The purposes of the Alaska Bar are to:

- regulate the practice of law;
- promote reform in the law and in judicial procedure;
- facilitate the administration of justice;
- encourage continuing legal education for the membership; and
- increase the public service and efficiency of the Bar.

ALASKA BAR ASSOCIATION

Board of Governors Meeting
840 K Street, Suite 100
Anchorage, AK 99501
April 23, 2025

All times on the agenda are given as an approximation. If members of the public want to be present for a particular agenda item, they should come early to ensure that they are present. Public comments are allowed as designated in the agenda, all public comments should be limited to two minutes in length.

Wednesday, April 23, 2025

8:30 a.m.		Roll Call and President's Remarks & Introduce Future Board Members
8:35 a.m.	(1)	Public Comments
8:45 a.m.	(2)	Consent Agenda A. Approval of January 2025 Minutes B. Motion & UBE Applicants C. Board of Governors Slate of Officers
8:50 a.m.	(3)	February 2025 Bar Exam Results
9:20 a.m.	(4)	2024 Financial Audit & 2025 Financial Update
10:20 a.m.	(5)	Information and Consent A. Next Year Meeting Schedule B. Election Update and U.S. Judge Poll Results C. ABA Rule of Law Statements
10:45 a.m.	(6)	Staff Reports A. Executive Director B. Admissions 1. July 2025 Bar Exam Update 2. Next Generation Bar Exam Update C. CLE D. Discipline 1. Discipline 4th Quarter Report 2. Summary 2023D091

		E. Pro Bono
12:00 p.m.		Lunch
1:00 p.m.	(7)	Alaska Bar Rule 65 Proposal: Pro Bono Service for CLE Credit
1:45 p.m.	(8)	Alaska Rules of Professional Conduct 1.2 & 1.16 Rule Proposal
2:15 p.m.	(9)	Status Changes Bylaw Proposal
2:30 p.m.	(10)	Ethics Opinions A. Duty to Safeguard Client Funds from Client Activity B. Ethical Use of Generative AI
3:15 p.m.	(11)	Subcommittee Reports A. Attorney Pipeline B. Building C. Executive Director and Bar Counsel Evaluations D. Membership Lists E. Convention Keynote
4:30 p.m.		Adjourn

The Alaska Bar Association recognizes and values the diversity and history of our unique state. This recognition is helpful in guiding our regulation of the practice of law and increasing our service to the public throughout Alaska. We serve all Alaskans and in particular honor its Indigenous people. Specifically, the Alaska Bar Association's office is on the ancestral lands of the Dena'ina. *Dena'inaq ełnenaq' gheshtnu ch'q'u yeshdu. "I live and work on the land of the Dena'ina."*

1

Public Comment

Sure, along with the attached article which I sent to you three years ago if you'd like, and I'm sure I could find many more. Thank you and continued very best wishes!

Ahmed M. Puloglu.

----- Forwarded Message -----

From: theodore christopher <tschristopherlibertarian@yahoo.com>

To: "[redacted]"

Sent: Tuesday, February 11, 2025 at 12:21:18 AM PST

Subject: Fw: 'The Licensing Racket' Review: There's a Board for That - WSJ

----- Forwarded Message -----

From: Danielle Bailey [redacted]

To: theodore christopher <tschristopherlibertarian@yahoo.com>

Sent: Monday, February 10, 2025 at 04:27:45 PM PST

Subject: Re: 'The Licensing Racket' Review: There's a Board for That - WSJ

This has been received. Would you like this to appear as a public comment at our Board's next meeting in April?

All the best,

Danielle Bailey | Executive Director | Alaska Bar Association

840 K Street, Suite 100, Anchorage, AK 99501

[redacted] | [redacted]

www.alaskabar.org

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From: theodore christopher <tschristopherlibertarian@yahoo.com>
Sent: Sunday, February 9, 2025 7:47 PM
To: [redacted]
Subject: Fw: 'The Licensing Racket' Review: There's a Board for That - WSJ

Please also see my November 30, 2022, e-mail.

----- Forwarded Message -----

From: "tc1000@verizon.net" <tc1000@verizon.net>

To: "tc1000@verizon.net" <tc1000@verizon.net>

Sent: Saturday, February 8, 2025 at 05:18:57 PM PST

Subject: 'The Licensing Racket' Review: There's a Board for That - WSJ

https://www.wsj.com/arts-culture/books/the-licensing-racket-review-theres-a-board-for-that-3da68d0a?mod=itp_wsj

'The Licensing Racket' Review: There's a Board for That

The restrictions and costs of professional licensing don't apply only to doctors and lawyers. Hairdressers, decorators and others must deal with them too.

By Alex Tabarrok Feb. 7, 2025 10:55 am ET

The Venus of Willendorf, a prehistoric statuette with finely braided hair, is proof that hair braiding has been practiced for at least 30,000 years. For most of that history, no government license was required. Yet today, in many American states, hair braiders must obtain a license—and that often means hundreds of hours of cosmetology training that costs tens of thousands of dollars. The absurdities and inequities of occupational licensing have been highlighted in recent years by the Institute for Justice, which has defended individuals' rights to work without a government license and has won some cases where the government failed to provide a rational basis for regulation.

The Licensing Racket: How We Decide Who Is Allowed to Work, and Why It Goes Wrong

THE LICENSING RACKET

HOW WE DECIDE WHO IS ALLOWED TO WORK, & WHY IT GOES WRONG

REBECCA HAW ALLENSWORTH

Nearly a quarter of American workers now require a government license to work, compared with about 5% in the 1950s. Much of this increase is due to a "ratchet effect," as professional groups organize and lobby legislatures to exclude competitors. In her excellent book, "The Licensing Racket," the Vanderbilt law professor Rebecca Haw Allensworth presents plenty of cases of hair braiders, barbers and interior decorators who have been prevented from working by license restrictions that inflate prices without improving safety or quality. But Ms. Allensworth has bigger targets in mind.

Most people will concede that licensing for hair braiders and interior decorators is excessive while licensing for doctors, nurses and lawyers is essential. Hair braiders pose little to no threat to public safety, but subpar doctors, nurses and lawyers can ruin lives. To Ms. Allensworth's credit, she asks for evidence. Does occupational licensing protect consumers? The author focuses on the professional board, the forgotten institution of occupational licensing.

Governments enact occupational-licensing laws but rarely handle regulation directly—there's no Bureau of Hair Braiding. Instead, interpretation and enforcement are delegated to licensing boards, typically dominated by members of the profession. Occupational licensing is self-regulation. The outcome is predictable: Driven by self-interest, professional identity and culture, these boards consistently favor their own members over consumers.

Ms. Allensworth conducted exhaustive research for "The Licensing Racket," spending hundreds of hours attending board meetings—often as the only nonboard member present. At the Tennessee board of alarm-system contractors, most of the complaints come from consumers who report the sort of issues that licensing is meant to prevent: poor installation, code violations, high-pressure sales tactics and exploitation of the elderly. But the board dismisses most of these complaints against its own members, and is far more aggressive in disciplining unlicensed handymen who occasionally install alarm systems. As Ms. Allensworth notes, "the board was ten times more likely to take action in a case alleging unlicensed practice than one complaining about service quality or safety."

She finds similar patterns among boards that regulate auctioneers, cosmetologists and barbers. Enforcement efforts tend to protect turf more than consumers. Consumers care about bad service, not about who is licensed, so take a guess who complains about unlicensed practitioners? Licensed practitioners. According to Ms. Allensworth, it was these competitor-initiated cases, "not consumer complaints alleging fraud, predatory sales tactics, and graft," where boards gave the stiffest penalties.

You might hope that boards that oversee nurses and doctors would prioritize patient safety, but Ms. Allensworth's findings show otherwise. She documents a disturbing pattern of boards that have ignored or forgiven egregious misconduct, including nurses and physicians extorting sex for prescriptions, running pill mills, assaulting patients under anesthesia and operating while intoxicated.

In one horrifying case, a surgeon breaks the white-coat code and reports a fellow doctor for performing a surgery so catastrophically botched that he assumes the practitioner must be an imposter. Others also report "Dr. Death" to the board. But Ms. Allensworth notes, "at the time of the complaints to the medical board, [Dr. Death] was only one third of the way through the thirty-seven spinal surgeries he would perform, thirty-three of which left the patients maimed or dead." The board system seems incapable of acting decisively and Dr. Death's rampage is only ended definitively when he is indicted—the initial charges include "assault with a deadly weapon," the scalpel—and eventually imprisoned.

No system is perfect, but Ms. Allensworth's point is that the board system is not designed to protect patients or consumers. She has a lot of circumstantial evidence that signals the same conclusion. The National Practitioner Data Bank (NPDB), for example, collects data on physician misconduct and potential misconduct as evidenced by medical-malpractice lawsuits. But "when Congress tried to open the database to the public, the [American Medical Association] 'crushed it like a bug.'"

One of the most infuriating aspects of the system is that the AMA and the boards limit the number of physicians with occupational licensing, artificially scarce residency slots and barriers preventing foreign physicians from practicing in the U.S. Yet when a physician is brought before a board for egregious misconduct, the AMA cites physician shortage as a reason for leniency. When it comes to disciplining bad actors, the mantra seems to be that "any physician is better than no physician," but when it comes to allowing foreign-trained doctors to practice in the U.S., the claim suddenly becomes something like "patient safety requires American training."

How can the system of occupational licensing be reformed? Here the author and I part company. Occupational licensing promised to deliver safety and quality in exchange for limiting supply, but that promise has been broken. Ms. Allensworth's reforms focus on reducing professional self-regulation. By converting licensing boards into independent government-run bureaucracies with permanent staff and enhanced resources, she would attempt to fulfill the original promise of the system.

I agree that licensing boards have failed to effectively discipline their members, but I think we should eliminate restrictions on supply. The adage "any physician is better than no

physician" should not be a shield for negligent doctors, but it underscores an essential truth. The real harm lies in the scarcity created by licensing.

We deregulated airlines, trucking and natural gas, reducing prices and increasing efficiency. It's time to deregulate the professions. Alarm installers, interior decorators and hair braiders should not require a license. In cases where health and safety are at issue, Ms. Allensworth suggests replacing occupational licensing with narrowly tailored regulation. Chefs don't require an occupational license to cook, but we do require commercial kitchens to be inspected for sanitation.

Voluntary certification can effectively replace many occupational licenses. Consider computer security, one of the most critical fields for consumer safety. Instead of requiring occupational licenses, professionals in this field rely on certifications such as the CISSP (Certified Information Systems Security Professional) to demonstrate expertise and competence.

Clifford Winston of the Brookings Institution argues for eliminating occupational licensing for lawyers entirely and replacing it with a system of voluntary certification. Government has a role to play by collecting information about service quality and making it easily accessible to the public. Databases like the NPDB should be improved and opened for many professions.

The medical profession is unlikely to be delicensed, but as Ms. Allensworth's book shows, we shouldn't let the AMA dictate the terms of medical education. Many European countries offer combined undergraduate and medical degree programs that take only six years, compared to the eight or more years required in the U.S.

Advances in artificial intelligence, which Ms. Allensworth doesn't explore, may also catalyze reform. AI is already transforming fields such as legal research and medical diagnostics, automating tasks once reserved for licensed professionals. As these technologies advance, they can reduce reliance on rigid licensing systems by ensuring quality and safety through innovative tools.

"The Licensing Racket" is a pioneering investigation of a broken system. The time has come to reimagine and reform. By embracing voluntary certification, tailored regulation and technological advancements, we can create a more dynamic, inclusive and efficient labor market.

Mr. Tabarrok is the Bartley J. Madden Chair in Economics at George Mason University.

Appeared in the February 8, 2025, print edition as 'Permission To Join The Field'.

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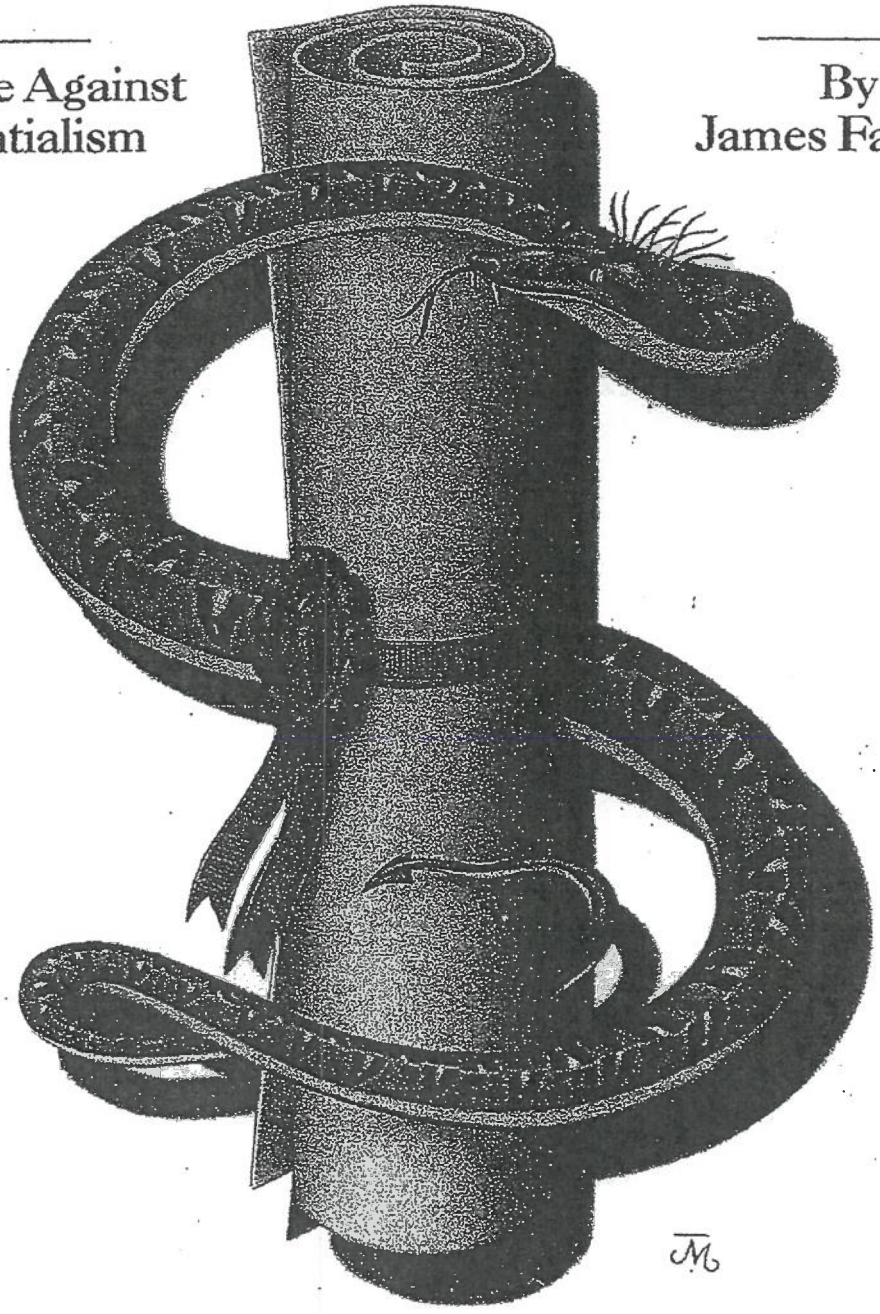
THE MODERN TRADING STATE / ROADSIDE ARCHITECTURE / HIGH-TECH VIDEO

Bad for Business

The Case Against Credentialism

By James Fallows



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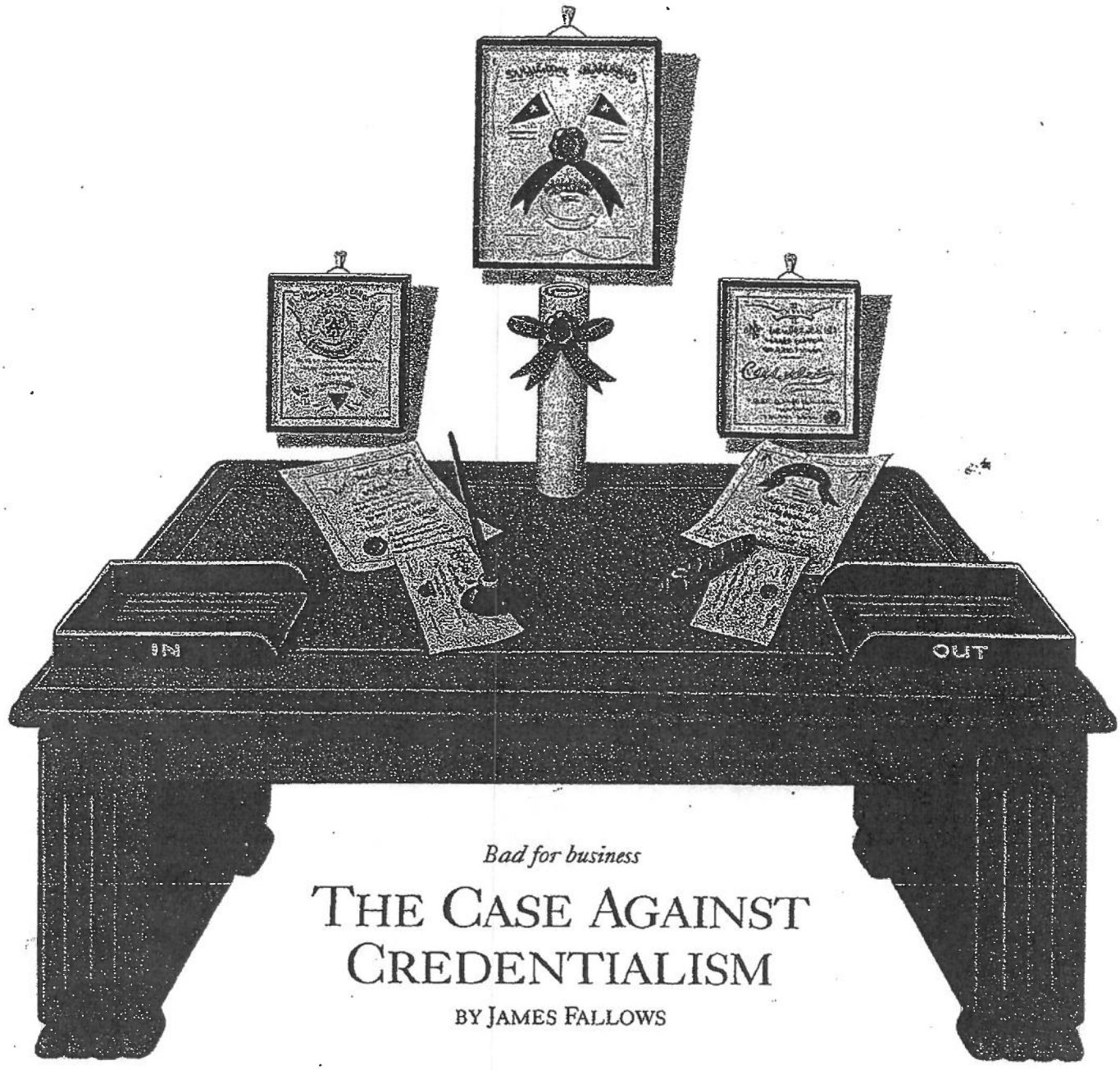


Bad for business

THE CASE AGAINST CREDENTIALISM

BY JAMES FALLOWS

IN 1961 DAVID MCCLELLAND, A PSYCHOLOGIST AT HARVARD, published *The Achieving Society*, an extravagantly ambitious attempt to discover why certain cultures "worked" better than others. Why, among West African tribes, were the Ashanti and the Ibo so economically dominant? Why was so much of the commerce of Southeast Asia run by expatriate Chinese, and so little by the Malays among whom they lived? Why had Jewish immigrants to the United States risen faster than southern Italians?

McClelland's answer involved a value he called *n* Achievement, which varied from culture to culture and gave members of different societies ways to view the workings of fate. Some cultures taught that struggle was fruitless, since success or failure ultimately depended on destiny and the gods. Others conveyed to their children the view that every person could control or at least influence his outcome in life. Luck mattered, but a prudent man could make his own luck. The odds might be long, but they were rarely insuperable. Indeed, in "achieving" societies people regularly underestimated the odds against them and launched ventures that on the facts seemed quite likely to fail. For indications about the *n* Achievement level of various cultures McClelland looked at nursery rhymes, children's stories, folktales, and other vehicles for the unconscious transmission of values.

When American culture was viewed through this lens,

its folktales seemed to promote an astronomically high level of *n* Achievement. Benjamin Franklin, Abraham Lincoln, Ulysses S. Grant, Thomas Edison, Andrew and even Dale Carnegie—these and countless other self-made men taught by their example what immigrants continued to prove, that hard work might well be rewarded and sights could never be set too high. Starting with *Poor Richard's Almanac* and running through the Horatio Alger series and such inspirational business tracts as *Acres of Diamonds* and *A Message to Garcia*, the flourishing self-improvement industry reflected the American faith that each person held the keys to success in his own hands.

With their regression charts and biographical data, sociologists have demonstrated that the saga of the self-made success was partly myth. The American business titan of the late nineteenth century was more likely to have been born to a comfortable, educated, urban family than to have been a son of toil. Still, McClelland never claimed that the folktales he analyzed—about bad fairies and magic spiders and friendly giants—were literally true. What mattered was that they were told and heard, and that they shaped a culture's attitude. Repeated in schoolrooms and parlors, emphasized in speeches, novels, and popular magazines, the folktales of American business successes emboldened the impressionable public to try. When the sociologist Ely Chinoy studied a community of autoworkers in the 1950s, many people told him that they viewed their jobs in the factory as temporary. Their real dream was to strike out on their own, with a farm, a gas station, or a store.

McClelland's most important point was probably his initial one: that there is a deep connection between the ways we hope to advance as individuals and the economic resiliency the entire culture displays. The nation's bookshelves now groan with analyses of America's productivity problems and competitive woes. Might part of what they seek to explain lie in the changing folklore of success and the private concepts of ambition?

To judge by the recent celebration of entrepreneurs, the American business folklore would seem to be as robustly *n* Achievement–laden as ever. Not since the 1920s has there been so little cynicism and so much public piety about the person who takes a risk, goes out on his own, makes it all work. But once we move past the admiring profiles of software titans and biotechnology kings, the idea that the United States has given itself over to a resurgent entrepreneurial culture is hard to believe. In fact, we are seeing a war between two quite different cultures of achievement, with quite different implications for America's economic ability to adapt and pay its way.

One is the assortment of informal, outside-normal-channels, no-guarantee, and low-prestige activities that is glossed over and glamorized by the term *entrepreneurialism*. Most of the entrepreneurs who rise to public notice have, of course, already proved themselves successful. When we read the inspiring chronicles of Jack Kilby, a co-inventor of the silicon chip, or Fred Smith, who founded Federal Express, we know that the early risks will eventually seem prudent and the early scoffers will have the joke turned on them. But the thousands of people who are trying to develop tomorrow's new industries have no such certainty: they can't be sure whether they're starting the next Xerox or the next Osborne Computers. Perhaps more important, the world seems to suspect the worst of entrepreneurs. The term *inventor* still conjures up a character with a garage full of gadgets; how much more dignified is the sound of *banker*, *lawyer*, or *manager at IBM*. No one brags to friends about children who have signed up for the Learn Computer Repair schools advertised on matchbook covers, even though such self-help courses epitomize the *n* Achievement idea that individuals can improve their standing and control their own fate.

Parents brag, instead, about the son who has finished college or the daughter who has been accepted to law school. Even as modern America honors the successful entrepreneur, it reflects the tremendous pull exerted by the security, dignity, and order of the professionalized world. The basic tenet of this culture of achievement is that he who goes further in school will go further in life. American society is often described as a meritocracy, in the sense that those who show the most pluck and academic merit will prevail. The Houston housewife who labored in obscure solitude on her first novel, picked an agent's name out of a magazine, and then sold her book last summer for $350,000 is a figure from the first culture, that of self-help; if she uses the money to send her son to Andover, Yale, and Harvard Law, he will be a citizen of the second, the meritocracy.

The rise to professional status is one of the most familiar and cherished parts of the American achievement ideal. What immigrant saga would be complete without the peddler's grandson receiving his M.D.? But such an ideal is also at odds with most analyses of what the society as a whole needs if it is to continue to achieve. If everyone has the tenure and security that come with professional status, who will take the risks?

NOWHERE IS THE TENSION BETWEEN THE TWO CULtures, the entrepreneurial and the professional, more evident at the moment than in American business. At just the time when American business is said to need the flexibility and the lack of hierarchy that an entrepreneurial climate can create, more and more businessmen seem to feel that their chances for personal success will be greatest if they become not entrepreneurs but professionals, with advanced educational degrees.

In the past twenty years enrollment in graduate business schools has increased by a factor of ten. Next spring 67,000 new M.B.A.s will take their degrees to the marketplace. Alert to the workings of supply and demand, some business-school officials have predicted a glut; already, newer, weaker schools have been retrenching, and some recent graduates have settled for less attractive jobs than they might once have hoped to get. Still, overall enrollment

continues to rise, and graduates of the most prominent schools are heavily in demand. The business-school community closely studies each school's "return on investment" or "value added" ratio—how much an M.B.A. degree adds to a person's salary, compared with how much it costs to obtain. At Dartmouth's Amos Tuck School, the nation's oldest graduate business college, tuition this year is $11,000, and the average starting salary for graduates is around $43,000. "That four-to-one ratio has been constant for at least the fifteen or twenty years I've been aware of it," Colin Blaydon, Amos Tuck's dean, says. Harvard also reports a four-to-one ratio, down from the heady seven-to-one ratio of 1969, but not so far that Harvard has any trouble filling its admissions quotas.

The rise of the M.B.A. has occurred during precisely the era in which, as anyone who follows business magazines is aware, the content of graduate business training has come under increasing attack. "We have created a monster," H. Edward Wrapp, of the University of Chicago's business school, wrote in 1980, in *Dun's Review*. "The business schools have done more to insure the success of the Japanese and West German invasion of America than any one thing I can think of." "I'd close every one of the graduate schools of business," Michael Thomas, an investment banker and author, wrote in *The New York Times*.

The specific case against business schools is that they have neglected certain skills and outlooks that are essential to America's commercial renaissance while inculcating values that can do harm. The traditional strength of business education has been to provide students with a broad view of many varied business functions—marketing, finance, production, and so forth. But like sociology and political science, business training has gotten all wrapped up in mathematical models and such ideas as can be boiled down to numbers. This shift has led schools to play down two fundamental but hard-to-quantify business imperatives: creating the conditions that will permit the design and production of high-quality goods, and waging the constant struggle to inspire, cajole, discipline, lead, and in general persuade employees to work in common cause.

IT IS BY NOW CONVENTIONAL WISDOM THAT AN UNDER-emphasis on production and on leadership lay behind many of America's industrial difficulties in the 1970s. "Business is principally about design and building and selling, and basic management is not paying attention to those functions," says Thomas Peters, a co-author of the legendarily successful *In Search of Excellence*. "In business and in business schools we don't focus enough on how to lead people. Until you have managed people, you don't have any idea how complex it is. The difficulty now is that the youngster comes to business school without any experience or taste about managing people, so he or she can't ask challenging questions. So in the class you've got the standard business-school professor, who got a Ph.D. in statistics at age twenty and a half, talking to students who got 800s on their GMATs. It sure feels good to both parties, but it doesn't have much to do with business. I wouldn't let anybody in the place before age thirty."

In addition to what business school, because of its academic and theoretical emphasis, neglects, it is said to inculcate attitudes hostile to the flexibility and daring celebrated in today's entrepreneurial heroes. "The students I see are very concerned about résumé value, and *very* risk-averse," says Roger Muller, who got his M.B.A. in 1973 and is now the director of placement at Amos Tuck. "They don't want to take any chances. Someone will come in wanting to be an investment banker. He decides, I've *got* to work for Goldman, Sachs this summer, because that will give me a better shot at the job with Goldman, Sachs when I get out of here. They want everything to line up just right and are easily frustrated when things don't."

Goldman, Sachs is not an idly chosen example; investment banking and consulting firms are the most popular outlet for M.B.A.s, especially from the top schools, and they pay the highest salaries. When the Harvard Business School surveyed its class of 1984, nearly 40 percent said they had taken jobs in consulting or investment banking. Consulting, with a median starting salary of $52,300, was the most lucrative field. Investment banking, at $45,000, was second highest. Manufacturing attracted only a quarter of the class, and its most common starting salary was under $40,000. The perversity of such a preference is that students are hoping to find security in the very pursuits that add such instability to the American financial structure. This fall *Business Week* featured a report on the "Casino Economy"—the tremendous increase in speculation, merger, corporate rearrangement, tax avoidance, and other forms of financial churning that make fortunes for investment bankers while ratcheting up the level of corporate debt. To such efforts are the best and brightest now drawn.

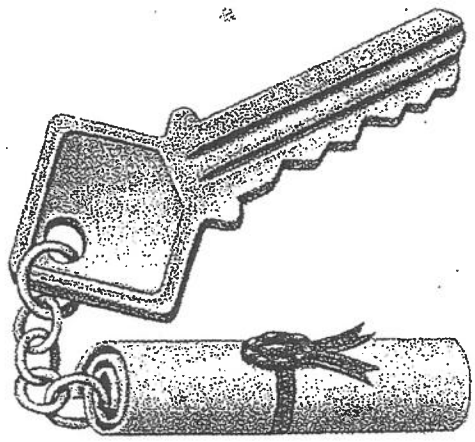
From the student's point of view, the continuing migration into business school and from there onward to consulting firms and banks is hardly mysterious. That is where the money is. But when we think about our culture and its parables of ambition, the rise of M.B.A.s and consultants raises a question like that posed by the prestige and prominence of the legal establishment. Why is so much raw talent creamed off for pursuits of such dubious economic value? Why are so many of our smartest people induced to spend their adult lives waging merger wars against one another and doing battle over the tax code? Even the factory workers who once dreamed of opening their own stores have, it seems, reset their sights. When Richard Sennett and Jonathan Cobb interviewed a group of working-class parents in the 1970s, the parents "did not speak about the good life for their children in terms of small business. It exists, most of them believe, in the professions, in medicine or college teaching or architecture. . . ."

Why did the professions become so attractive, and independent business so unappealing? Why has there been such a surge in the most "professionalized" form of business, investment banking, and such a decline (despite the

current romance of high tech) in designing, building, and selling America's goods? Through the years certain cultures have rewarded behavior that eventually proved ruinous to the society as a whole—the British upper class's desire to be free of the taint of commerce is the most famous example. Is a similar perverse process at work here?

One way to understand the professionalization of business is to step back from strictly commercial concerns and follow the course of an enormous change in American society over the past hundred years. The connection between education and occupation is now so firmly ingrained as to seem almost a fact of nature. To get a good job, you get a diploma; at one time a high school diploma sufficed, and then a B.A., but now you're better off with a J.D. or an M.B.A. When Richard Herrnstein, a Harvard psychologist, wrote a book called *I.Q. in the Meritocracy*, in 1973, parts of his argument were controversial but not his assertion that success in school was and should be a prerequisite to success in later working life. "The gradient of occupations is, then, a natural, essentially unconscious expression of the current social consensus," Herrnstein said. Society had to select and conserve its talent, and the best way to do that was through the schools.

Yet this familiar system, far from evolving "naturally" or "unconsciously," is the product of distinct cultural changes in American history. The process that left it on our landscape is less like the slow raising of a mountain range or the growth of oxbows on the Mississippi, and more like the construction of a dam. Three changes, which all took place in the past hundred years, produced the system that is now producing M.B.A.s. They were the conversion of jobs into "professions," the scientific measurement of intelligence, and the use of government power to "channel" people toward certain occupations.



THE FIRST CHANGE WAS PROVOKED BY THE GENERAL social chaos of the late nineteenth century. In fond recollection this is the era of ice-cream socials and horse-and-buggy outings and white linen suits, but for those alive then, it seems to have featured one moment of terrifying uncertainty after another. Between the end of the Civil War and the beginning of the First World War the nation's population grew faster and migrated more frequently than ever before or since. Tens of millions of people poured through Ellis Island and into the New World; millions more left farms in Wisconsin and Tennessee to work in stockyards and steel mills in such brash new boomtowns as Chicago, Cleveland, and Detroit. Men and women who had grown up on farms or in small towns where everyone knew his neighbors, and where behavior was constrained by the knowledge that nothing could be kept secret for very long, now found themselves kowtowing to impersonal foremen and brushing shoulders with people who had only recently lived in Calabria or Minsk.

The social order and the traditional sources of security were repeatedly called into question. When the transcontinental railroad network was completed, the United States was for the first time something like a national market. Small-town merchants found they couldn't compete with the big chains operating out of Chicago and New York. With the growth of steamship lines and the cultivation of vast new tracts in Australia, Canada, and South America, farmers were exposed not just to a national but to a worldwide economy. A farm family in Kansas could till, sow, pray for rain, and harvest—only to find that a bumper crop in Argentina had destroyed the price for wheat. At the time of the Civil War more than half of the American work force could still be found on the farm. By the turn of the century only a third was still there. With the decline of the village and the farm, doors were closing on the man who wanted to work for himself and opening to those who were willing to sign on with Armour or Union Pacific or Standard Oil.

"An age never lent itself more readily to sweeping, uniform description: nationalization, industrialization, mechanization, urbanization," the historian Robert Wiebe wrote in his classic study of the era.

> Yet to almost all of the people who created them, these themes meant only dislocation and bewilderment. America in the late nineteenth century was a society without a core. . . . A feeling [was] suddenly acute across the land that local America stood at bay, besieged by giant forces abroad and beset by subversion at home.

Wiebe's book was called *The Search for Order*; it stressed the different ways in which different groups struggled to recover the social and economic security they had lost. The farmers joined ranks in the anti-foreign, anti-immigrant, anti-bank, and eventually anti-black protests of the Populist movement. Immigrant and other industrial workers fought for protection through labor unions. The traditional American aristocracy of Roosevelts and Cabots tried both to hold off the immigrants who were reaching for control of city politics and to erect barriers of snobbery and taste with which to separate themselves from the grasping plutocrats of the Gilded Age.

For the middling rank of dislocated merchants, craftsmen, and semi-professionals, the most promising route to security was to enhance the prestige of their occupations. Through the nineteenth century "anyone with a bag of pills and a bottle of syrup could pass for a doctor," as Wiebe put it; many doctors were socially ill-regarded beings, with earnings that fluctuated wildly and were chronically below those of businessmen. Lawyers, teachers, and engineers had similar problems. But a more complicated society had more demand for technical skills, and in the decades after the Civil War nearly every group now thought of as "professional," from lawyers to librarians to accountants to mechanical engineers, organized itself in an attempt to raise its standards and its status.

The economic advantages to be had from professional organization were most concisely explained by Mark Twain, who in *Life on the Mississippi* described the riverboat pilots' attempt to make themselves into a monopoly. At mid-century, when westward expansion caused the steamboat business to boom, the pilots' pay unaccountably began to fall. The reason, as the pilots soon deduced, was that any fool off the farm could sign on as an apprentice pilot, increasing competition and depressing the market. A few of the pilots formed a guild, or "association," asking an inflated wage. They slowly recruited members and agreed to exchange information about the river's constantly changing snags and sandbars only with other members of the guild.

"Now came [the] perfectly logical result," Twain wrote, with admiration. "The outsiders began to ground steamboats, sink them, and get into all sorts of trouble, whereas accidents seemed to keep entirely away from the association men." Insurance companies began to plump for association pilots; the steamship owners agreed to one wage raise after another, passing on the difference (and then some) in freight. Since no one could become a pilot without the recommendation of two existing pilots, the association could regulate its own competition. The pilots prospered until the entire, now overpriced industry was destroyed by the railroads and "the association and the noble science of piloting were things of the dead and pathetic past!"

The difference between the pilots' association and the countless other guilds that sprang up and survived was that the pilots were tied to one specialized industry and could be completely displaced, unlike doctors, teachers, lawyers, and engineers. But the economic logic that lay behind the pilots' association shaped the other organizations as well. They controlled entry into their fields, they often raised professional standards, and they sheltered their members from the more chaotic side of the marketplace.

The newly organizing groups could call themselves professions, and not simply resurrected medieval guilds, because their members' mastery of a new body of knowledge gave them claims to a competence beyond the amateur's reach. Doctors could take advantage of the new breakthroughs in germ theory and anesthesia, engineers of refinements in industrial technology. "A strong profession requires a real technical skill that produces demonstrable results and can be taught," a sociologist named Randall Collins wrote in a history of educational credentials. "The skill must be difficult enough to require training and reliable enough to produce results. But it cannot be too reliable, for then outsiders can judge work by its results." Indeed, when historians try to explain why engineers have never become as prestigious and independent as doctors or lawyers, one of their answers is that the engineer's competence is too clearly on display. (When a patient dies, the doctor might not be to blame, but if a bridge falls down, the engineer is.)

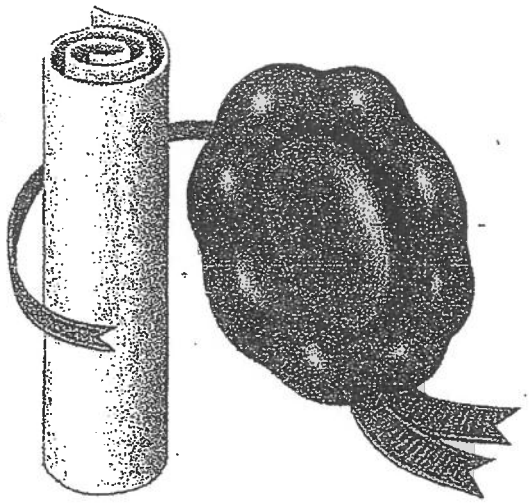
As a means of transmitting the knowledge on which their authority was based—and of reserving to themselves control over who would enter the field—the professions dramatically increased the educational requirements for new aspirants near the turn of the century. Before, practically anyone could declare himself a doctor or a teacher or a lawyer, and the choice about who prospered and who failed would be left to "the market," including people who died after trying to cure their cholera with snake oil. Afterward, those who wanted to enter the professions had to go to school, and once they had their credentials they enjoyed a near-tenured status they had previously been denied. Before the First World War not a single state required that its lawyers have attended law school, and fewer than a third of all North American medical schools required even a high school diploma for admission. By the Second World War professionals without advanced degrees were becoming an oddity.

Business managers began "professionalizing" about the same time that the other groups did, but their alliance with educational institutions developed more slowly. The new body of knowledge that turned business into a profession was created by the rise of huge, complex, integrated corporations. With the coming of railroads and telegraphs and nationwide trading firms, businessmen couldn't keep schedules or accounts in their heads any longer, as the small-town merchant had done. Resources had to be coordinated, inventory tracked from place to place, new systems of accounting worked out. In his history of American management, *The Visible Hand*, Alfred Chandler, of the Harvard Business School, described how the rise of multi-unit corporations killed off the owner-managers of a simpler era and created a demand for salaried, "scientific" management. Soon after the turn of the century professional management societies and scientific-management journals sprouted up everywhere. The early generation of professionally trained managers was mainly from engineering schools like MIT. "You needed an engineering background to know what was going on inside the factories," Chandler told me. "But when the merger movement began and you needed skills for more than just production, you had the first wave of business schools. At that point, they were indeed meeting a need."

By 1910 graduate business schools had been founded at Dartmouth and Harvard, as had undergraduate schools of business at New York University and the universities of Chicago, California, and Pennsylvania (the Wharton School). Still, until the eve of the Second World War specialized training in business was the exception. According to a national survey conducted in 1937–1938, only about half of all employers required that prospective managers have even a high school diploma, and only one eighth required a college degree. Thirty years later a regional study found that nearly half of all managerial jobs formally required either a B.A. or a graduate degree.

The first cultural change, then, was the evolution of distinct professions, requiring proof of academic training from those who hoped to join. In part the rise of credentialed professions reflected the greater precision of scientific knowledge and the greater complexity of modern business operations, but it also arose from a social choice. When it came to determining professional status, the trial and error of the marketplace would not suffice. Objective standards must be found. Shortly after the Civil War, Charles William Eliot, newly installed as the president of Harvard, had complained in his inaugural address that "as a people we have but a halting faith in special training for high professional employments." There was "national danger" in the "vulgar conceit that the Yankee can turn his hand to anything [which] we insensibly carry into high places, where it is preposterous and criminal. We are accustomed to seeing men leap from farm or shop to courtroom or pulpit, and we half believe that common men can safely use the seven-league boots of genius." The new ethic of self-regulating professions was the answer to this vulgar Yankee conceit.

Because meeting "objective" standards so often meant getting an academic degree, professional competence soon was measured by "input," not "output." That is, anyone who brought the right educational credentials and could pass the entry test was certified and from that point on was shielded from further formal tests of competence. Once a professional, always a professional, barring felony conviction or grotesque error. As part of the movement for professionalization, the U.S. Civil Service was converted from a high-turnover political-spoils system to a "merit" system, based on objective entry tests. In the old days practically anyone could be hired for a government job, but no one could count on staying very long. After the Civil Service was reformed, only those who met the standards could sign on—and once hired, they could practically never be dislodged. The corruption of the spoils system symbolized the social chaos that the professional guilds hoped to combat, not only in the government but also in business and the professions. The rigidity of the modern Civil Service illustrates how far the idea of professional tenure has gone. In five years in office Ronald Reagan has managed to replace fewer federal employees than Abraham Lincoln did in four, and in Lincoln's day the government was one seventieth its current size.



THE SECOND HISTORIC STEP TOWARD A MERITOCRACY occurred at about the same time as the wave of professionalization. It was the invention of IQ tests and the dawning of the idea that "intelligence" was a single, real, measurable, and unchanging trait that severely limited each person's occupational choice.

To the creator of the first intelligence test, the French psychologist Alfred Binet, *IQ* meant something very different from what it has come to imply. As has often been told, Binet was commissioned by the French Ministry of Instruction to develop a test to identify children in need of remedial schooling. He came up with a list of simple tasks that would illustrate the child's "mental age"—a normal three-year-old should be able to point to his nose, eyes, and mouth, a normal ten-year-old should be able to make a sentence with the words *Paris*, *fortune*, and *gutter*, and so forth. The ratio between mental age and chronological age, of course, yielded the "intelligence quotient," or IQ, with 100 defined as normal.

Binet never viewed "normal" children as appropriate subjects for his test, which, like the white-blood-cell count, was designed to indicate the presence of disease, not to rank degrees of health. He went out of his way to denounce the idea that IQ could be thought of as a fixed, innate value. As he saw it, an IQ test was, to use another analogy, something like a physical-fitness exam given before a conditioning program, which would indicate areas of weakness and serve as a benchmark for future progress. He prescribed a course of "mental therapeutics" to build mental strength and raise IQ. He began his chapter "The Training of Intelligence" by saying, "After the illness, the remedy." As a young student, Binet himself had been told he would never have a truly philosophical spirit.

> Never! What a momentous word. Some recent thinkers seem to have given their moral support to these deplorable verdicts by affirming that an individual's intelligence is a fixed quantity, a quantity that cannot be increased. We must protest and react against this brutal pessimism; we must try to demonstrate that it is founded upon nothing.

Something happened to Binet's concept of IQ when it was translated into English. In both England and the United States, IQ was seized upon as a way of quantifying the long-suspected mental differences among individuals and races. In response to the seemingly unstoppable flow of immigrants, American theorists had developed elaborate schema of the mental standing of different ethnic groups —"Nordics" highest, Eastern Europeans and blacks lowest—but for proof they had had to get by with comparative cranium measurements and photographs of deviant physiognomies. The IQ tests gave the new science of psychometrics—mental measurement—the kind of objective, hard data it had so sorely lacked.

By the beginning of the First World War psychometrics had come so far that millions of American recruits were screened for IQ with the famous Army Alpha and Army Beta tests. (The first ten questions from an Army Alpha exam are listed below.*) When the results were correlated with the recruits' social and ethnic backgrounds, they confirmed what everyone had suspected: the immigrants and blacks were overwhelmingly subnormal, with the most recent arrivals proving to be the most defective. The only unforeseen and unsettling wrinkle was that *most* people were subnormal: the average mental age for white draftees was thirteen. The chief administrator of the tests, Robert Yerkes, noted that if the results were taken seriously, 47 percent of white draftees must be classified as morons. He concluded, "Thus it appears that feeble-mindedness . . . is of much greater frequency of occurrence than had been originally supposed."

The 900-page analysis of the Army exams was made public in 1921. Ever since then arguments about intelligence tests have centered on whether the tests are "fair." If the IQ test and all its progeny, from the Army Alpha to the Scholastic Aptitude Test, really did seek out raw talent "fairly," regardless of social setting, why have all of them, from the beginning, shown that the people with the best jobs, the most money, and the best bloodlines also have the highest IQs? Had American (and English) society become so perfectly meritocratic by the early 1900s that the smartest people had already reached the occupational summit, despite nativist passions, Jim Crow laws, and the brutalized condition of the urban working class?

But beneath the drawn-out arguments about fair and unfair measures of IQ a more powerful concept has often lain unchallenged. Everyone seems to agree that if only we could find a way to determine IQ "objectively," we would be more than halfway to determining where people should end up in life. Even most critics of the tests don't question the current structure of the professions. Their concern is giving everyone a "fair" shot at an M.B.A.

Forging a link between intelligence and occupation was explicitly the goal of the early psychometricians, even though it was not a goal of Alfred Binet's. Lewis Terman, one of the movement's leaders, wrote in 1923 that

> preliminary investigations indicate that an IQ below 70 rarely permits anything better than unskilled labor; that the range from 70 to 80 is preeminently that of semi-skilled labor, from 80 to 100 that of the skilled or ordinary clerical labor, from 100 to 110 or 115 that of the semi-professional pursuits; and that above all these are the grades of intelligence which permit one to enter the professions or the larger fields of business. Intelligence tests can tell us [to which group] a child's native brightness corresponds. . . .

The most important word here is *permits*. If the first major social change, the rise of professions based on advanced educational degrees, dramatically increased the importance of higher education, the second change implied that only a few people would be recognized as having the raw intelligence to handle long years in school and the careers that would follow. The results of this perception were spelled out by Richard Herrnstein, in his book on the meritocracy. "The ties among I.Q., occupation, and social standing make practical sense," he wrote. "If virtually anyone is smart enough to be a ditch digger, and only half the people are smart enough to be engineers, then society is, in effect, husbanding its intellectual resources by holding engineers in greater esteem, and on the average, paying them more."

Surely some people are more talented than others, and some are not fit to be doctors or artists or musicians. Still, there are reasons to be skeptical of the idea that IQ is usually the limit on occupational ascent. For example, one of sociology's longest-running and most thorough surveys, known as the "Kalamazoo Brothers" study, followed thousands of boys from their childhoods in Kalamazoo well into adulthood. A recent analysis of its results revealed that of the men who ended up as professionals, 10 percent had as children been considered "high-grade morons." (That is, their IQs were 85 or below, placing them in the bottom sixth of the population. During the first half century of intelligence testing, people with scores below 85 were known, in descending order of intelligence, as morons, imbeciles, and idiots. Now scores below 70 are associated with severity of retardation, from "mild" to "profound.") Michael Olneck and James Crouse, who analyzed the Kalamazoo data, found that a third of all the professionals and 42 percent of the managers had childhood IQs below 100, which is by definition subnormal. As a group the man-

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* Army Alpha Test 8

1. The *apple* grows on a *shrub vine bush tree*
2. *Five hundred* is played with *rackets pins cards dice*
3. The *Percheron* is a kind of *goat horse cow sheep*
4. The most prominent industry of *Gloucester* is *fishing packing brewing automobiles*
5. *Sapphires* are usually *blue red green yellow*
6. The *Rhode Island Red* is a kind of *horse granite cattle fowl*
7. *Christy Mathewson* is famous as a *writer artist baseball player comedian*
8. *Revolvers* are made by *Swift & Co. Smith & Wesson W.L. Douglass B.T. Babbitt*
9. *Carrie Nation* is known as a *singer temperance agitator suffragist nurse*
10. *"There's a reason"* is an "ad" for a *drink revolver flour cleanser*

agers had above-average IQs, but a large number of individual managers did not. According to pure meritocratic theory, Olneck and Crouse observed, the greatest diversity of IQ scores should be found at the bottom of the occupational pyramid (since some people have the brains but not the gumption or the opportunity to move up) and the least diversity at the top (where everyone would have to be smart to make the grade). When Richard Herrnstein compared the IQ scores of Second World War recruits with their occupations before induction, he discovered just such a pattern. But Herrnstein's subjects were young, starting out in their careers; the Kalamazoo study, which traced its subjects until much later in life, found that the IQ-and-occupation pattern was in fact the reverse. The greatest diversity of IQ scores was found not among unskilled laborers but among professionals. "It appears that the capacity to succeed in [professional and managerial] jobs is rather widespread, and is not confined to men who score well on tests," Olneck and Crouse concluded.

Another illustration that people can often do more than their IQ "limits" suggest: After the Second World War the GI Bill financed a college education for 2.3 million men, including half a million whose backgrounds suggested that they were not "college material" and who said they would not otherwise have gone to school. James B. Conant, the president of Harvard, called the bill "distressing," because it did not "distinguish between those who can profit most by advanced education and those who cannot." In the same spirit Robert Hutchins, of the University of Chicago, warned that when the GIs came home, "colleges and universities will find themselves converted into educational hobo jungles." In other words, this was a scheme to push people beyond what their intelligence would permit. Of course, when the returning GIs enrolled, they confounded all predictions and proved to be famously mature and successful in class. Researchers found that those who would not have gone to college without help from the GI Bill did slightly better in course work than other equally able veterans.

If the linkage between jobs and IQ were as strong and automatic as the meritocratic theories proposed, how could the Kalamazoo morons have succeeded in business and the professions? How could the population of Europe have switched from an overwhelmingly agricultural to an industrial society, with its more demanding skill level, within three or four generations? Where could the United States have found the extra talent to manage an even more rapid transition—the proportion of professional and managerial jobs has quadrupled just since 1900—at precisely the time that its gene pool was "deteriorating" because of dysgenic flows from overseas? Obviously, during the agricultural era the limit on human performance was not the stockpile of native intelligence but the primitive level of technology and social organization. Through most of history most people have been capable of far more than economic organization has permitted them to do. It would be remarkable indeed if in the 1980s we had reached the precise point of equilibrium at which the supply of human talent exactly matched the high-skill jobs that exist to be done.

Nonetheless, the lasting effect of this second social change was the belief that an individual's IQ placed firm limits on how extensively he could be educated—and, because of the emerging link between education and work, on the jobs to which he could aspire. Since a person's intellectual ability was genetically fixed, predictions about his specific limits could be made early in life, as soon as he reached school. The third change began as a logical sequence of the first two: the conversion of the schools into a "channeling" mechanism.

UNTIL THE EARLY TWENTIETH CENTURY "REFORMing" America's schools meant persuading more people to attend. Through the mid-nineteenth century compulsory-school-attendance laws were all but unknown, and only about two percent of the high-school-age population was enrolled in high school. By the turn of the century more than half the states had passed school-attendance laws, and the long nineteenth-century crusade for publicly financed "common schools" serving the general public had been victorious. But the very success of this crusade created new complications. What was to be done about the "plain people" who were being given the once-rare gift of a diploma but would find that it took them no further than to factory or field?

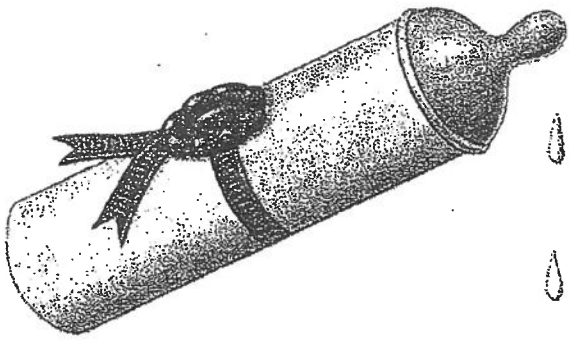
The resolution of this conflict involved the creation of different classroom "tracks" and vocational, as well as academic, schools. But, like IQ testing, manpower channeling took sudden leaps, because of the demands of war. During the First World War, which the United States entered late, mass mobilization did more for the psychometricians than they did for the war effort, since it gave them their first opportunity to collect data on a grand scale. Twenty-five years later, as the United States girded up for total war, its strategic planners knew they had to use human resources as efficiently as rubber or tin. Their principal tool for deploying manpower was the power to draft or defer, and for thirty years, from 1940 to 1970, the Selective Service system played a crucial role in, and offered a window on, the evolution of the meritocracy.

General Lewis B. Hershey, whose military career had begun not at West Point but with a National Guard unit in Angola, Indiana, had as the first Selective Service director vigorously advanced a "no deferments" policy during the Second World War. He was especially hostile to student deferments, arguing that they would turn into a collaboration between colleges (which wanted to keep their enrollments up) and privileged students (who preferred to stay away from the front lines). But in such sentiments Hershey soon proved to be on the wrong side of social history. In the Cold War era the prevailing view was that the United States could not afford to misallocate its intelligence and talent if it hoped to prevail against the Soviet Union.

In 1948 an advisory group assembled by Hershey recommended the creation of a new draft classification, covering any young man "whose educational aptitude suggests he is of potential special value." Men could qualify for the deferment on the basis of their grades in school and their score on what was essentially an IQ test. The plan represented everything that Hershey detested, but he accepted it, apparently out of his bureaucratic desire to keep the Selective Service system alive. He contracted with the Educational Testing Service to write the test, and when he began calling men for service in Korea in 1951, anyone who scored above 70 (out of a possible 100) on the test could remain in college and be sheltered from the draft. Eventually the IQ-test deferment evolved into the 2-S deferment that proved so catastrophically divisive during the Vietnam War.

In a way, the IQ deferment plan was merely symbolic. The number of deferments for married men and fathers, members of ROTC, and those classified 4-F vastly exceeded deferments granted through the IQ test. Still, as symbolism it was potent indeed. By the middle of the twentieth century differences in legal standing based on wealth and skin color were on their way out. The time was long past when a slave was legally three fifths of a man or only property owners could vote. Such distinctions had come to seem unacceptable—but not the idea that the state would scientifically seek out its most intelligent people and grant them extra rights.

This third change, then, instituted the idea that the state, through its school system and its ability to compel military service, would put the science of mental measurement to work, by helping to steer people toward their proper level of education and most appropriate jobs. By the 1950s the evolution of manpower channeling had, along with the two other changes, given us the modern meritocracy.



WITH ITS EMPHASIS ON THE EARLY DETECTION OF intelligence and on extended education as the route to professional success, the meritocratic order has produced such familiar symptoms as the frenzied competition for places in private nursery schools (presumably to improve the odds of admission to Harvard Law School twenty years hence), the bleak prospects that laid-off and uncredentialed industrial workers face when the mills close down, and even the proliferation of consultants and M.B.A.s. But has it in any fundamental way affected America's prospects as a functioning economy or a cohesive democratic state?

If anything in David McClelland's model makes sense—if an earlier national folklore of wide-open opportunities persuaded Americans to take risks that sheer logic might have ruled out—then the rise of the meritocracy has to have had an impact. As the definition of *success* has been altered to give more encouragement to the professional and less to the rough-and-ready entrepreneur, the achievement motive has also changed. If talent is unchangeable and genetic endowment so precisely limits what each person can do, then why fight the inevitable? The logical response to a low IQ score would be resignation to fate.

In measurable economic terms the rate of social mobility in the United States has changed very little in at least a hundred years: people still rise out of poverty and fall from affluence about as frequently as in the days when no one had heard of IQ or tracking or M.B.A.s. American society is more open than most others, but it still rewards the wisely chosen birth. Researchers who dug through estate records in Cleveland in the 1960s, for example, found that if a man was born into the wealthiest five percent of families, the odds were two out of three that his own adult annual earnings would exceed $47,000 (in 1985 dollars). If he was born into the poorest 10 percent, the odds were one in a hundred. As far as economic historians can determine, at most points in American history actual mobility rates have been about the same as they are now.

What has changed with the coming of the meritocracy is the air of scientific inevitability that surrounds the results. If only one man in a hundred makes it out of the lowest rank, is it because the other ninety-nine just aren't smart enough? Even while angrily denying that a college degree is necessarily a sign of intelligence, or that executives and members of the clean-hands class deserve the privileges they enjoy, many working-class Americans seem to nurse the fear that they really *aren't* good enough to make it anymore. If the "famous self-confidence" of the businessman, as David McClelland put it, made a tangible difference in the growth of American industry, might not this induced self-doubt do equivalent harm?

"I used to go past Johns Hopkins all the time, practically every day," Robert Ward told me earlier this year. Ward is a gruff, wisecracking novelist in his early forties who had recently published *Red Baker*, a book about the travails of a laid-off steelworker. Ward himself grew up in a working-class Baltimore neighborhood similar to the one he described in the novel.

"I went past there probably a thousand times, and it just never occurred to me that somebody like me could go there. It wasn't like, Gee, I wish I could go there and isn't it too bad I can't. *It never entered my mind!* I wasn't ever bit-

ter about it, because I just understood deep down in my soul that of course I'd never go to a place like that." In the end Ward applied at the last minute to Towson State, "only because my mom asked at the end of the summer what I'd think about going to college." He moved on to teaching English at a variety of private schools, wrote his novels, and this year became a story editor in Los Angeles for *Hill Street Blues*.

"When I'd seen a little more of the world, I started thinking, Hey, I could've gone there! I'm as smart as these people! But it wasn't till years later that I saw how you're tracked unless somebody happens to push you in a different direction. One of my teachers used to tell me, 'You're smart, and the only person we've got to convince of that is you.'"

"You're taught never to be certain about what you know," Peggy Miller had told me in Baltimore several years earlier. Miller was a slight woman in her early thirties, with dark hair, round dark-rimmed glasses, and a grave air. She had grown up in a working-class area of Pennsylvania, had earned a doctorate in psychology, and was studying certain aspects of how parents raised children in the neighborhoods that surround Baltimore's steel mills. "Myself, I feel compelled to be a hundred percent sure of something before I'll say that it's so, when many other people say it's the case if they're fifty-one percent convinced. One of the reasons, of course, is that a standard of success in the professional world is a kind of glibness and self-confidence. When you ask a worker about something he actually knows in detail, what he'll say is, 'I know a little about that' or 'I have a little bit of experience with it.'"

Their own life stories might seem to contradict what Ward and Miller say—after all, each of them has risen in the world. But they offer testimony about an attitude to which most of their friends succumbed. Surrounded by indications that they just weren't good enough to earn a berth in the college-degree world, many were persuaded not even to try. There is a more powerful illustration of this destruction of human capital: the behavior of lower-class black teenagers, especially boys, who inspire from most of their fellow citizens a mixture of fear, despair, and a desire that they be kept at bay. The tangled history of race in America may make the situation of the black underclass seem unique, but what is racial prejudice if not a concentrated version of the meritocratic message that certain people are so defective that they deserve to fail?

"When you watch these young men playing sports, you know the enthusiasm, the creativity, the competition, and the standards are all there," Irving Hamer told me one afternoon last year. Hamer is the headmaster of the Park Heights Street Academy, in Baltimore, a private school designed to give a second chance to students who seem bright but have run into trouble in the public schools. The Street Academy is located in a cleaned-up row house in the Baltimore ghetto. Hamer, who was raised in central Harlem by his mother, is a tall black man in his late thirties with broad shoulders and a slender waist.

"Sports is different, because it's the one place where adolescent black males believe there is an outlet for themselves. The determination and energy they show there doesn't translate itself into other areas, because they think they're unavailable. Apart from sports, there is nothing that brings them the message that an upbeat approach can pay off. The subtle message that leaps from their experience and reinforces a sense of self-hate is that they shouldn't even try. How do you get a handle on a social pathology that makes people hate themselves?" Hamer ran down a list of his graduates and what had become of them in the few years since Park Heights had opened. About half have gone on to the nearby community colleges, and many have joined the Army. "The military has become a convenient way out for a lot of them, and it kills me. The military simply doesn't demand the performance or level of achievement they should be capable of. And those CETA programs—what terrible, unkind assumptions they make about young people, that they can only make it if all the standards are lowered for them. These kids figured out fairly early that little was expected of them."

When I talked with Park Heights students and asked why they had quit or floundered in public school, I nearly always got the same reply. The teachers were robots; nobody cared about anything except the paychecks; it was a waste of time even to show up. With all proper allowances for teenagers' vast capacity to deflect responsibility away from themselves, by the twentieth time I heard such an account I was convinced—convinced not simply that the urban public schools, deserted by the middle class, have become a trap for those who can't buy their way out but also that when people are told they will fail, most of them do. Is it merely a coincidence that so many immigrants, whose potential has not been ascertained, rise as if they do not know where they are supposed to stop? At the time of my visit to Park Heights, in the spring of 1984, Jesse Jackson's campaign for the presidency was beginning to gather steam. One wall of Hamer's office was dominated by a super-life-size portrait, in which Jackson stood resplendent in a business suit. His dimensions and his beatific smile made him look like a happy god. "Why do you think he's getting all the black votes?" Hamer said. "He sends a message that you can succeed."

"People are always saying, 'Why don't these local blacks try harder, when so many of the black-skinned immigrants do so well?'" Juan Williams said early this year. Williams, a young reporter for *The Washington Post*, is himself a black-skinned immigrant, born in Panama and brought by his mother to Bedford-Stuyvesant when he was two. "When people do well, it's because their parents gave them the feeling that great things were expected of them and *were within their grasp*. My older sister went off to this fancy college and came home all fine and uppity. You start thinking, I want that too. What mattered was having practical models of what you could achieve."

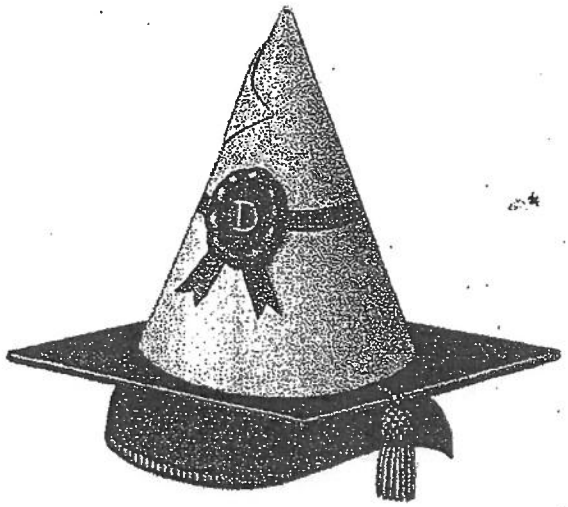
By persuading people on the bottom of the heap that they probably can't succeed, then, the educational meri-

tocracy destroys talent on which we might otherwise draw. By teaching people that they are stuck where they deserve to be, it promotes the resentment that is so destructive to economic and democratic life. Within the past decade, as American businesses have looked with anxiety at Japan and with envious curiosity at successful domestic firms, the conventional business wisdom has emphasized the danger of creating a rigid class structure within a firm. From the Delta executives who handle baggage at Christmastime to the GM Saturn workers whose pay will depend on the plant's profitability, the anecdotes on which the new folk wisdom is based have had a Frank Capra–like democratic theme. Everyone has to feel important, has to think that his efforts are needed and will be rewarded. These days the "us-against-them" mentality of recalcitrant unions and thickheaded managers is widely denounced, but the caste system created by educational credentials has a similarly divisive effect.

For much of my adult life I have lived among those who have "had it good" on the meritocracy's terms. Because of their intellectual promise, they were better educated than most others, and given longer to explore options and make choices. What I find striking about this class is how few of its members are involved in the sort of creative economic efforts that nearly everyone now professes to admire. From college and graduate school I know lawyers, consultants, and analysts aplenty, but few people who have started their own businesses or created jobs for anyone besides themselves. There are exceptions, but most of the real entrepreneurs I know lack the track record of impeccable schooling and early academic success that is supposed to distinguish the meritocracy's most productive members. What kind of merit system is this, if it discounts the activity on which the collective wealth depends?

A few years ago it was fashionable to blame the distaste for enterprise on the anti-business attitudes of an overeducated "new class." I wonder whether such an explanation is necessary or sensible—especially since the behavior persists even while the well educated have become the main cheerleaders for America's entrepreneurs. Isn't there a more obvious reason, based on calculations of risk and reward? Despite all the pious encomiums that risk-takers now receive, few people seek risk when they can rely on a sure thing. To a degree only dreamed of by Mark Twain's river pilots, the professions now represent America's surest thing. Not many professionals become truly rich, but neither do many doctors, lawyers, consultants, and (today's business students hope) M.B.A.s fall out of the upper tier of income and status. An entrepreneurial society is like a game of draw poker; you take a lot of chances, because you're rarely dealt a pat hand and you never know exactly what you have to beat. A professionalized society is more like blackjack, and getting a degree is like being dealt nineteen. You could try for more, but why?

Thus, in addition to depressing the "unmeritorious" a meritocracy can corrupt its professionals, making them care more about keeping what they have than creating something new. For at least thirty years after the Depression families refused to borrow, socked away their extra dollars, dared not give up tedious but secure jobs, lived in dread that bad times might return. Such caution was based on a fear of ruination; the lack of entrepreneurial daring in today's professional class seems to come instead from a sense of entitlement. Nearly everyone admitted to a professional school graduates; most of those accredited live well. If an "achieving" society requires a balance between confidence and anxiety, can it afford a swelling class whose chief ambition is one day to "make partner"?



"ALL OF OUR WORK HAS GIVEN ME A VERY STRONG view," Richard Boyatzis told me one afternoon. The consulting firm Boyatzis heads, McBer and Company, was founded by David McClelland in 1963. Its specialty has been analyzing what people actually *do* in business jobs—not what their job descriptions say, but how they spend their time and which skills seem most important to their success. "I've come to see that whenever a group institutes a credentialing process, whether by licensing or insisting on advanced degrees, the espoused rhetoric is to enforce the standards of professionalism. This is true whether it's among accountants or plumbers or physicians. But the observed consequences always seem to be these two: the exclusion of certain groups, whether by intention or not, and the establishment of mediocre performance standards."

Mediocre performance is a grave charge, since the principal justification for a meritocracy is that it sends the right talent to the right jobs. The baleful consequences for working-class morale, the professionals' quest for tenure—these might seem to be the costs we inevitably pay for competence. But the implication of work done at McBer, along with other studies, is that the academic-credentialing system that has evolved over the past century is deficient by its own most basic standard, that of guaranteeing high performance. At every step of the way what is rewarded is excellence in school, which is related to excellence on the job only indirectly and sometimes not at all.

"Because the credentialing and licensing process uses input measures, mainly years of schooling, to determine who gets into the field, we end up licensing people who are good at *studying* law or business, which is not necessarily the same thing as being good at the job," Boyatzis said. "Occasionally a licensing procedure will require a demonstration of relevant skills—craft unions or accountants, for example. But even in those cases they have no way of assessing whether the skills and knowledge have atrophied in all the years afterwards. The physicians are a perfect example. They've agreed to a system for continuing education—which they can satisfy not by passing a test again but by showing that they've gone to a few courses each year."

Within the professions there are abundant illustrations that the skills on which credentials are granted are different from the performance that matters most. For example, in 1979 Daniel Hogan, a lawyer and social psychologist at Harvard, published a four-volume study called *The Regulation of Psychotherapists*. Its ambition was to examine the day-by-day workings of psychotherapy at every level, from social worker to licensed psychoanalyst.

Hogan devoted his first several hundred pages to an analysis of the traits and qualities that distinguish effective psychotherapists from ineffective ones. In judging effectiveness he concentrated on "output"—changes in the patient's condition—rather than "input," such as how much effort the therapist applies, how much he charges, or how long he spent in school. Then, in the second half of that volume, and with the same painstaking thoroughness, Hogan went through the qualities demanded of those who want to be certified as psychotherapists. There was little overlap between the two lists.

"Contrary to much professional opinion . . . ," he said, "the effectiveness of therapists is more determined by the presence or absence of certain personality characteristics and interpersonal skills than technical abilities and theoretical knowledge." The skills that make a superb psychotherapist are mainly common-sense human skills—warmth, empathy, reliability, a lack of pretentiousness or defensiveness, an alertness to human subtlety, an ability to draw people out. "The necessary qualities are very similar to those one looks for in a good friend." These are not traits that can be detected on a multiple-choice exam, but they are real, and can be measured in creative ways. In half of the "effectiveness" studies that Hogan surveyed, nonprofessional therapists did better than professionals in helping patients, despite their lack of formal education. In one study conducted in 1965, for example, five laymen (only one of whom had finished college) were given less than 100 hours of training in therapy skills. Then they were put in charge of patients who had been hospitalized, on average, for more than *thirteen years*. Under their treatment more than half the patients improved.

Hogan contrasted such subjective skills with the traits the profession considered essential before issuing a license, most of which were based on academic proficiency. "For traditional psychotherapy, psychiatrists stress an understanding of human biology, neurology, and psychopharmacology; psychologists stress personality dynamics and interpersonal behavior; and social workers believe that a theoretical understanding of environmental influences on behavior is essential." As Hogan pointed out, such "hard" scientific preparation was necessary in some cases, to be sure that the patient's complaint did not arise from chemical imbalance, from injury, or from a tumor. But once those possibilities had been eliminated, Hogan's findings showed, advanced technical training counted for nothing in restoring most mental patients to health.

If psychotherapy seems too "soft" a discipline to provide a fair test of meritocratic standards, what about air-traffic control? In 1970 Ivar Berg reported on a study conducted by the Federal Aviation Administration, which wanted to understand what made 507 highly competent air-traffic controllers good at their jobs. The question was whether advanced educational requirements would produce competent controllers; the answer was no. As Berg explained,

> This complicated job . . . might well require, not merely the details of engineering or management science or mathematics, but all the supposed "correlates" of education—a disciplined mind, for example—and the more personal qualities that education is supposed to produce—reliability, steadfastness, responsibility, ability to think quickly, motivation, etc.

Common sense might suggest that the better controllers would be more educated—but the FAA found that fully half the top-ranked controllers had no formal education beyond high school. Many of them had come directly to the FAA for rigorous technical training specifically related to the jobs they were expected to do. Berg said,

> Because it was "stuck with" less educated men . . . the FAA became a little laboratory in which the relevance of education for attainment of, and achievement in, important managerial and technical positions could be examined. Education proves not to be a factor in the daily performance of one of the most demanding decision-making jobs in America.

The implication of examples such as these is not that talent is equally distributed or that minds are limitlessly malleable or that advanced training is always destructive. A liberal education is good for its own sake, and schooling of any sort can impart a broad perspective that can help in any job. Rather, the charge against credential requirements is that they are simultaneously too restrictive and too lax. They are too restrictive in giving a huge advantage to those who booked early passage on the IQ train and too lax in their sloppy relation to the skills that truly make for competence. No nurse is allowed to hang out a shingle and collect professional fees for the many medical functions she can competently perform; any psychiatrist is legally entitled to perform open-heart surgery or read x-rays of your knee. If sports were run like the meritocracy, the Miami Dolphins would choose their starting lineup on the ba-

sis of high-school times in the forty-yard dash and analyses of the players' muscle tissues to see who had the highest proportion of "quick-twitch" fibers. If the Dolphins actually did this, they'd face a long losing season: the coach cares about speed but finally chooses the players who have proved they can catch the ball or stop the run.

Nearly fifteen years ago David McClelland wrote an article called "Testing for Competence Rather Than Intelligence." It said, in effect, that what Don Shula does for the Dolphins the testing and licensing system should do for the professions. While some people are brighter than others, and while the variations in their abilities matter in some jobs, differences in IQ scores should not be the central concern of professional licensing. The proper function of licenses is to ensure that when passengers enter an airplane, they can count on the pilot's knowing how to fly, and that anyone who offers to argue a case in court or prepare a tax return is competent in those tasks. Designing tests of these specific skills might be slightly harder than drawing up yet another IQ test, McClelland said, but the obstacles would hardly be insuperable. Social competition would be more open, the economy would be more flexible, and standards of performance would be higher if credential requirements gave way to tests of specific skills.

In business the companies that are growing and changing the fastest, and where flexibility and performance are presumably more crucial than anywhere else, already tend to overlook credentials and behave like armies in wartime, rewarding people for what they can do today, not for their background or what their theoretical potential might be. "We do a lot of college recruiting to find our new people," says Steven Ballmer, a twenty-nine-year-old vice-president of Microsoft, the phenomenally successful software firm that Ballmer's contemporary and college classmate, Bill Gates, founded after dropping out of Harvard. Ballmer dropped out of Stanford Business School to join him. "We go to colleges not so much because we give a damn about the credential but because it's hard to find other places where you have large concentrations of smart people and somebody will arrange the interviews for you. But we also have a lot of walk-on talent. We're looking for programming talent, and the degree is in no way, shape, or form very important. We ask them to send us a program they've written that they're proud of. One of our superstars here is a guy who literally walked in off the street. We talked him out of going to college and he's been here ever since."

Such established firms as General Electric and AT&T have long been known for recruiting college graduates and then offering management training, as necessary, inside the firm. Of the 4,500 entry-level professionals General Electric hires each year, only fifty are new M.B.A.s. Most of the others have technical backgrounds; as they move up, they are given brief courses inside the company rather than being formally sent back to school. "As far as we're concerned, there's no broad incentive for technical companies to go out and get M.B.A.s," says James Baughman, who formerly taught at Harvard Business School and now supervises management training at GE. "It's a heck of a lot easier to change a technical person into a businessman over the years than the other way around."

As an alternative or supplement to judging academic credentials, many firms have developed "assessment centers," in which employees handle simulated business problems, in a setting as close to real life as possible, to demonstrate their competence or indicate the need for training. Candidates for administrative jobs, for example, might work their way through a sample in-box. "Bosses find those promoted because of their assessment center scores to be competent, the candidates feel the system is fair, and assessors believe that the process has given them the chance to measure important characteristics," wrote Robert Klitgaard in his recent book, *Choosing Elites*.

A number of firms, from McDonnell Douglas to Mobil to Digital Equipment, have turned to McBer for its "competency" analyses of specific jobs. The results are sometimes surprising. To manage its new-product development lab, for example, one firm had habitually looked for freewheeling, creative types; the lab's researchers were innovators, so naturally their boss should be too. "It turned out that those with the best performance were actually less creative and risk-taking than others," Richard Boyatzis says. "The most creative people held onto ideas way too long. What distinguished the superior performers were other traits, like being able to informally steer people and to get engineers, market researchers, and scientists to pull together."

Equipped with such knowledge, the company was able to select more-competent directors; more important, it was able to train a broader range of people to succeed. McBer's view of "competencies" is very similar to Binet's view of intelligence: after the illness, the remedy. Boyatzis says, "The most positive message we consistently get is that people do want to improve themselves, but usually they don't know *exactly* what to work on. When you can give them good feedback on specific goals, that releases the natural internal inclination to improve."

IS IT POSSIBLE TO COMBINE THAT BASIC DESIRE FOR IMprovement and upward mobility with standards that ensure high performance? Can a society be both efficient and open? One of the most successful, and least credentialed, assessment procedures suggests that it is.

Among lawyers, accountants, and M.B.A.s incompetence may be a nuisance, but in airline pilots it is a catastrophe. In the early days of commercial flight the airlines bore the responsibility for training and certifying their pilots, but they soon begged for government regulation, so as to spread the responsibility when crashes occurred. Like the licensing procedures for doctors, lawyers, and engineers, these standards were supposed to protect the public from incompetence, but they were of a very different nature from those of the professional guilds. The pilot-licensing system was built on the premise that competence

was divisible: people can be good at one thing without being being good at others, and they should be allowed to do only what they have mastered. As opposed to receiving a blanket license, the way members of other professions do, pilots must work their way up through four certificate levels, from student to air-transport pilot, and be specifically qualified on each kind of aircraft they want to fly. What's more, a pilot must demonstrate at regular intervals that he is still competent. To keep his license a pilot must take a review flight with an instructor every two years, and the pilots for commercial airlines must pass a battery of requalification tests every six months. "A small but regular percentage is washed out each time," John Mazor, of the Air Line Pilots Association, says. It is reassuring to know they are gone, but what about their tenured counterparts in the other professions?

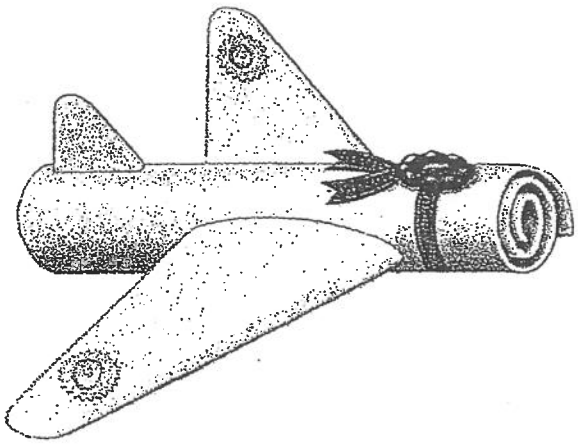
The results of this licensing scheme are a high level of proficiency and a profession more open socially than the rest. Most pilots of big jets learned to fly in the military, since that is the least expensive way to put in the 1,500 hours of flight time necessary for an air-transport license. But the remainder slowly worked their way up, putting in flight time on their own or working for small air-taxi outfits until they could move to the next level of licensure. Imagine what other professions would be like if they operated this way. The sociologist Randall Collins's prescription for medical training follows a similar pattern:

> All medical careers would begin with a position as orderly, which would be transformed into the first stage of a possible apprenticeship for physicians. After a given number of years, successful candidates could leave for a few years of medical school (2 years seems sufficient background for most practitioners . . .) and then return to the hospital for advanced apprenticeship training of the sort now given in internship and residency programs. . . . Advanced specialties could continue to be taught as they now are—through further on-the-job training; only medical researchers would be involved in lengthy schooling.

In theory business is better positioned than the professions to resist the worst effects of a meritocracy. The professions depended for their creation and growth on credential barriers that kept people out; business depends for its survival on making the best and most flexible use of all its resources, including talent. Even dominant firms must face the possibility that somebody who may not have gone to the right school and may not have the right degree might still come to market with a better, cheaper product.

Because successful business practice depends to some extent on appearances, business may never be as completely open as America's one true meritocracy—sports. (It didn't matter that Babe Ruth was fat, slovenly, and ungrammatical, so long as he could hit the ball.) But why shouldn't sports, rather than the professions, epitomize the meritocracy to which we aspire? American professional sports have their sins and excesses, to be sure. But with their relative openness to newcomers and disregard for background (most teams have hired no-name free agents and waived famous first-round draft choices) and their faith that ruthless and continuing judgments of performance will finally lead to equal opportunity, sports seem more admirably meritocratic than the system of early selection and later tenure that *meritocracy* has been perverted to mean.

Perhaps the cultural changes that have professionalized America are irreversible. The economist Mancur Olson has gloomily hypothesized that most societies tend to separate into inflexible castes, except when warfare or other cataclysms disrupt the social order and unleash new talent. The United States has renewed itself in less traumatic fashion—by continually populating new regions, by absorbing varied immigrant groups, and by taking deliberate steps, such as the GI Bill, to give more of its people a chance. As we drift toward a neater and more predictable social order, we might reflect on the rough-and-ready adaptation to experience that brought us this far, and ask ourselves whether we need it still. □



2A

Consent Agenda

Approval of January 2025 Minutes

Minutes of the Board of Governors
of the Alaska Bar Association
Zoom Virtual Meeting
Anchorage, AK 99501
January 30 & 31, 2025

The meeting of the Board of Governors was called to order on January 30, 2025, at 9:00 a.m. The following Board members were present:

Jeffrey Robinson, President
Rebecca Patterson, President Elect
Ben Hofmeister, Vice President
Jed Cox
Rachel Espejo
Donald Handeland
Grace Lee
Nick Ostrovsky
Patrick Roach
Meghan "Sig" Tapqaq

Treasurer: Initially vacant, Roach appointed.

Absent: Bill Granger

Also present were:

Ambriel Sandone, New Lawyer Liaison

Bar Staff: Executive Director Danielle Bailey, Bar Counsel Phil Shanahan, Assistant Bar Counsel Louise Driscoll, Assistant Bar Counsel Mark Woelber, Controller Karen Schmidlkofer, CLE Director Kara Bridge, Admissions Director Jane Lovelace, Pro Bono Director Lea McKenna.

Public Participants: Andrew Juneau

New Pro Bono Director Lea McKenna introduced herself.

1. Public Comment.

No one wished to testify in person. There were three public comments in the packet.

2. Consent Agenda.

Hofmeister moved, Cox seconded, and the Board unanimously voted to,

> Approve the consent agenda.

3A. Board of Governor and Officer Vacancy.

Bailey updated staff that with Aimee Oravec's appointment to the Supreme Court, there is now a vacancy on the Board and for the officer position Secretary. She advised that the Board could appoint a replacement now or wait since the Bar would be soliciting for the next election in around a month. The Board agreed to keep the position open until the next election.

Hofmeister moved, Patterson seconded, and the Board unanimously voted to,

> Appoint Patrick Roach as Secretary of the Board of Governors.

3B. Commission on Judicial Conduct.

Bailey informed the Board that the Governor had still not appointed anyone to the Commission on Judicial Conduct. Larry Zervos, who was previously sent to the Governor for appointment, withdrew his name from consideration because approximately a year had passed without his appointment. The Bar re-solicited for the position, and Bill Satterberg was the only individual who put in for the position.

Hofmeister moved, Cox seconded, and the Board voted to,

> Send Satterberg's name to the Governor for consideration of appointment to the Commission on Judicial Conduct.

The motion passed on the following roll call vote:

> Yes: Cox, Lee, Handeland, Hofmeister, Ostrovsky, Patterson, Roach, Robinson
> No: Espejo, Tapqaq

3C. Judicial Council Vacancy.

Bailey updated the Board that Steven Hansen had to step down from the Judicial Council because he took a job with the University. The Bar will solicit for a replacement when they conduct the rest of the elections.

3D. Dues Waiver.

Bailey introduced the agenda item.

Robinson indicated that he did not think the Board should support this request as it was not the intent of the dues waiver process.

Hofmeister agreed and added that he thinks Karla is trying to help out, but that her situation does not meet the qualifications for a dues waiver from the Board. Hofmeister stated that there is another entity that needs to make some determinations.

Cox moved, Hofmeister seconded, and the Board voted unanimously to,

> Deny the dues waiver request.

4A. February 2025 Bar Exam Update.

Bailey stated that the February Exam is being planned and that there are only around 40 applicants registered.

4B. Next Generation Bar Exam Update.

Bailey provided an update she stated that there are now 32 jurisdictions that intend to adopt NextGen.

5A. Executive Director Report.

Bailey delivered her report.

Patterson encouraged Board members to contact her if they are interested in serving in an officer role for the next year.

Sandone stated that she did not think that the Alaska Bar was implicated in the DEI Executive Order. She stated that she doesn't think anything the Bar does is inconsistent with Federal anti-discrimination law. Espejo said she agreed.

Hofmeister stated that looking at the 5th Circuit *Keller* case supporting diversity is not violative of *Keller*. Shanahan stated that the fear is that this Executive Order thinks the 5th Circuit case is wrong.

5B. CLE Report.

Bridge delivered the report. She stated that 73 CLEs were put on last year, which is double the CLEs from 2023. Of the 73 CLEs, 24 were produced at no expense by our partners and 61 were free. She also highlighted the Video on Demand library.

She also highlighted the upcoming Law and Culture Day on February 12.

The Annual Convention is well underway, and the website has been updated. Registration will open soon.

Bridge stated that there have been 107 tracked section meetings worth 82 general credits and 5 ethics credits. There are also two new sections that were formed.

Cox asked if there has been concern over the increased CLE requirement. Bridge said most people have been thankful for all the ways you can get CLE credits.

Sandone stated it would be helpful if there were more ways to track CLE credits. Bridge stated that they have been pulling attendance and delivering attendance certificates.

Hofmeister highlighted all the CLEs that were put on by the Juneau Bar and noted that their attendance has jumped as a result.

5C. Discipline Report.

Shanahan delivered the report. He stated that call numbers are nearly identical to last year, discipline cases are slightly down, and public comments are up. There are a few trustee matters as well.

Shanahan addressed the summary in the packet.

Robinson said that the last several meetings have had an uptick in discipline matters, and he wondered if the staff knows if there is a cause. Shanahan stated that historically it is not that different. However, he does think COVID may have had an impact and affected some Bar members. Bailey added that

this also seemed to mirror trends that the Lawyers Assistance Committee has seen with COVID.

5D. Pro Bono Report.

McKenna gave an update on AKFLA. In 2024, 231 clients asked 248 questions, and 9 attorneys volunteered 142 hours.

McKenna stated the Pro Bono Service Committee is considering drafting a rule to count pro bono hours as CLE.

McKenna gave an update on MLK Day: 102 volunteers provided 353 hours of service to 273 clients.

5E. Budget Report.

Schmidlkofer delivered the report. The Bar had projected a loss of $128,000 but ended in a gain of $355,000. The Bar was also able to pay off the building loan. The Bar was able to save money on travel, investment income, admission fees, and salary savings. The building also reported a gain of $68,000.

Cox asked if the new minimum wage law was going to impact the Bar. Bailey said no because they already pay all staff above the increased minimum wage, exempt staff makes more than the increase, and the Bar offers enough leave.

Hofmeister asked what the Bar should think about doing with the gain. Schmidlkofer stated in October the Board already allocated money to the working capital reserve account.

10A. Attorney Pipeline Subcommittee.

Bailey stated that this work has been put on pause briefly. However, it does seem like stakeholders are interested. The next steps will be to get into the specifics on what a practice to licensure pathway would look like and develop a grading rubric.

10B. Awards Subcommittee.

Ostrovsky, Roach, Lee, and Handeland were appointed.

10C. Building Subcommittee.

Bailey delivered the report. Cox added that the subcommittee is still prioritizing maximum profit and is not seeking alternative uses for the building.

Schmidlkofer added that the Bar moved files from our off-site file storage and is using the vacant space instead. This is resulting in savings of $100 per month.

Hofmeister stated that the continued vacant space is annoying, but it is really a small portion of the building. The subcommittee has discussed making upgrades to the space to make it more marketable, but they don't want to waste money when a new tenant would probably just ask for new improvements.

10D. Membership Lists.

Bailey delivered the report.

Sandone mentioned that she had received a member comment criticizing the italicizing of women's names in the Todd Directory.

A subcommittee was appointed to handle this matter, consisting of Ostrovsky, Sandone, and Lee.

Shanahan mentioned that the Board may want to consider updating the Bar Rule that requires attorneys to make public their other contact information.

Patterson asked if we need physical mailing addresses for attorneys who work from home. Shanahan stated that some information should not be private. Clients need to be able to get ahold of their attorneys, and they need to be able to be contacted.

The board recessed for lunch at 11:50 a.m.

The board came back on record at 1:03 p.m.

6. Alaska Rules of Professional Conduct Rule Proposal.

Murtaugh delivered the report.

Sandone stated that the word "crime" is pretty broad. She wondered if there was any discussion on narrowing it down to a subset of crimes. Shanahan clarified that this is the current language in the comment.

Roach asked how members would find out about the rule change. Shanahan explained that if approved by the Board, this proposal will be advertised to members for comment, it will then come back to the Board to decide to send it to the Court. If it is approved by the Court, it will be re-advertised for members.

Patterson asked how often people grapple with this. Shanahan said it does not come up a lot. Part of the motivation to look at this was because the ABA urged the AK Supreme Court to look at this.

Patterson said she supports sending it to the members for comment before the Board attempts to make any changes.

Hofmeister commented on the distinction between crime and fraud. Murtaugh stated that relying on statutory construction would mean fraud is something that is not a crime. Shanahan mentioned that fraud generally involves a level of dishonesty. Shanahan added that it was defined in ARPC 8.1. Murtaugh stated that he thinks the Board should be comfortable advising attorneys not to assist in fraud.

Hofmeister moved, Patterson seconded, and the Board voted unanimously to,

> Publish the rule proposal in the *Bar Rag* for member comment.

7. In the Matter of the Petition for Reinstatement of Kenneth D. Albertsen, 2024R002, S-19102.

Robinson introduced the matter and asked if there were any conflicts on the Board. There were none. Parties were asked if they objected to the participation of the New Lawyer Liaison. There was no objection.

> The Board voted to adopt the Area Hearing Committee recommendation that Albertsen be reinstated to the Alaska Bar Association.

8. In the Disciplinary Matter Involving Attorney S – 2016D128, et al. Confidential Stipulation for Suspension.

Robinson introduced the matter.

Lee moved, Cox seconded, and the Board voted unanimously to,

> Go into executive session for the purpose of discussing a confidential disciplinary matter.

The Board went into executive session.

The Board returned from executive session.

In executive session Robinson and Hofmeister recused themselves from participating.

The Board voted to reject the proposed stipulation for discipline in the Disciplinary Matter involving Attorney S.

9. Status Changes Bylaw Proposal.

Bailey delivered the report.

Cox moved, Hofmeister seconded, and the Board voted unanimously to,

Publish the Bylaw proposal in the *Bar Rag* for member comment.

The Board recessed for the day.

The meeting of the Board of Governors was called to order on January 31, 2025, at 9:00 a.m. The following Board members were present:

Jeffrey Robinson, President
Rebecca Patterson, President Elect
Ben Hofmeister, Vice President
Patrick Roach, Secretary
Jed Cox
Rachel Espejo (was present at 9:06 a.m.)
Donald Handeland
Grace Lee
Nick Ostrovsky
Meghan "Sig" Tapqaq

Absent: Bill Granger

Also present were:

Ambriel Sandone, New Lawyer Liaison

Bar Staff: Executive Director Danielle Bailey, Bar Counsel Phil Shanahan, Assistant Bar Counsel Louise Driscoll, Assistant Bar Counsel Mark Woelber, Controller Karen Schmidlkofer, CLE Director Kara Bridge, Admissions Director Jane Lovelace, and Pro Bono Director Lea McKenna.

Public Participants: Robert Stone, Jessica Graham, Allyson Barkley, Caitlyn Leary, Thomas Metzloff, Maggie Humm, Joy Anderson, Sarah Carver.

11. Lawyers' Fund for Client Protection.

Lee moved, Cox seconded, and the Board voted unanimously to,

> Go into executive session for the purpose of discussing lawyers' fund for client protection claims.

The Board went into executive session at 9:02 a.m.

The Board returned from executive session at 10:03 a.m.
Patterson moved, Hofmeister seconded, and the Board voted unanimously to,

> Find a reimbursable expense of $3,704.58 in Lawyers' Fund for Client Protection case 2024L004.

Patterson moved, Hofmeister seconded, and the Board voted unanimously to,

> Find a reimbursable expense of $4,869.80 in Lawyers' Fund for Client Protection case 2024L015.

Patterson moved, Hofmeister seconded, and the Board voted unanimously to,

> Find a reimbursable expense of $28,101.87 in Lawyers' Fund for Client Protection case 2024L009.

Patterson moved, Hofmeister seconded, and the Board voted unanimously to,

> Find a reimbursable expense of $26,666.67 in Lawyers' Fund for Client Protection case 2024L010.

Patterson moved, Hofmeister seconded, and the Board voted unanimously to,

> Find a reimbursable expense of $12,300 in Lawyers' Fund for Client Protection case 2024L012.

Patterson moved, Hofmeister seconded, and the Board voted unanimously to,

> Find a reimbursable expense of $36,584.28 in Lawyers' Fund for Client Protection case 2024L013.

12. Lawyers' Fund for Client Protection Rule Proposal.

Stone delivered the report as a member of the Lawyers' Fund for Client Protection Committee.

Sandone asked why the committee did not seek to increase the per lawyer limit. Stone said there was a discussion, but ultimately, they decided their proposal made sense from an inflation perspective. They also did not want to penalize people for being late in time.

Patterson asked if there was a limit to filing claims. Stone replied that there was, and it was three years.

Shanahan added that there were 27 jurisdictions with no cap and 12 jurisdictions with higher caps per lawyer.

Hofmeister asked if there had been a problem with the health of the fund. Schmidlkofer stated that even without interest, the account gains around $32,000 a year.

Shanahan explained that this rule proposal would not have to go to members for comments.

Roach asked if limits had ever prevented someone from collecting funds in the past. Stone stated that he could not recall a situation where that was the case. Shanahan added that a couple claims are pending that would exceed the cap.

Sandone commented that the 50% stop gap of the fund is pretty extreme. Stone added that historically, that has not happened, and trying to see how that would happen would be unrealistic. He also added that the Board has ultimate discretion at any point when allocating funds.

Hofmeister said that this seems to be happening with the same category of solo practitioners and that the Board wants to be able to do more to help. Staff presented a few ways that the Bar is currently trying to address these issues: the newly created solo and small practitioner section, the lawyers' assistance committee, and CLEs targeting succession planning and these ethics issues.

Patterson added that taking steps towards prevention is important. She suggested that knowing how to timely intervene so we can stop the loss before it unravels would help.

Hofmeister moved, Patterson seconded, and the Board voted unanimously to,

Forward the rule proposal to the Supreme Court.

13. Alaska Law Review Proposal.

Barkley presented the proposal on behalf of the Alaska Law Review (ALR).

Graham stated that she wished to give public comment both as a former Board of Governor and as an alumnus of Duke Law School. She said that she supported the proposal for two main reasons. She said the first reason is that ALR has been doing an extraordinary job. The second is that in a business context, you should only be looking to go to bid if you are paying too much or if there are quality issues. In this case, Duke produces the ALR for free, and their quality has been consistently improving. They are working hard to stay current and advance, and she has a hard time wondering why the Board would want to disrupt that.

Bailey added that from the position of Bar administration, continuing with Duke Law School is helpful to have consistency. This consistency has allowed the partnership to grow and make improvements. She also added that the Bar has a limitation of resources, and the Board should be thinking about where they want to expend energy.

Patterson asked why we are considering this proposal a year before the contract is even set to expire. Bailey responded that if the Board intends to go out for a bid, we will need to have time to advertise and solicit bids from other law schools.

Patterson asked if we have heard from other law schools. Bailey stated that law schools tend not to reach out until we go out for bids and that the last time we did that was 10 years ago.

Sandone asked if we knew how many members of ALR have come to practice in Alaska. Metzloff stated that they have had a fair number of graduates (usually 1 or 2 a year). He also added that they have had a lot of clerks recently.

Sandone asked why Duke students are interested in ALR. Barkley mentioned that interest exceeds space, so they do turn students away. She mentioned

that many students are interested in the service and the client-oriented mission of the law review. The students like that they get to meet with practitioners and judges.

Robinson stated that two of his former clients were Duke grads and that the breadth of the topics covered in the ALR and their engagement has been great.

Sandone said that she thought there was a reason to go to bid because of the time that has passed since the last time.

Espejo moved, Hofmeister seconded, and the Board voted to,

> Move to agree to extend the Alaska Law Review contract with Duke Law School as proposed,

On the following roll call vote:

> Yes: Hofmeister, Espejo, Handeland, Lee, Ostrovsky, Tapqaq
> No: Patterson

Robinson left the meeting.

14. Alaska Legal Services 43.5 Application.

Humm delivered the report.

Roach asked what the scope of the practice is approved for those working on this waiver. Bailey stated that the scope was purposefully kept vague so that individuals could be trained in different practice areas. Carver added that they would have to be working with ALSC clients. Hofmeister also added that he sees it less as being vague and more as being left open. He also stated that they would all have to come in front of the Board.

Hofmeister asked about the community justice workers (CJW) and if they are being paid and if ALSC supervises when they are working as a CJW. Anderson stated that yes and used the AVCP partnership as an example. She also clarified that there is no rule saying they must be an employee or can't be a volunteer.

Patterson asked if the CJW are working in tribal courts. Anderson stated that she didn't believe that they were because representation in tribal courts is not widespread. However, she noted that it is happening in the lower 48.

McKenna added that the CJW were at the MLK legal clinic, and she is excited to see that partnership in the future.

A motion was made by Hofmeister, seconded by Lee, and unanimously adopted,

To approve Rule 43.5 application as presented.

Hofmeister added that he has been on the board for some time and one of the best things that he believes the Board does is to help our legal aid partners. He also said that we are very lucky to have Maggie Humm at the ALSC.

A motion was made by Hofmeister, seconded by Lee, and unanimously adopted,

To adjourn.

The meeting was adjourned.

Minutes respectfully submitted by staff.

_____
Secretary

2B

Motion & UBE Applicants

2C

Elections

Board of Governors Slate of Officers

ALASKA BAR
ASSOCIATION

2025-2026 Board of Governors Proposed Slate of Officers

President: Rebecca Patterson

President-Elect: Nick Ostrovsky

Vice President: Meghan "Sig" Tapqaq

Secretary: Patrick Roach

Treasurer: Bill Granger

3

February 2025 Bar Exam Results Oral Report

4

2024 Financial Audit & 2025 Financial Update

SWALLING & ASSOCIATES PC
Certified Public Accountants + Business Advisers

March 10, 2025

Board of Governors
Alaska Bar Association
840 K Street, Suite 100
Anchorage, AK 99501

We have audited the combined financial statements of the General Fund and the Lawyers' Fund for Client Protection of the Alaska Bar Association for the year ended December 31, 2024, and we have issued our report thereon dated March 10, 2025. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated September 20, 2024. Professional standards also require that we communicate to you the following information related to our audit.

Significant Audit Matters

Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the Alaska Bar Association are described in Note 1 to the combined financial statements.

Accounting estimates are an integral part of the combined financial statements and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the combined financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimate affecting the combined financial statements was:

> Management's estimate of accounts receivable and the related deferred dues were based on billing of the prior year's members with pro-rata recognition during the year to which it pertains. We evaluated the key factors and assumptions and determined that the method is reasonable related to the combined financial statements taken as a whole.

Certain financial statement disclosures are particularly sensitive because of their significance to financial statement users. The most sensitive disclosures affecting the combined financial statements were:

The disclosure in Note 1 of board designated net asset reserve policies.

The disclosure in Note 3 describes the Liquidity and Availability of Financial Assets.

The disclosure in Note 4 of the fair value measurement of the investments describes the fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value and sets forth the Association's investment assets by level in the hierarchy.

The financial statement disclosures are considered neutral, consistent, and clear.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management. The attached schedule summarizes uncorrected misstatements of the combined financial statements. Management has determined that their effects are immaterial, both individually and in aggregate, to the combined financial statements taken as a whole. The uncorrected misstatements or the matters underlying them could potentially cause future period combined financial statements to be materially misstated, even though, in our judgment, such uncorrected misstatements are immaterial to the combined financial statements under audit.

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the combined financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in the management representation letter dated March 10, 2025.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the Association's combined financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the Association's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

In planning and performing our audit of the combined financial statements of Alaska Bar Association, we considered the Association's system of internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of issuing our report on the combined financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Association's internal control. Accordingly, we do not express an opinion on the effectiveness of the Association's internal control.

We are required to communicate, in writing, to those charged with governance all material weaknesses and significant deficiencies that have been identified in the Association's internal controls over financial reporting. The definitions of control deficiency, significant deficiency and material weakness follows:

Control Deficiency – A deficiency in internal control exits when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis.

Significant Deficiency – A deficiency or combination of deficiencies in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Material Weakness – A deficiency or combination of deficiencies in internal control, such that there is reasonable possibility that a material misstatement of the Association's combined financial statements will not be prevented or detected and corrected on a timely basis.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and, therefore, material weaknesses or significant deficiencies may exist that were not identified. However, as discussed below, we identified a certain deficiency in internal control that we consider to be material weakness.

During the audit, it was noted that the Executive Director did not approve two transfers out of the PayPal account into the Association's operating account that occurred in February. Without oversight, this leads to the possibility for monies to be transferred out of the Association's accounts to personal and/or undesignated accounts.

Executive Director approval of the bank reconciliation and associated statements, which included these transfers, was sighted for all months in 2024. PayPal transfers were sighted by the auditor into the correct Association account per the transfer requests.

We recommend an alternate approval authority from the Board, either the Treasurer or Board President to ensure that transfers always have required approvals. The Executive Director should continue to review and approve monthly bank reconciliations, with applicable bank statements as detective control.

This information is intended solely for the use of the Board of Governors and management of the Alaska Bar Association and is not intended to be, and should not be, used by anyone other than these specified parties.

Very truly yours,

Swalling & Associates, P.C.

Enclosure: Management representation letter and proposed adjustments.

ALASKA BAR
ASSOCIATION

March 10, 2025

Swalling & Associates, P.C.
3201 C Street, Suite 405
Anchorage, AK 99503

This representation letter is provided in connection with your audit of the combined financial statements of the General Fund and the Lawyer's Fund for Client Protection of the Alaska Bar Association (the Association) , which comprise the statements of financial position as of December 31, 2024, and the related statements of activities, functional expenses, and cash flows for the year then ended, and the disclosures (collectively, the "combined financial statements") for the purpose of expressing an opinion as to whether the combined financial statements are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States (U.S. GAAP).

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement. An omission or misstatement that is monetarily small in amount could be considered material as a result of qualitative factors.

We confirm, to the best of our knowledge and belief, as of March 10, 2025, the following representations made to you during your audit.

Combined Financial Statements

1. We have fulfilled our responsibilities, as set out in the terms of the audit engagement letter dated September 20, 2024, including our responsibility for the preparation and fair presentation of the combined financial statements in accordance with U.S. GAAP.

2. The combined financial statements referred to above are fairly presented in conformity with U.S. GAAP.

3. We acknowledge our responsibility for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of combined financial statements that are free from material misstatement, whether due to fraud or error.

4. We acknowledge our responsibility for the design, implementation, and maintenance of internal control to prevent and detect fraud.

5. Significant assumptions we used in making accounting estimates, including those measured at fair value, are reasonable.

6. Related party relationships and transactions have been appropriately accounted for and disclosed in accordance with U.S. GAAP.

7. All events subsequent to the date of the combined financial statements and for which U.S. GAAP requires adjustment or disclosure have been adjusted or disclosed.

8. The effects of uncorrected misstatements are immaterial, both individually and in aggregate, to the combined financial statements as a whole. A list of uncorrected misstatements is attached to the representation letter. In addition, you have proposed adjusting journal entries that have been posted to the Association's accounts. We are in agreement with the adjusting journal entries you have proposed.

9. There are no known actual or possible litigation, claims, and assessments which need to be accounted for and disclosed in accordance with U.S. GAAP.

10. Significant estimates and material concentrations have been appropriately disclosed in accordance with U.S. GAAP.

11. There are no guarantees, whether written or oral, under which the Association is contingently liable, which need to be recorded or disclosed in accordance with U.S. GAAP.

12. We have analyzed all debt and equity investments for proper classification and valuation in accordance with U.S. GAAP.

13. Revenue from contracts with customers has been appropriately accounted for and disclosed in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) *606, Revenue from Contracts with Customers*. All contracts underlying revenue recognized in the combined financial statements have commercial substance and have been approved by appropriate parties. We have considered side agreements, implied promises, and unstated customary business practices in identifying performance obligations in the contracts. We have sufficient and appropriate documentation supporting all estimates and judgments underlying the amount and timing of revenue recognized in the combined financial statements.

14. We have analyzed all financial instruments and appropriately recorded and/or disclosed expected credit losses in accordance with *FASB ASC 326, Financial Instruments – Credit Losses.*

15. Receivables recorded in the combined financial statements represent valid claims against debtors for sales or other charges arising on or before the statement of financial position date and have been reduced to their estimated net realizable value.

16. We have analyzed all lease contracts and have considered and recorded material embedded leases contained within other contracts in accordance with ASU 2016-02.

Information Provided

17. We have provided you with:

    a. Access to all information, of which we are aware, that is relevant to the preparation and fair presentation of the combined financial statements, such as records (including information from outside of the general and subsidiary ledgers), documentation, and other matters.

    b. Additional information that you have requested from us for the purpose of the audit.

    c. Unrestricted access to persons within the Association from whom you determined it necessary to obtain audit evidence.

    d. Minutes of the meetings of the governing board or summaries of actions of recent meetings for which minutes have not yet been prepared.

18. All material transactions have been recorded in the accounting records and are reflected in the combined financial statements.

19. We have disclosed to you the results of our assessment of the risk that the combined financial statements may be materially misstated as a result of fraud.

20. We have no knowledge of any fraud or suspected fraud that affects the Association and involves:

    a. Management,

    b. Employees who have significant roles in internal control, or

    c. Others where the fraud could have a material effect on the combined financial statements.

21. We have no knowledge of any allegations of fraud or suspected fraud affecting the Association's combined financial statements communicated by employees, former employees, grantors, regulators, or others.

22. We have no knowledge of any instances of noncompliance or suspected noncompliance with laws and regulations whose effects should be considered when preparing combined financial statements.

23. We are not aware of any pending or threatened litigation, claims, or assessments or unasserted claims or assessments that are required to be accrued or disclosed in the combined financial statements in accordance with U.S. GAAP, and our in-house counsel has confirmed this.

24. We have disclosed to you the names of all of the Association's related parties and all the related party relationships and transactions, including any side agreements.

25. The Association has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset been pledged as collateral, except for the assignment of leases to a bank lender as disclosed in the combined financial statements.

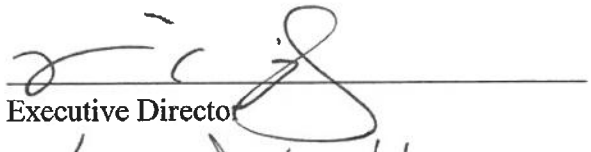
26. We are responsible for compliance with the laws, regulations, and provisions of contracts and grant agreements applicable to us.

27. We have reviewed long-lived assets to be held and used for impairment whenever events or changes in circumstances have indicated that the carrying amount of assets might not be recoverable and have appropriately recorded any adjustment.

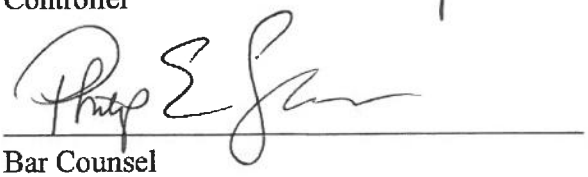
28. The Alaska Bar Association is an instrumentality of the State of Alaska whose activities are exempt from taxation under the Internal Revenue Code.

29. In regard to financial statement preparation services performed by you, we have –

    a. assumed all management responsibilities,
    b. designated Karen Schmidlkofer who has suitable skill, knowledge, or experience to oversee the services,
    c. evaluated the adequacy and results of the services performed,
    d. accepted responsibility for the results of the services,
    e. and ensured that the date and records are complete and we have sufficient information to oversee the services.

Signature: 
Title: Executive Director

Signature: 
Title: Controller

Signature: 
Title: Bar Counsel

Attachment A

Client: ALASKA BAR ASSOCIATION
Engagement: 2024 COMBINED AUDIT
Current Period: 12/31/2024
Workpaper: Proposed (Waived) Journal Entry Report

Account	Description	Misstatement	Debit	Credit	Net Income Effect
PJE01		Known			
various	Expense Accounts	*PY Accrued Expenses*		12,611.83	
3030.000	Unappropriated Capital		12,611.83		(12,611.83)
PJE02		Known			
various	Building Expense Accounts	*PY Accrued Expenses*		12,671.63	
3030.000	Unappropriated Capital		12,671.63		(12,671.63)
					(25,283.46)

Combined Financial Statements

Alaska Bar Association
(with Independent Auditor's Report)

Year ended December 31, 2024

SWALLING & ASSOCIATES PC
Certified Public Accountants + Business Advisers

Alaska Bar Association

Year ended December 31, 2024

Contents

SWALLING & ASSOCIATES PC
Certified Public Accountants + Business Advisers

Independent Auditor's Report

To the Board of Governors
Alaska Bar Association
Anchorage, Alaska

Opinion

We have audited the accompanying combined financial statements of the General Fund and the Lawyers' Fund for Client Protection of the Alaska Bar Association, which comprise the combined statements of financial position as of December 31, 2024, and the related combined statements of activities, statement of functional expenses – general fund, combined statements of cash flows for the year then ended, and the related notes to the combined financial statements.

In our opinion, the combined financial statements referred to above present fairly, in all material respects, the financial position of the General Fund and the Lawyers' Fund for Client Protection of the Alaska Bar Association as of December 31, 2024, and the changes in its net assets and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Combined Financial Statements* section of our report. We are required to be independent of the Alaska Bar Association and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Responsibilities of Management for the Combined Financial Statements

Management is responsible for the preparation and fair presentation of the combined financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of combined financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the combined financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Alaska Bar Association's ability to continue as a going concern within one year after the date that the combined financial statements are available to be issued.

To the Board of Governors and Management
Alaska Bar Association

Auditor's Responsibilities for the Audit of the Combined Financial Statements

Our objectives are to obtain reasonable assurance about whether the combined financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements, including omissions, are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgement made by a reasonable user based on the combined financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the combined financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the combined financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Alaska Bar Association's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the combined financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Alaska Bar Association's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

Swalling & Associates, P.C.

Anchorage, Alaska
March 10, 2025

Alaska Bar Association
Combined Statements of Financial Position
December 31, 2024

	General Fund	Lawyers' Fund for Client Protection	Total All Funds
Assets			
Current assets:			
Cash and cash equivalents	$ 654,171	$ 157,333	$ 811,504
Accounts receivable	1,576,306	-	1,576,306
Accrued interest receivable	12,750	10,626	23,376
Due from General Fund	-	34,870	34,870
Investments	2,206,987	1,611,255	3,818,242
Prepaid expenses	105,499	-	105,499
Total current assets	4,555,713	1,814,084	6,369,797
Property and equipment, at cost			
Building	1,923,727	-	1,923,727
Building improvements	279,528	-	279,528
Land	801,534	-	801,534
Office furniture and equipment	991,629	-	991,629
Video tape library and equipment	11,361	-	11,361
Historical artifacts	3,750	-	3,750
	4,011,529	-	4,011,529
Less accumulated depreciation	(1,276,039)	-	(1,276,039)
Property and equipment, net	2,735,490	-	2,735,490
Right-of-use assets, operating leases	15,061	-	15,061
Lease fees, net of amortization of $6,740	17,172	-	17,172
Total assets	$ 7,323,436	$ 1,814,084	$ 9,137,520

See accompanying notes to combined financial statements and independent auditor's report.

Alaska Bar Association
Combined Statements of Financial Position (Continued)
December 31, 2024

	General Fund	Lawyers' Fund for Client Protection	Total All Funds
Liabilities and Net Assets			
Current liabilities:			
Accounts payable and accrued expenses	$ 168,589	$ -	$ 168,589
Due to other funds	58,249	-	58,249
Deferred dues and fees	2,237,155	32,070	2,269,225
Deferred lease income and deposits	17,910	-	17,910
Short-term lease liability, operating	5,891	-	5,891
Total current liabilities	2,487,794	32,070	2,519,864
Long-term lease liability, operating	9,170	-	9,170
Total liabilities	2,496,964	32,070	2,529,034
Net assets:			
Without donor restrictions:			
Designated by the Board of Governors for:			
Working capital	1,075,000	-	1,075,000
Asset acquisition	734,015	-	734,015
Building capital	1,975,261	-	1,975,261
Undesignated	1,038,446	1,782,014	2,820,460
	4,822,722	1,782,014	6,604,736
With donor restrictions	3,750	-	3,750
Total net assets	4,826,472	1,782,014	6,608,486
Total liabilities and net assets	$ 7,323,436	$ 1,814,084	$ 9,137,520

See accompanying notes to combined financial statements and independent auditor's report.

Alaska Bar Association
Combined Statements of Activities
Year ended December 31, 2024

	General Fund	Lawyers' Fund for Client Protection	Total All Funds
Revenue and other income:			
Dues	$ 2,182,749	$ 32,128	$ 2,214,877
Admission fees	240,000	-	240,000
Continuing legal education	70,467	-	70,467
Lawyer referral fees	37,794	-	37,794
Annual meeting	25	-	25
Rule 81 fees	169,650	2,610	172,260
Investment return, net	138,437	85,141	223,578
Lease income	273,021	-	273,021
Bar Foundation CLE Contribution	32,616	-	32,616
Other	97,859	3,292	101,151
Total revenue and other income	3,242,618	123,171	3,365,789
Expenses:			
Discipline	969,503	-	969,503
Administration	680,040	314	680,354
Continuing legal education	272,138	-	272,138
Admissions	246,944	-	246,944
Pro Bono	103,686	-	103,686
Lawyer referral	73,806	-	73,806
Fee arbitration	68,976	-	68,976
Sections	31,068	-	31,068
Mandatory CLE	30,644	-	30,644
Board of Governors	21,800	-	21,800
Other	185,320	99,587	284,907
	2,683,925	99,901	2,783,826
Expenses related to lease income:			
Occupancy expenses	87,105	-	87,105
Depreciation and amortization	63,000	-	63,000
Repairs and maintenance	53,714	-	53,714
Interest expense	9,566	-	9,566
	213,385	-	213,385
Total expenses	2,897,310	99,901	2,997,211
Increase in net assets	345,308	23,270	368,578
Net assets, beginning of year	4,481,164	1,758,744	6,239,908
Net assets, end of year	$ 4,826,472	$ 1,782,014	$ 6,608,486

See accompanying notes to combined financial statements and independent auditor's report.

Alaska Bar Association
Statement of Functional Expenses - General Fund
Year ended December 31, 2024

	Program Services					
	Admissions	Board of Governors	Discipline	Fee Arbitration	Lawyer Referral	Continuing Education
Salaries and related expenses	$ 164,956	$ -	$ 846,705	$ 56,167	$ 66,614	$ 197,068
Repairs and maintenance	2,755	-	21,354	2,755	1,378	5,511
Credit card and bank fees	-	-	-	-	-	-
Depreciation and amortization – furniture and equipment	2,207	-	17,107	2,207	1,104	4,415
Travel	670	14,475	6,216	-	-	3,232
Seminar costs	-	-	-	-	-	44,326
Newsletter	-	-	-	-	-	-
Occupancy expenses	1,551	-	12,028	1,551	776	3,105
Accounting fees	-	-	-	-	-	-
Depreciation and amortization – building	1,269	-	9,838	1,269	635	2,539
Equipment lease	1,123	-	8,706	1,123	562	2,247
Repairs and maintenance - building	1,060	-	8,218	1,060	530	2,121
Insurance	5,191	2,596	6,529	779	519	2,076
Legal research services	-	-	-	-	-	-
Programming	976	-	7,567	976	488	1,953
Grading and review	20,652	-	-	-	-	-
Postage	3,116	566	2,503	300	321	1,100
Office supplies and expense	3,054	764	3,665	458	458	1,680
Exam questions	15,248	-	-	-	-	-
Internet web page design	-	-	-	-	-	-
Lease expense	11,565	-	2,673	-	-	-
Litigation support	-	-	1,961	-	-	-
Dues, publications, and training seminars	-	-	10,991	-	-	-
Foundation accounting services	-	-	-	-	-	-
Interest expense	193	-	1,494	193	96	386
MLK Day	-	-	-	-	-	-
Public notices	-	-	817	-	-	-
Committee expenses	194	1,608	-	-	-	-
Copying	167	81	747	117	2	68
Pension administration	-	-	-	-	-	-
Telephone	34	-	84	21	323	26
Temporary support staff	-	-	-	-	-	-
Miscellaneous	10,963	1,710	300	-	-	285
	$ 246,944	$ 21,800	$ 969,503	$ 68,976	$ 73,806	$ 272,138

See accompanying notes to combined financial statements and independent auditor's report.

Alaska Bar Association
Statement of Functional Expenses - General Fund (Continued)
Year ended December 31, 2024

	Program Services				Supporting Services	
	Pro Bono	Mandatory CLE	Sections	Annual Meeting and Other	Administration	Total
Salaries and related expenses	$ 88,237	$ 20,896	$ 18,898	$ -	$ 498,581	$ 1,958,122
Repairs and maintenance	2,755	2,066	2,755	-	27,643	68,972
Credit card and bank fees	-	-	-	65,224	-	65,224
Depreciation and amortization – furniture and equipment	2,207	1,656	2,207	-	22,073	55,183
Travel	2,857	-	-	11,574	8,882	47,906
Seminar costs	-	350	-	-	-	44,676
Newsletter	-	-	-	39,633	-	39,633
Occupancy expenses	1,551	1,164	1,551	-	15,522	38,799
Accounting fees	-	-	-	-	34,070	34,070
Depreciation and amortization – building	1,269	952	1,269	-	12,695	31,735
Equipment lease	1,123	843	1,123	-	11,234	28,084
Repairs and maintenance - building	1,060	795	1,060	-	10,604	26,508
Insurance	519	519	519	-	6,790	26,037
Legal research services	-	-	-	24,852	-	24,852
Programming	976	732	976	-	9,764	24,408
Grading and review	-	-	-	-	-	20,652
Postage	200	200	200	-	7,075	15,581
Office supplies and expense	305	305	305	-	4,276	15,270
Exam questions	-	-	-	-	-	15,248
Internet web page design	-	-	-	14,572	-	14,572
Lease expense	-	-	-	-	-	14,238
Litigation support	-	-	-	11,340	-	13,301
Dues, publications, and training seminars	-	-	-	-	1,587	12,578
Foundation accounting services	-	-	-	11,721	-	11,721
Interest expense	193	145	193	-	1,928	4,821
MLK Day	-	-	-	4,472	-	4,472
Public notices	-	-	-	-	3,186	4,003
Committee expenses	-	-	-	1,932	-	3,734
Copying	2	10	1	-	1,994	3,189
Pension administration	-	-	-	-	1,620	1,620
Telephone	11	11	11	-	66	587
Temporary support staff	-	-	-	-	440	440
Miscellaneous	421	-	-	-	10	13,689
	$ 103,686	$ 30,644	$ 31,068	$ 185,320	$ 680,040	$ 2,683,925

See accompanying notes to combined financial statements and independent auditor's report.

Alaska Bar Association
Combined Statements of Cash Flows
Year ended December 31, 2024

	General Fund	Lawyers' Fund for Client Protection	Total All Funds
Cash flows from operating activities:			
Increase in net assets	$ 345,308	$ 23,270	$ 368,578
Adjustments to reconcile change in net assets to net cash:			
Depreciation and amortization	154,384	-	154,384
Unrealized gain (loss) on investments	4,094	(2,447)	1,647
Decrease (increase) in operating assets:			
Accounts receivable	29,199	-	29,199
Accrued interest receivable	14,456	(4,089)	10,367
Due from general fund	-	(262)	(262)
Prepaid expenses	(30,720)	-	(30,720)
Increase (decrease) in operating liabilities:			
Accounts payable and accrued expenses	24,096	-	24,096
Due to other funds	1,223	-	1,223
Group medical plan dissolution payable	(1,704)	-	(1,704)
Deferred dues and fees	18,325	360	18,685
Deferred lease income and deposits	(2,176)	-	(2,176)
Net cash provided by operating activities	556,485	16,832	573,317
Cash flows from investing activities:			
Proceeds from maturities of investments	4,721,000	2,374,000	7,095,000
Purchases of investments	(4,896,000)	(2,322,652)	(7,218,652)
Purchases of property and equipment	(92,208)	-	(92,208)
Net cash (used in) provided by investing activities	(267,208)	51,348	(215,860)
Cash flows from financing activities -			
Principal payments on long-term debt	(248,904)	-	(248,904)
Net increase in cash and cash equivalents	40,373	68,180	108,553
Cash and cash equivalents, beginning of year	613,798	89,153	702,951
Cash and cash equivalents, end of year	$ 654,171	$ 157,333	$ 811,504
Supplemental disclosure of cash flows -			
Interest paid	$ 9,835	$ -	$ 9,835

See accompanying notes to combined financial statements and independent auditor's report.

Alaska Bar Association
Notes to Combined Financial Statements
Year ended December 31, 2024

Note 1: Nature of Activities and Significant Accounting Policies

Nature of Activities

The Alaska Bar Association's Board of Governors regulates the practice of law in the State of Alaska. The powers and duties of the Board are conferred by the Alaska Integrated Bar Act, the Alaska Bar Rules, and the Rules of Professional Conduct which are promulgated by the Alaska Supreme Court. The two primary functions of the Alaska Bar Association (the Association) are the admission and discipline of its members. In addition, the Association performs other functions including continuing legal education, lawyer referral service, and fee arbitration.

The Association is supported primarily through member dues, admission fees, continuing legal education programs, lawyer referral service fees, and investment income. The Association receives no public support. The net assets of the General Fund and Lawyers' Fund for Client Protection are retained pursuant to the exemption for pre-statehood entities contained in Article IX Sec. 7 of the Alaska Constitution.

The Association maintains the Lawyers' Fund for Client Protection 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.

Legislative Audit

The Alaska Bar Association is subject to periodic "sunset reviews" by the State of Alaska Division of Legislative Audit. The existence of the Board of Governors is extended to June 30, 2029.

Basis of Presentation

The combined financial statements of the Association have been prepared in accordance with accounting principles generally accepted in the United States of America, which require the Association to report information regarding its financial position and activities according to the following net asset classifications:

Net assets without donor restrictions: Net assets that are not subject to donor-imposed restrictions and may be expended for any purpose in performing the primary objectives of the organization.

Net assets with donor restrictions: Net assets subject to stipulations imposed by donors, and grantors. Some donor restrictions are temporary in nature; those restrictions will be met by actions or by the passage of time. Other donor restrictions are perpetual in nature, where by the donor has stipulated the funds be maintained in perpetuity.

Donor restricted contributions are reported as increases in net assets with donor restrictions. When a restriction expires, net assets are reclassified from net assets with donor restrictions to net assets without donor restrictions in the statements of activities.

Note 1: Nature of Activities and Significant Accounting Policies (Continued)

Basis of Accounting

The combined financial statements of the Association have been prepared on the accrual basis of accounting and, accordingly, reflect all significant receivables, payables and other liabilities.

Use of Estimates

The preparation of combined financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

Fair Value of Financial Instruments

The Association's financial instruments consist of cash and cash equivalents, investments in marketable securities, receivables, accounts payable, and other accrued expenses. The Association estimates that the fair value of these non-derivative financial instruments at December 31, 2024 do not differ materially from the aggregate carrying value of its financial instruments recorded in the accompanying statements of financial position.

Cash and Cash Equivalents

For the purposes of the statements of cash flows, the Association considers all unrestricted cash and highly liquid financial instruments with an initial maturity of three months or less and money market mutual funds to be cash equivalents.

Accounts Receivables and Allowance for Credit Losses

The Association's revenue and receivables are from members, primarily in Alaska. Receivables from contracts with customers are reported as accounts receivable in the accompanying statements of financial position and are stated at the amount management expects to collect from outstanding balances. Management does not provide credit to its members, but rather dues are recognized annually to maintain membership to practice law. Contract liabilities are reported as deferred dues and fees in the accompanying statements of financial position.

Investments

The Association has invested funds in certificates of deposit and in mutual funds. Investments are reported at their fair values in the statements of financial position, and changes in fair value are reported as investment return in the statements of activities. Net investment return/(loss) is reported in the statements of activities and consists of interest and dividend income, realized and unrealized capital gains and losses, less any external and direct internal investment expenses.

It has been the Association's policy to primarily hold certificates of deposit to maturity.

Note 1: Nature of Activities and Significant Accounting Policies (Continued)

Property and Equipment

Property and equipment are recorded at cost. Minor additions less than $1,000 are expensed in the year incurred. Major additions are depreciated using the straight-line method, which amortizes the cost of the assets evenly over their estimated useful lives, or lesser of the useful life or lease term for leasehold improvements or capitalized lease assets. The cost and related depreciation or amortization are removed from the accounts when assets are sold or disposed of, and any resulting gain or loss is included in the statements of activities. Costs of maintenance and repairs that do not improve or extend the useful lives of the respective assets are expensed.

The carrying values of property and equipment are reviewed whenever events or circumstances indicate the carrying value of an asset may not be recoverable from the estimated future cash flows expected to result from its use and eventual disposition. When considered impaired, an impairment loss is recognized to the extent the carrying value exceeds the fair value of the asset.

Right-of-Use (ROU) Assets and Lease Liabilities

The Association determines if an arrangement is a lease at inception. ROU assets represent the Association's right to use an underlying asset for the lease term and lease liabilities represent the Association's obligation to make lease payments arising from the lease. Operating leases are included as ROU assets, current portion of lease liabilities, and long-term lease liabilities in the statement of financial position.

ROU assets and liabilities are recognized at commencement date based on the present value of lease payments over the lease term. Most leases do not have an interest rate implicit in the lease. As a result, for the purpose of measuring the ROU asset and lease liability, as an accounting policy election, the Association uses a risk-free discount rate, determined using a period comparable with that of the lease term, made by class of underlying asset. In the case an interest rate is implicit in a lease, that rate will be used as the discount rate for that lease. An accounting policy election was made to not recognize ROU assets and lease liabilities on the statement of financial position for those leases with initial terms of one year or less and instead such lease obligations will be expenses on a straight-line basis over the lease term.

Net Asset Reserves

The Board of Governors has designated reserves of net assets without donor restrictions for working capital (Working Capital), for future upgrade or replacement of computer systems (Asset Acquisition), and for future improvements to the building (Building Capital). The Working Capital, Asset Acquisition and Building Capital reserves are adjusted annually to maintain a reserved balance equivalent to expected needs. In October 2020, the Board of Governors voted to modify the working capital reserve policy to accumulate a working capital reserve with a targeted amount equal to seven months of expenses.

Note 1: Nature of Activities and Significant Accounting Policies (Continued)

Revenue Recognition

The Association recognizes revenues in accordance with two different Accounting Standard Codifications (ASC): 1) ASC 606: *Revenue from Contracts with Customers* ("Topic 606") and 2) ASC 842: *Leases* ("Topic 842").

The Association's revenues are comprised of membership dues and related fees, continuing legal education, annual meetings, and other related services.

The Association leases office facilities to third parties under noncancelable operating leases. Minimum lease income is recognized on a straight-line basis over the terms of the leases. Common area maintenance reimbursements are accounted for as part of lease income.

Income Taxes

The Association is an instrumentality of the State of Alaska whose activities are exempt from taxation under the Internal Revenue Code.

Advertising

The Association expenses advertising costs as they are incurred.

Functional Expenses

The Association has General Fund program service expenses for ten activities and has supporting function administration expenses as summarized in the Statement of Functional Expenses – General Fund. Certain categories of expenses are attributable to more than one program or supporting function and, therefore, require allocation on a reasonable basis that is consistently applied. The expenses that are allocated include salaries and related expenses, which are allocated on the basis of estimates of time and effort, depreciation, amortization, repairs and maintenance, and rent, which are allocated on a square footage basis, and office supplies, equipment lease, and postage, which are allocated on an estimated use basis. Other expenses such as copying, travel, telephone and public notices are allocated on a specific use basis.

The Lawyers' Fund for Client Protection has expenses directly attributable to the purpose of the fund as reported in the Statements of Activities.

Subsequent Events

Management has evaluated subsequent events through March 10, 2025, the date the combined financial statements were available to be issued.

Note 2: Concentration of Credit Risk Arising from Uninsured Cash and Cash Equivalents

The Association maintains cash and cash equivalent balances at several financial institutions. Cash balances at banks may exceed the Federal Deposit Insurance Corporation's basic insurance maximum of $250,000 during the course of the year. At December 31, 2024, the Association has uninsured cash balances of $93,549. The Association also has uninsured PayPal accounts with a total balance of approximately $73,766 at December 31, 2024.

Note 3: Liquidity and Availability of Financial Assets

The following represents the Association's General Fund financial assets at December 31, 2024:

Financial assets:	
Cash and cash equivalents	$ 654,171
Accounts receivable	1,576,306
Accrued interest receivable	12,750
Investments	2,206,987
Total financial assets	4,450,214
Less:	
Board-designated asset acquisition reserve	734,015
Board-designated building capital reserve	1,975,261
	2,709,276
Financial assets available to meet general expenditures over the next twelve months	$ 1,740,938

The Association invests General Fund cash and cash equivalents in excess of near-term operating needs in certificates of deposit. As part of its liquidity plan, the Board of Governors has designated a General Fund working capital reserve to accumulate a targeted amount equal to seven months of expenses. The Lawyers' Fund for Client Protection assets of $1,814,084 at December 31, 2024 consist of financial assets that are available to meet cash needs within one year if needs were to arise within the purpose of the fund. The assets of the Lawyers' Fund for Client Protection are held as cash or invested in a short duration income mutual fund and certificates of deposit.

Note 4: Fair Value Measurements

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (i.e., an exit price). The accounting guidance includes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The three levels of the fair value hierarchy are as follows:

- Level 1 – Unadjusted quoted prices for identical assets or liabilities in active markets;
- Level 2 – Inputs other than quoted price in active markets for identical assets and liabilities that are observable either directly or indirectly for substantially the full term of the asset of liability; and
- Level 3 – Unobservable inputs for the asset or liability, which includes management's own assumption about the assumptions market participants would use in pricing the asset or liability; including assumptions about risk.

The valuation methodologies used to measure the fair value of the Association's investments are described as follows:

- Certificates of deposit are traded in financial markets and valued by the custodian using pricing models based on credit quality, time to maturity, stated interest rates, and market-rate assumptions. These a.re included as a Level 2 measurement.
- Open-ended mutual funds are valued at the daily redemption value reported by the fund sponsor. These are included as a Level 1 measurement.

The following table summarizes the valuation of the Association's investments by the above fair value hierarchy levels as of December 31, 2024.

	Cost	Market Value		
		Level 1	Level 2	Total
General Fund				
Certificates of deposit	$ 2,208,000	$ -	$ 2,206,987	$ 2,206,987
Lawyers' Fund for Client Protection				
Short duration income mutual fund	656,943	572,768	-	572,768
Certificates of deposit	1,039,000	-	1,038,487	1,038,487
Total investments – Lawyers' Fund for Client Protection	1,695,943	572,768	1,038,487	1,611,255
Total investments	$ 3,903,943	$ 572,768	$ 3,245,474	$ 3,818,242

Note 5: Leases

The Association has operating leases for a postage meter system and a copier. The postage meter system lease was entered into in April 2021. The cost of this system is $864 per quarter until March of 2026. The copier lease agreement was entered into in September 2023. Initial terms call for a 60-month lease period with payments due monthly of $241.

Supplemental statement of financial position and other information related to operating leases as of December 31, 2024 are as follows:

Operating leases - right-of-use assets	$ 15,061
Operating lease liabilities:	
Current	5,891
Long-term	9,170
Total operating lease liabilities	$ 15,061

Weighted average remaining operating lease term and discount rate as of December 31, 2024 are as follows:

Weighted-average remaining operating lease term	2.98 years
Weighted-average operating lease discount rate	3.57%

Components of lease costs for the year ended December 31, 2024, are as follows

Operating lease expense	$ 6,347
Short term lease expense	14,238
Total lease expense	$ 20,585

A maturity analysis of the future undiscounted cash flows associated with the operating lease liabilities is as follows:

Year ending December 31,	
2025	$ 6,347
2026	4,618
2027	2,889
2028	2,167
Total undiscounted cash flows	16,021
Less present value discount	(960)
Total lease liabilities	$ 15,061

The operating lease expense and cash paid for amounts included in the measurement of operating lease liabilities for year ended December 31, 2024 was $6,347.

Note 6: Net Assets with Donor Restrictions

The Association has net assets with donor restrictions consisting of historical artifacts which are displayed in the Alaska State Courthouse. The historical artifacts were determined to have a fair market value of $3,750 at the time of donation and there was no change in net assets with donor restrictions during the year ended December 31, 2024.

Note 7: Revenue Recognition

Leases (Topic 842)

The Association earns lease income on office facilities to commercial businesses under noncancellable operating agreements with varying terms and conditions ranging from 2-5 years. At lease inception, the Association determines whether the arrangement qualifies as a lease under Topic 842 (i.e., conveys the right to control the use of an identified asset for a period of time in exchange for consideration). The Association only reassesses if the terms and conditions of a contract are changed. Lease terms may include scheduled lease increases based on contractual terms, fair market value adjustments, or options to renew at the discretion of the Association and the lessee. No lease arrangements contain a variable lease component. Generally, lease revenue recognition begins when the tenant takes possession of the leased space and the leased space is substantially ready for its intended use. Revenues are recognized based on the contractual lease terms and are considered most reflective of the pattern in which the benefit is expected to be derived from the use of the underlaying asset. Billings are performed monthly, and payment is usually collected within thirty days. Lease income is included in the statement of activities as lease income. Cash receipts from operating leases are classified within cash flows from operating activities.

Under contracts structured as operating leases, the Association retains title to leased assets, thereby retaining the potential benefit and assuming the risk of the residual value of leased assets. The Association's risk management strategy includes utilizing a property management firm to operate and manage the Association's leased property in order to maintain their value. The carrying value of leased office space included in building, building improvements, and land within the statement of financial position is $1,740,681 as of December 31, 2024.

As part of the leasing arrangement, the Association collects a security deposit from tenants at the inception of the lease. The primary purpose of this deposit is to provide financial security against potential defaults, damages, or any other breaches of the lease terms by the tenants. While the Association believes it takes appropriate measures to mitigate residual value risk, uncertainties and market fluctuations can still impact the actual residual value of the underlying assets at the end of the lease term.

Note 7: Revenue Recognition (Continued)

A maturity analysis of the future undiscounted operating lease payments are as follows:

Year ending December 31,	
2025	$ 232,968
2026	207,008
2027	82,100
2028	38,500
Total future minimum rents	$ 560,576

Revenues from Contracts with Customers (Topic 606)

Dues

Membership dues are the Association's primary source of revenue. Dues represent the Association's promise to exchange a variety of services to the member for an agreed amount of consideration. Services provided include, but are not limited to, the right to practice, research tools, and access to professional discounts. Each service provided is not distinct in terms of the member's ability to benefit from the service individually. Based upon the nature of the services, each represents a component of the membership provided. Each membership is viewed as a single performance obligation and recognized as such. The benefits of the membership are received and consumed by the member simultaneously as services are provided. Memberships are billed on an annual basis in the last month of the prior year and the revenue is deferred until earned. Revenues are recognized and accounted for straight-line over the term of the annual membership subsequent to the year of billing.

Membership dues receivable are recorded at the time of billing. Penalties are assessed if payment is not received within the first month of the year. Members are placed on administrative suspension and not allowed to practice if dues and late fees are not collected within the first quarter of the year. A second administrative suspension deadline of September 1 is imposed for those members paying by installment. Membership dues receivable are monitored throughout the year and adjusted for member status changes that would affect the balance at the end of the year.

Annual dues include a contribution to the Lawyers' Fund for Client Protection. The fund was created for the purpose of reimbursing clients who have suffered non-insured losses of money or things of value as a result of dishonest conduct by attorneys. The fund's intent is to support the community for potential loss and does not directly or indirectly benefit the individual Association members. The Association recognizes this portion of the annual dues as a contribution to the fund and is excluded from revenues earned by the General Fund.

Note 7: Revenue Recognition (Continued)

Admission Fees

The Association earns admission fees for processing membership applications. The application process requires multiple steps for admission including the successful completion of the Uniform Bar Exam. To practice within the State of Alaska, all members must prove competence either through admission by exam or admission by reciprocity. The majority of application fees are earned through admission by exam. Revenue earned through admission by exam is recognized over the period of time required to evaluate and process the application. All other admissions fees are earned at a point in time upon application processing.

Rule 81 Revenue

The Association recognizes Rule 81 revenue from fees paid to practice by non-members. Out of state attorneys must register with the Association to provide legal counsel on a case by case basis within the State of Alaska. Rule 81 revenue is accounted for the same as annual dues. Rule 81 fees are billed annually until a case is closed.

Lawyer Referral Program

The Association earns revenue by charging lawyers a fee to place names on a referral list. The list may be accessed by contacting the Association and is designed to promote business based upon type of law practiced. The fees are charged annually and revenue is recognized straight-line over the period of the agreement. Upon successful referral, the Association charges an additional fee to the referred lawyer which is billed quarterly.

Disaggregation of Revenue

The Association disaggregates revenue based on the timing of the transfer of services and type of services being provided. The Association believes the amount, nature, and timing of cash flows are best depicted as presented on the statements of activities.

The timing of revenue recognition, billing, and cash collection results in accounts receivable and deferred dues and fees on the statements of financial position. The beginning and ending contract balances were as follows:

	General Fund	Lawyers' Fund for Client Protection	Total All Funds
Accounts receivable, January 1, 2024	$ 1,595,960	$ -	$ 1,595,960
Accounts receivable, December 31, 2024	1,566,550	-	1,566,550
Deferred dues and fees, January 1, 2024	$ 2,218,830	$ 31,710	$ 2,250,540
Deferred dues and fees, December 31, 2024	2,237,155	32,070	2,269,225

Note 8: Employee 401(k) Plan

The Association has an employee 401(k) plan. The plan covers all employees who have completed one year of service. For 2024, the Association contributed five percent of the compensation of each participant. Contributions for the year ended December 31, 2024 totaled $63,793.

Note 9: Commitments

The Association purchased the building they previously leased office space from in October of 2020 and contracted with a property management firm to manage the property. This contract terminated in October of 2021 and continues on a month-to-month basis.

In July of 2024, the Association entered into an agreement with LMJ Consulting for managed IT support services and managed security for a term of 36 months. The cost of this service is $2,453 per month.

The Association entered into an agreement with Euclid Technology to upgrade and host their member management system for a term of three years. Hosting services started in December of 2024 with a cost of $1,400 per month.

In 2024, the Association entered into a ten year contract with Pine Technologies, LLC for a subscription to their case management system. Under this contract, the system is made available to the Association for the benefit and use of the Association's members. The cost of this service is $20,000 annually for the first three years and then increases annually by 3%. Upon expiration, the agreement may automatically renew for one year successive periods until the Association gives notice of non-renewal.

Year ending December 31,	
2025	$ 46,236
2026	66,236
2027	50,118
2028	20,600
2029	21,218
Thereafter	116,029
Total future commitments	$ 320,437

ALASKA BAR ASSOCIATION

Balance Sheet

February 2025

ASSETS		
Current Assets		
Cash	300,006	
Investments	3,682,173	
Receivables	153,825	
Prepaid Expense	84,592	
TOTAL Current Assets		4,220,596
Fixed Assets		
Fixed Assets (Net)	2,757,782	
TOTAL Fixed Assets		2,757,782
TOTAL ASSETS		6,978,378
LIABILITIES		
Current Liabilities		
Unearned Income	1,835,112	
Accounts Payable	3,589	
Accrued Liabilities	162,200	
Due Related Funds	45,677	
Building 840 K St Security Deposits	15,110	
TOTAL Current Liabilities		2,061,688
Long-Term Liabilities		
Bank Loans	9,170	
TOTAL Long-Term Liabilities		9,170
TOTAL LIABILITIES		2,070,858
CAPITAL		
Working Capital Reserve	1,075,000	
Capital Reserve - Artifacts	3,750	
Building 840 K St	1,825,261	
Building Improvement Reserve	100,000	
Capital Acquisition Reserve	734,015	
Tenant Improvement Reserve	50,000	
Unappropriated Capital	1,038,445	
Year-to-Date Earnings	81,049	
TOTAL CAPITAL		4,907,520
TOTAL LIABILITIES & CAPITAL		6,978,378

ALASKA BAR ASSOCIATION
Balance Sheet
February 2025

ASSETS

Current Assets		
Petty Cash	100	
Office Stamp Fund	50	
Office Change Drawer	100	
PayPal Credit Cards - CV	39,789	
PayPal Credit Cards - Admit	4,306	
1st National Checking Account	164,152	
1st National - Tenant Security Deposits	15,110	
1st National - Building Reserve Account	50,076	
1st National - Building Operating Acct	26,323	
Merrill Lynch Cash Management	154,150	
Merrill Lynch Investments	1,547,000	
Adjustment to Fair Mkt Value	(1,013)	
1st National Wealth Management	18,036	
1st National Investments	1,964,000	
Lawyer Referral Receivable	5,244	
Members Dues Receivable	117,415	
Bar Foundation Receivable	3,051	
Interest Receivable	28,090	
Suspense - Miscellaneous	25	
Prepaid Postage	3,188	
Prepaid Property/GLA/WC Insc	7,557	
Prepaid Maintenance	2,704	
Prepaid Annual Convention	5,000	
Prepaid Rent/Benefit/CopyLease	32,363	
Prepaid Database Maintenance	20,384	
Prepaid Database Cloud Fees	15,067	
Prepaid Property Taxes	(2,233)	
Prepaid Anch BID Assessment	(207)	
Prepaid Building Insurance	769	
TOTAL Current Assets		4,220,596
Fixed Assets		
Furniture & Equipment	1,002,879	
CLE Video Library Equipment	11,361	
Accumulated Depreciation	(942,837)	
Artifacts	3,750	
Leasehold Improvements	61,412	
Amortized Leasehold Improve	(14,184)	
Building	1,923,727	
Land	801,534	
Building Accumulated Depreciation	(283,215)	
Building Improvements	166,146	
Amortized Building Improvements	(30,347)	
Tenant Improvements	41,645	
Amortized Tenant Improvements	(23,598)	
Lease Commissions	32,592	
Amortized Lease Commissions	(16,543)	

Construction Management Fees	10,325	
Amortized Constr Management Fees	(1,927)	
Right of Use Asset - Leases	15,061	
TOTAL Fixed Assets		2,757,781
TOTAL ASSETS		6,978,377
LIABILITIES		
Current Liabilities		
Unearned Dues-Current Year	1,816,342	
Unearned Exam Fees-Feb	15,687	
Unearned Dues Install Fees	3,083	
Alaska ESD Payable	2,899	
FUTA Payable	690	
Accrued Annual Leave	156,309	
Lease Liability	5,891	
Due LFCP-Current Year	31,634	
Due AK Legal Services	2,140	
Due Historian's Comm Project	139	
Due Access to Justice Support	1,005	
Due Career Fair	2,257	
Due Bar Foundation	1,550	
Due Elizabeth Peratrovich Legal Clin	2,540	
MLK Day Contributions	466	
Due Law School Scholarships	1,075	
Due Territorial Lawyers	2,871	
Security Deposits	15,110	
TOTAL Current Liabilities		2,061,688
Long-Term Liabilities		
Lease Liability	9,170	
TOTAL Long-Term Liabilities		9,170
TOTAL LIABILITIES		2,070,858
CAPITAL		
Working Capital Reserve	1,075,000	
Capital Reserve - Artifacts	3,750	
Building 840 K St	1,825,261	
Building Improvement Reserve	100,000	
Capital Acquisition Reserve	734,015	
Tenant Improvement Reserve	50,000	
Unappropriated Capital	1,038,445	
Year-to-Date Earnings	81,048	
TOTAL CAPITAL		4,907,519
TOTAL LIABILITIES & CAPITAL		6,978,377

ALASKA BAR ASSOCIATION

Income Statement-Actual to Budget

Year-to-Date Performance, February 2025 - current month, Consolidated by account

	2 Months Ended February 28, 2025	*Annual Budget*	*Unused*	*% Used*
Revenue				
Admission Fees-Bar Exam	8,163	78,940	70,777	10.3 %
Admission Fees-Motion	18,000	58,800	40,800	30.6 %
Admission Fees-Exam Soft	0	11,775	11,775	
Admissions Fees-UBE	6,000	47,000	41,000	12.8 %
Admission Fees-Rule 81	41,580	130,000	88,420	32.0 %
CLE-Seminars	14,352	92,650	78,298	15.5 %
CLE- Health Plan Surplus Fnds	0	30,982	30,982	
MCLE-Accreditations	250	2,000	1,750	12.5 %
MCLE Reinstatement Fees	0	0	0	
Lawyer Referral Fees	4,378	34,550	30,172	12.7 %
The Alaska Bar Rag	375	17,000	16,625	2.2 %
Annual Convention	6,705	88,250	81,545	7.6 %
Career Fair	0	7,000	7,000	
Substantive Law Section Membership	13,650	25,895	12,245	52.7 %
Accounting Svc-Found	1,811	12,753	10,942	14.2 %
Special Projects	0	0	0	
Membership Dues	363,385	2,180,272	1,816,887	16.7 %
Dues Installment Fees	1,297	4,550	3,253	28.5 %
Penalties on Late Dues	5,290	12,580	7,290	42.1 %
Readmission Fee	0	0	0	
Disc Cost Awards	0	0	0	
Labels & Copying	50	500	450	10.0 %
Investment Interest	27,235	103,174	75,939	26.4 %
State of Alaska	0	0	0	
Gain/Loss on Sale of Assets	0	0	0	
Unrealized Gain (Loss) on Investments	0	0	0	
Referral Partner Royalty Fees	3,788	14,818	11,030	25.6 %
Rental Income	53,847	274,185	220,338	19.6 %
AK Bar Rental Share	0	0	0	
Miscellaneous Income	0	50	50	
TOTAL Revenue	570,157	3,227,724	2,657,567	17.7 %
NET REVENUE	570,157	3,227,724	2,657,567	17.7 %

	2 Months Ended February 28, 2025	*Annual Budget*	*Unused*	*% Used*
NET REVENUE	570,157	3,227,724	2,657,567	17.7 %
Expenses				
Admissions	38,846	305,604	266,758	12.7 %
CLE	34,559	276,570	242,011	12.5 %
MCLE	3,980	28,297	24,317	14.1 %
Substantive Law Sections	3,481	24,844	21,363	14.0 %
Lawyer Referral	11,236	79,311	68,075	14.2 %
The Alaska Bar Rag	0	42,497	42,497	
Pro Bono	16,893	142,172	125,279	11.9 %
Board of Governors	6,466	73,295	66,829	8.8 %
Discipline	160,207	1,037,831	877,624	15.4 %
Fee Arbitration	8,674	60,959	52,285	14.2 %
Administration	124,428	836,931	712,503	14.9 %
Building - 840 K St	35,534	234,735	199,201	15.1 %
Annual Convention	2,500	86,550	84,050	2.9 %
Career Fair	0	0	0	
Diversity Commission	0	0	0	
Travel/Outreach	0	17,000	17,000	
LRE Travel/Outreach	0	5,000	5,000	
Accounting Svc-Foundation	1,811	12,753	10,942	14.2 %
MLK Day	3,796	4,000	204	94.9 %
ADA Members Services	0	1,000	1,000	
Fastcase	4,142	24,852	20,710	16.7 %
Committees	516	2,500	1,984	20.6 %
Miscellaneous Litigation	0	15,000	15,000	
Marketing/Communications	1,877	16,149	14,272	11.6 %
Loan Interest/Fees	0	0	0	
Computer System Training	0	500	500	
Lobbyist	0	0	0	
Credit Card and Bank Fees	30,161	36,952	6,791	81.6 %
Succession Planning	0	20,000	20,000	
Miscellaneous Expense	0	6,000	6,000	
Clearing Accounts	0	0	0	
TOTAL Expenses	489,109	3,391,302	2,902,193	14.4 %
NET GAIN/(LOSS)	81,047	(163,578)	(244,625)	-49.5 %
Other Income & Expenses				
Accts Pay Discounts	0	0	0	
TOTAL Other Income & Expenses	0	0	0	
NET GAIN/(LOSS)	81,047	(163,578)	(244,625)	-49.5 %

	2 Months Ended February 28, 2025	*Annual Budget*	*Unused*	*% Used*
NET GAIN/(LOSS)	81,047	(163,578)	(244,625)	-49.5 %

ALASKA BAR ASSOCIATION

Income Statement-Actual to Budget

Admissions

	2 Months Ended February 28, 2025	*Annual Budget*	*Unused*	*% Used*
Revenue				
Admission Fees-Bar Exam	8,163	78,940	70,777	10.3 %
Admission Fees-Motion	18,000	58,800	40,800	30.6 %
Admission Fees-Exam Soft	0	11,775	11,775	
Admissions Fees-UBE	6,000	47,000	41,000	12.8 %
Admission Fees-Rule 81	41,580	130,000	88,420	32.0 %
TOTAL Revenue	73,743	326,515	252,772	22.6 %
NET REVENUE	73,743	326,515	252,772	22.6 %
NET REVENUE	73,743	326,515	252,772	22.6 %
Expenses				
Direct Expense				
Admit Grading-MBE	0	7,258	7,258	
Admit Grading-Local	0	12,800	12,800	
Admit NCBE Travel	0	2,034	2,034	
Admit Review/Training	0	1,000	1,000	
Admit Exam Rent/Admin	4,950	16,400	11,450	30.2 %
Admit Litigation	0	0	0	
Admit Fingerprinting	1,144	7,826	6,682	14.6 %
Admit Cert/Schools	0	0	0	
Admit Law Examiners	0	250	250	
Admit Booklets	1,849	1,950	101	94.8 %
Admit Conf Rm Rent	0	0	0	
Admit Mand Ethics	0	1,000	1,000	
Admit MPT & MEE Questions	0	6,048	6,048	
Admit Exam Soft	0	8,492	8,492	
TOTAL Direct Expense	7,943	65,058	57,115	12.2 %
Administrative Expense				
Admit Staff Salaries	13,381	123,817	110,436	10.8 %
Admit Payroll Taxes	1,162	10,277	9,115	11.3 %
Admit 401k Plan	669	6,191	5,522	10.8 %
Admit Staff Insurance	10,605	63,430	52,825	16.7 %
Admit Postage/Freight	60	3,244	3,184	1.8 %
Admit Supplies	1,246	3,249	2,003	38.4 %
Admit Telephone	0	0	0	
Admit Copying	13	161	148	8.1 %
Admit Office Rent	1,007	6,841	5,834	14.7 %
Admit Depr/Amort	285	5,630	5,345	5.1 %
Admit Leased Equipment	256	1,776	1,520	14.4 %
Admit Equip Maintain	700	2,754	2,054	25.4 %

Admissions

	2 Months Ended February 28, 2025	*Annual Budget*	*Unused*	*% Used*
Admit Prop/GLA/WC Insc	870	7,418	6,548	11.7 %
Admit Programming/Database	650	5,058	4,408	12.9 %
Admit Temp Support Staff	0	0	0	
Admit Dues & Miscellaneous	0	700	700	
TOTAL Admin Expense	30,903	240,546	209,643	12.8 %
TOTAL Expenses	38,846	305,604	266,758	12.7 %
NET GAIN/(LOSS)	34,897	20,911	(13,986)	166.9 %
NET GAIN/(LOSS)	34,897	20,911	(13,986)	166.9 %
NET GAIN/(LOSS)	34,897	20,911	(13,986)	166.9 %

ALASKA BAR ASSOCIATION

Income Statement-Actual to Budget

Continuing Legal Education

	2 Months Ended February 28, 2025	*Annual Budget*	*Unused*	*% Used*
Revenue				
CLE-Seminars	14,352	92,650	78,298	15.5 %
CLE- Health Plan Surplus Fnds	0	30,982	30,982	
TOTAL Revenue	14,352	123,632	109,280	11.6 %
NET REVENUE	14,352	123,632	109,280	11.6 %
NET REVENUE	14,352	123,632	109,280	11.6 %
Expenses				
Direct Expense				
CLE Seminars & Lib	3,938	61,150	57,212	6.4 %
CLE ACLEA Trv MidYear	1,290	3,244	1,954	39.8 %
CLE ACLEA Trv Annual	0	4,204	4,204	
CLE Committee Expense	0	100	100	
TOTAL Direct Expense	5,228	68,698	63,470	7.6 %
Administrative Expense				
CLE Staff Salaries	17,972	124,521	106,549	14.4 %
CLE Staff Payroll Taxes	1,624	10,492	8,868	15.5 %
CLE Staff 401k Plan	893	6,139	5,246	14.5 %
CLE Staff Insurance	5,228	40,657	35,429	12.9 %
CLE Postage/Freight	0	1,220	1,220	
CLE Supplies	686	1,787	1,101	38.4 %
CLE Telephone	0	0	0	
CLE Copying	18	66	48	27.3 %
CLE Office Rent	1,007	6,841	5,834	14.7 %
CLE Depr/Amort	237	4,692	4,455	5.1 %
CLE Leased Equipment	195	1,480	1,285	13.2 %
CLE Equip Maintain	583	2,295	1,712	25.4 %
CLE Prop/GLA/WC Insc	348	2,967	2,619	11.7 %
CLE Programming/Database	541	4,215	3,674	12.8 %
CLE Dues & Miscellaneous	0	500	500	
TOTAL Admin Expense	29,331	207,872	178,542	14.1 %
TOTAL Expenses	34,559	276,570	242,011	12.5 %
NET GAIN/(LOSS)	(20,207)	(152,938)	(132,731)	13.2 %
NET GAIN/(LOSS)	(20,207)	(152,938)	(132,731)	13.2 %
NET GAIN/(LOSS)	(20,207)	(152,938)	(132,731)	13.2 %

ALASKA BAR ASSOCIATION

Income Statement-Actual to Budget

MCLE

	2 Months Ended February 28, 2025	*Annual Budget*	*Unused*	*% Used*
Revenue				
MCLE-Accreditations	250	2,000	1,750	12.5 %
MCLE Reinstatement Fees	0	0	0	
TOTAL Revenue	250	2,000	1,750	12.5 %
NET REVENUE	250	2,000	1,750	12.5 %
NET REVENUE	250	2,000	1,750	12.5 %
Expenses				
Direct Expense				
MCLE Convention Travel	0	0	0	
MCLE CLEReg Travel	0	0	0	
MCLE Free Ethics Course	0	350	350	
MCLE Committee Expense	0	0	0	
TOTAL Direct Expense	0	350	350	
Administrative Expense				
MCLE Staff Salaries	2,236	15,250	13,014	14.7 %
MCLE Staff Payroll Taxes	204	1,301	1,097	15.7 %
MCLE 401k Plan	112	763	651	14.7 %
MCLE Staff Insurance	743	5,439	4,696	13.7 %
MCLE Postage/Freight	0	222	222	
MCLE Supplies	125	325	200	38.5 %
MCLE Telephone	0	0	0	
MCLE Copying	0	29	29	
MCLE Office Rent	168	1,140	972	14.7 %
MCLE Depr/Amort	47	938	891	5.0 %
MCLE Leased Equipment	33	296	263	11.1 %
MCLE Equip Maintain	117	459	342	25.5 %
MCLE Prop/GLA/WC Insc	87	742	655	11.7 %
MCLE Programming/Database	108	843	735	12.8 %
MCLE Temp Support Staff	0	0	0	
MCLE Dues & Miscellaneous	0	200	200	
TOTAL Admin Expense	3,980	27,947	23,967	14.2 %
TOTAL Expenses	3,980	28,297	24,317	14.1 %
NET GAIN/(LOSS)	(3,730)	(26,297)	(22,567)	14.2 %
NET GAIN/(LOSS)	(3,730)	(26,297)	(22,567)	14.2 %
NET GAIN/(LOSS)	(3,730)	(26,297)	(22,567)	14.2 %

ALASKA BAR ASSOCIATION
Income Statement-Actual to Budget
Lawyer Referral

	2 Months Ended February 28, 2025	Annual Budget	Unused	% Used
Revenue				
Lawyer Referral Fees	4,378	34,550	30,172	12.7 %
TOTAL Revenue	4,378	34,550	30,172	12.7 %
NET REVENUE	4,378	34,550	30,172	12.7 %
NET REVENUE	4,378	34,550	30,172	12.7 %
Expenses				
Direct Expense				
LR Advertising-Anc	0	0	0	
LR Advertising-Other	0	0	0	
LR Telephone-LD,800	39	364	325	10.7 %
TOTAL Direct Expense	39	364	325	10.8 %
Administrative Expense				
LR Staff Salaries	6,180	42,212	36,032	14.6 %
LR Staff Payroll Taxes	567	3,644	3,077	15.6 %
LR Staff 401k Plan	309	2,111	1,802	14.6 %
LR Staff Insurance	2,904	19,127	16,223	15.2 %
LR Postage/Freight	0	362	362	
LR Supplies	187	486	299	38.5 %
LR Copying	0	35	35	
LR Office Rent	336	2,280	1,944	14.7 %
LR Depr/Amort	95	1,877	1,782	5.1 %
LR Leased Equipment	83	592	509	14.0 %
LR Equip Maintain	233	918	685	25.4 %
LR Prop/GLA/WC Insc	87	742	655	11.7 %
LR Programming/Database	217	1,686	1,469	12.9 %
LR Temp Support Staff	0	2,775	2,775	
LR Miscellaneous	0	100	100	
TOTAL Admin Expense	11,197	78,947	67,750	14.2 %
TOTAL Expenses	11,236	79,311	68,075	14.2 %
NET GAIN/(LOSS)	(6,858)	(44,761)	(37,903)	15.3 %
NET GAIN/(LOSS)	(6,858)	(44,761)	(37,903)	15.3 %
NET GAIN/(LOSS)	(6,858)	(44,761)	(37,903)	15.3 %

ALASKA BAR ASSOCIATION

Income Statement-Actual to Budget

Alaska Bar Rag

	2 Months Ended February 28, 2025	*Annual Budget*	*Unused*	*% Used*
Revenue				
The Alaska Bar Rag	375	17,000	16,625	2.2 %
TOTAL Revenue	375	17,000	16,625	2.2 %
NET REVENUE	375	17,000	16,625	2.2 %
NET REVENUE	375	17,000	16,625	2.2 %
Expenses				
Direct Expense				
BR Typesetting/Layout	0	11,298	11,298	
BR Printing	0	9,555	9,555	
BR Distribution	0	15,344	15,344	
BR Ad Commissions	0	4,700	4,700	
BR Promotion/Consulting	0	0	0	
BR Miscellaneous	0	1,600	1,600	
TOTAL Direct Expense	0	42,497	42,497	
TOTAL Expenses	0	42,497	42,497	
NET GAIN/(LOSS)	375	(25,497)	(25,872)	-1.5 %
NET GAIN/(LOSS)	375	(25,497)	(25,872)	-1.5 %
NET GAIN/(LOSS)	375	(25,497)	(25,872)	-1.5 %

ALASKA BAR ASSOCIATION

Income Statement-Actual to Budget

Sections

	2 Months Ended February 28, 2025	*Annual Budget*	*Unused*	*% Used*
Revenue				
Substantive Law Section Membership	13,650	25,895	12,245	52.7 %
TOTAL Revenue	13,650	25,895	12,245	52.7 %
NET REVENUE	13,650	25,895	12,245	52.7 %
NET REVENUE	13,650	25,895	12,245	52.7 %
Expenses				
Direct Expense				
SECT Conference Room Rent - Mtgs	0	0	0	
SECT Zoom - Mtgs	0	150	150	
SECT Section News	0	0	0	
TOTAL Direct Expense	0	150	150	
Administrative Expenses				
SECT Staff Salaries	1,805	12,475	10,670	14.5 %
SECT Staff Payroll Taxes	166	1,089	923	15.2 %
SECT Staff 401k Plan	90	624	534	14.4 %
SECT Staff Insurance	739	5,414	4,675	13.6 %
SECT Postage/Freight	0	222	222	
SECT Supplies	125	325	200	38.5 %
SECT Telephone	0	0	0	
SECT Copying	0	27	27	
SECT Office Rent	168	1,140	972	14.7 %
SECT Depr/Amort	47	938	891	5.0 %
SECT Equipment Leases	29	296	267	9.8 %
SECT Equip Maintain	117	459	342	25.5 %
SECT Prop/GLA/WC Ins	87	742	655	11.7 %
SECT Programming/Database	108	843	735	12.8 %
SECT Audio Programs, Dues & Misc	0	100	100	
TOTAL Admin Expense	3,481	24,694	21,213	14.1 %
TOTAL Expenses	3,481	24,844	21,363	14.0 %
NET GAIN/(LOSS)	10,169	1,051	(9,118)	967.6 %
NET GAIN/(LOSS)	10,169	1,051	(9,118)	967.6 %
NET GAIN/(LOSS)	10,169	1,051	(9,118)	967.6 %

ALASKA BAR ASSOCIATION
Income Statement-Actual to Budget
Pro Bono

	2 Months Ended February 28, 2025	*Annual Budget*	*Unused*	*% Used*
NET REVENUE	0	0	0	
NET REVENUE	0	0	0	
Expenses				
Direct Expense				
PB Trv-ABA Equal Justice	0	3,142	3,142	
PB Travel-Convention	0	0	0	
PB Travel-Statewide	0	0	0	
PB Recognition	0	1,250	1,250	
PB Printing	0	250	250	
PB Outreach	0	1,250	1,250	
TOTAL Direct Expense	0	5,892	5,892	
Administrative Expense				
PB Staff Salaries	13,869	81,000	67,131	17.1 %
PB Staff Payroll Taxes	1,238	6,682	5,444	18.5 %
PB Staff 401k Plan	0	675	675	
PB Staff Insurance	79	35,375	35,296	0.2 %
PB Postage/Freight	0	222	222	
PB Supplies	125	325	200	38.5 %
PB Telephone	0	0	0	
PB Copying	0	29	29	
PB Office Rent	503	3,421	2,918	14.7 %
PB Depr/Amort	142	2,815	2,673	5.0 %
PB Equipment Leases	120	888	768	13.5 %
PB Equip Maintain	350	1,377	1,027	25.4 %
PB Prop/GLA/WC Ins	87	742	655	11.7 %
PB Programming/Database	325	2,529	2,204	12.9 %
PB Temp Support Staff	0	0	0	
PB Dues & Miscellaneous	55	200	145	27.5 %
TOTAL Admin Expense	16,893	136,280	119,387	12.4 %
TOTAL Expenses	16,893	142,172	125,279	11.9 %
NET GAIN/(LOSS)	(16,893)	(142,172)	(125,279)	11.9 %
NET GAIN/(LOSS)	(16,893)	(142,172)	(125,279)	11.9 %
NET GAIN/(LOSS)	(16,893)	(142,172)	(125,279)	11.9 %

ALASKA BAR ASSOCIATION

Income Statement-Actual to Budget

Board of Governors

	2 Months Ended February 28, 2025	*Annual Budget*	*Unused*	*% Used*
NET REVENUE	0	0	0	
NET REVENUE	0	0	0	
Expenses				
Direct Expense				
BOG Travel-Anchorage	1,730	16,076	14,346	10.8 %
BOG Travel-Convention	0	7,882	7,882	
BOG Travel-Statewide	0	0	0	
BOG NCBP Midyear-Feb	0	5,536	5,536	
BOG Bar Leadership-Mar	0	3,299	3,299	
BOG NCBP Annual-Aug	0	7,778	7,778	
BOG Western States	3,513	7,824	4,311	44.9 %
BOG Travel - NW Bars Leadership	0	3,394	3,394	
BOG Travel - New Lawyer Liaison	0	3,316	3,316	
BOG N/Atny Trv-Anc	0	0	0	
BOG N/Atny Trv-Con	0	0	0	
BOG Special Committees	0	500	500	
BOG Conf Rm Rent	0	0	0	
BOG Printing/Online Voting	0	0	0	
BOG Meeting Other	90	7,880	7,790	1.1 %
TOTAL Direct Expense	5,333	63,485	58,152	8.4 %
Administrative Expense				
BOG Postage/Freight	0	555	555	
BOG Supplies	312	812	500	38.4 %
BOG Telephone	0	0	0	
BOG Copying	40	119	79	33.6 %
BOG Prop/GLA/WC Insc	435	3,709	3,274	11.7 %
BOG Staff Recognition	0	1,100	1,100	
BOG Dues & Miscellaneous	348	3,515	3,167	9.9 %
TOTAL Admin Expense	1,134	9,810	8,676	11.6 %
TOTAL Expenses	6,466	73,295	66,829	8.8 %
NET GAIN/(LOSS)	(6,466)	(73,295)	(66,829)	8.8 %
NET GAIN/(LOSS)	(6,466)	(73,295)	(66,829)	8.8 %
NET GAIN/(LOSS)	(6,466)	(73,295)	(66,829)	8.8 %

ALASKA BAR ASSOCIATION

Income Statement-Actual to Budget

Discipline

	2 Months Ended February 28, 2025	*Annual Budget*	*Unused*	*% Used*
NET REVENUE	0	0	0	
NET REVENUE	0	0	0	
Expenses				
Direct Expense				
DISC Trv NOBC Midyear	2,697	6,550	3,853	41.2 %
DISC Trv NOBC Annual	0	3,151	3,151	
DISC Travel-Convention	0	0	0	
DISC Trv Inv/Area Hrngs/Other	0	500	500	
DISC Trv Database/OBI	0	2,230	2,230	
DISC Lit Support	870	3,000	2,130	29.0 %
DISC Conflict Cases	0	0	0	
DISC Area Hrg Com	0	1,000	1,000	
DISC Public Notice/Info	0	2,500	2,500	
DISC Law Books/Manuals/Dues	0	14,689	14,689	
TOTAL Direct Expense	3,566	33,620	30,054	10.6 %
Administrative Expense				
DISC Staff Salaries	89,124	605,220	516,096	14.7 %
DISC Payroll Taxes	7,826	49,808	41,982	15.7 %
DISC Staff 401k Plan	4,300	29,367	25,067	14.6 %
DISC Staff Insurance	34,170	174,982	140,812	19.5 %
DISC Postage/Freight	0	2,463	2,463	
DISC Supplies	1,496	3,895	2,399	38.4 %
DISC Telephone	0	0	0	
DISC Copying	87	876	789	9.9 %
DISC Office Rent	7,873	41,888	34,015	18.8 %
DISC Depr/Amort	1,613	31,906	30,293	5.1 %
DISC Leased Equipment	1,417	10,063	8,646	14.1 %
DISC Equip Maintain	3,967	15,607	11,640	25.4 %
DISC Prop/GLA/WC Insc	1,087	9,272	8,185	11.7 %
DISC Programming/Database	3,681	28,664	24,983	12.8 %
DISC Miscellaneous	0	200	200	
TOTAL Admin Expense	156,640	1,004,211	847,571	15.6 %
TOTAL Expenses	160,207	1,037,831	877,624	15.4 %
NET GAIN/(LOSS)	(160,207)	(1,037,831)	(877,624)	15.4 %
NET GAIN/(LOSS)	(160,207)	(1,037,831)	(877,624)	15.4 %
NET GAIN/(LOSS)	(160,207)	(1,037,831)	(877,624)	15.4 %

ALASKA BAR ASSOCIATION
Income Statement-Actual to Budget
Fee Arbitration

	2 Months Ended February 28, 2025	Annual Budget	Unused	% Used
NET REVENUE	0	0	0	
NET REVENUE	0	0	0	
Expenses				
Direct Expense				
FA Exec Committee	0	0	0	
FA Conference Room Rent	0	0	0	
FA Support Services	0	500	500	
TOTAL Direct Expense	0	500	500	
Administrative Expense				
FA Staff Salaries	5,029	34,619	29,590	14.5 %
FA Staff Payroll Taxes	455	2,918	2,463	15.6 %
FA Staff 401k Plan	250	1,731	1,481	14.4 %
FA Staff Insurance	1,612	11,622	10,010	13.9 %
FA Postage/Freight	0	333	333	
FA Supplies	187	493	306	37.9 %
FA Telephone	0	0	0	
FA Copying	56	177	121	31.6 %
FA Office Rent	336	2,280	1,944	14.7 %
FA Depr/Amort	95	1,877	1,782	5.1 %
FA Leased Equipment	75	592	517	12.7 %
FA Equip Maintain	233	918	685	25.4 %
FA Property/GLA/WC Insc	130	1,113	983	11.7 %
FA Programming/Database	217	1,686	1,469	12.9 %
FA Miscellaneous	0	100	100	
TOTAL Admin Expense	8,674	60,459	51,785	14.3 %
TOTAL Expenses	8,674	60,959	52,285	14.2 %
NET GAIN/(LOSS)	(8,674)	(60,959)	(52,285)	14.2 %
NET GAIN/(LOSS)	(8,674)	(60,959)	(52,285)	14.2 %
NET GAIN/(LOSS)	(8,674)	(60,959)	(52,285)	14.2 %

ALASKA BAR ASSOCIATION

Income Statement-Actual to Budget

Administration

	2 Months Ended February 28, 2025	*Annual Budget*	*Unused*	*% Used*
NET REVENUE	0	0	0	
NET REVENUE	0	0	0	
Expenses				
Direct Expense				
AD Trv NABE MidYear	0	0	0	
AD Trv NABE Annual	0	6,155	6,155	
AD Travel-Convention	0	0	0	
AD Travel-Conf-Western States	0	4,452	4,452	
AD Travel-Conf-NW Bars Leadership	0	1,921	1,921	
AD Trv Bar Leadership-Mar	0	3,425	3,425	
AD Annual Audit	25,000	34,751	9,751	71.9 %
AD Card/Notice/Rpt	348	3,164	2,816	11.0 %
AD Dues/Sub/Seminar	15	2,277	2,262	0.7 %
AD Poll/Survy/Delegate	0	0	0	
AD Pension Admin	0	0	0	
AD HRA Admin	330	1,280	950	25.8 %
TOTAL Direct Expense	25,693	57,425	31,732	44.7 %
Administrative Expense				
AD Staff Salaries	48,673	365,088	316,415	13.3 %
AD Staff Payroll Taxes	4,316	30,491	26,175	14.2 %
AD Staff 401k Plan	2,245	16,220	13,975	13.8 %
AD Staff Insurance	17,690	168,860	151,170	10.5 %
AD Postage/Freight	530	6,305	5,775	8.4 %
AD Supplies	1,745	4,548	2,803	38.4 %
AD Telephone	0	0	0	
AD Copying	328	2,636	2,308	12.4 %
AD Office Rent	7,549	51,311	43,762	14.7 %
AD Depr/Amort	2,182	43,167	40,985	5.1 %
AD Equipment Leases	1,925	13,615	11,690	14.1 %
AD Equip Maintain	5,367	21,116	15,749	25.4 %
AD Prop/GLA/WC Ins	1,130	9,643	8,513	11.7 %
AD Programming/Database	4,980	38,781	33,801	12.8 %
AD Temp Staff/Recruitment Fee	75	7,225	7,150	1.0 %
AD Miscellaneous	0	500	500	
TOTAL Admin Expense	98,736	779,506	680,770	12.7 %
TOTAL Expenses	124,428	836,931	712,503	14.9 %
NET GAIN/(LOSS)	(124,428)	(836,931)	(712,503)	14.9 %
NET GAIN/(LOSS)	(124,428)	(836,931)	(712,503)	14.9 %

Administration

	2 Months Ended February 28, 2025	*Annual Budget*	*Unused*	*% Used*
NET GAIN/(LOSS)	(124,428)	(836,931)	(712,503)	14.9 %

ALASKA BAR ASSOCIATION
Income Statement-Actual to Budget
Building 840 K Street

	2 Months Ended February 28, 2025	Annual Budget	Unused	% Used
Revenue				
Rental Income	53,847	274,185	220,338	19.6 %
AK Bar Rental Share	0	0	0	
TOTAL Revenue	53,847	274,185	220,338	19.6 %
NET REVENUE	53,847	274,185	220,338	19.6 %
NET REVENUE	53,847	274,185	220,338	19.6 %
Expenses				
Direct Expense				
BLDG Janitorial	2,629	13,282	10,653	19.8 %
BLDG Janitorial Supplies	397	3,048	2,651	13.0 %
BLDG Window Cleaning	332	1,650	1,318	20.1 %
BLDG HVAC Contract	0	4,324	4,324	
BLDG HVAC R&M	262	3,960	3,698	6.6 %
BLDG General Building Maint	3,049	24,710	21,661	12.3 %
BLDG Elevator Contract	512	2,402	1,890	21.3 %
BLDG Fire Alarm Inspect & Maint	0	412	412	
BLDG Security	489	2,479	1,990	19.7 %
BLDG Landscaping	0	0	0	
BLDG Snow Removal/Sweeping	190	1,510	1,320	12.6 %
BLDG Electricity	6,514	37,066	30,552	17.6 %
BLDG Gas	3,914	21,278	17,364	18.4 %
BLDG Water/Sewer	267	1,647	1,380	16.2 %
BLDG Refuse	586	3,624	3,038	16.2 %
TOTAL Direct Expense	19,141	121,392	102,251	15.8 %
Administrative Expense				
BLDG Amortization Loan Fees	0	165	165	
BLDG Building Loan	0	0	0	
BLDG Management Fee	2,062	12,276	10,214	16.8 %
BLDG Leasing Commission	747	6,864	6,117	10.9 %
BLDG Construction Management Fees	130	1,360	1,230	9.6 %
BLDG Real Estate Taxes	2,233	13,396	11,163	16.7 %
BLDG Downtown Improvement Distr	138	821	683	16.8 %
BLDG Professional/Legal	0	1,320	1,320	
BLDG Depreciation - Building	7,107	42,322	35,215	16.8 %
BLDG Amortization - Tenant Improv	983	8,931	7,948	11.0 %
BLDG Insurance	1,023	6,698	5,675	15.3 %
BLDG Amortization - Building Capt Improv	1,970	18,860	16,890	10.4 %
BLDG Miscellaneous Admin	0	330	330	
TOTAL Administrative Expense	16,392	113,343	96,951	14.5 %

Building 840 K Street

	2 Months Ended February 28, 2025	*Annual Budget*	*Unused*	*% Used*
TOTAL Expenses	35,534	234,735	199,201	15.1 %
NET GAIN/(LOSS)	18,313	39,450	21,137	46.4 %
NET GAIN/(LOSS)	18,313	39,450	21,137	46.4 %
NET GAIN/(LOSS)	18,313	39,450	21,137	46.4 %

LAWYERS FUND CLIENT PROTECTION

Balance Sheet

February 2025

ASSETS		
Current Assets		
First National Bank	10,985	
Merrill Lynch CMA Account	155,834	
Merrill Lynch Investments	1,591,623	
Adjustment to Fair Mkt Value	(84,687)	
Alaska Bar Assn Receivable	31,634	
Interest Receivable	16,158	
TOTAL Current Assets		1,721,547
TOTAL ASSETS		1,721,547
CAPITAL		
Fund Balance	1,782,014	
Year-to-Date Gain/(Loss)	(60,467)	
TOTAL CAPITAL		1,721,547
TOTAL LIABILITIES & CAPITAL		1,721,547

LAWYERS FUND CLIENT PROTECTION

Income Summary

Month- and Year-to-Date, February 2025 - current month

	1 Month Ended February 28, 2025		*2 Months Ended February 28, 2025*	
Revenue				
Active Member Assessments	(17)	-0.3 %	31,634	61.1 %
Investment Interest	5,615	99.4 %	20,095	38.8 %
Miscellaneous Revenue	50	0.9 %	50	0.1 %
TOTAL Revenue	5,648	100.0 %	51,780	100.0 %
NET REVENUE	5,648	100.0 %	51,780	100.0 %
GROSS PROFIT	5,648	100.0 %	51,780	100.0 %
Expenses				
Claims Awarded	0	0.0 %	112,247	216.8 %
TOTAL Expenses	0	0.0 %	112,247	216.8 %
NET GAIN/(LOSS)	5,648	100.0 %	(60,468)	-116.8 %
PROFIT BEFORE TAXES	5,648	100.0 %	(60,468)	-116.8 %
NET GAIN/(LOSS)	5,648	100.0 %	(60,468)	-116.8 %

5A

Information and Consent

Next Year Meeting Schedule

Alaska Bar Association Board of Governors
General Meeting Information

- **Regular Meetings:** President is required to schedule at least 4 regular meetings during the year. Meeting dates, agendas, and action items are listed on the Bar's website here: https://alaskabar.org/for-lawyers/board-of-governors/meetingsagendasaction/

- **Dates:** June 4, 2025 (Zoom Meeting Only 12pm-1pm)
  August 21 & 22, 2025 (Zoom Meeting Only)
  October 29, 2025 Strategic Planning
  October 30 & 31, 2025
  January 22 & 23, 2026
  April 28 & 29, 2026 (Juneau)
  April 29-May 1, 2026 Annual Convention and Annual Meeting (Juneau)

- **Location:** Unless otherwise noted, all meetings will take place at the Alaska Bar Association Building, 840 K Street, Suite 100, Anchorage, AK 99501. All meetings will be available for participation over Zoom. *(Airfare and lodging to board meetings is covered by the Bar. Contact Melissa Short* melissa@alaskabar.org *for bookings and other travel details.)*

- **Time:** As set on the agenda. Scheduled as two-day meetings from 8:00 a.m.– 4:30 p.m. But the meeting times may get amended based on the amount of information to be covered.

- **Agenda:** Delivered to Board members at least 10 days prior to the meeting. Agenda is set by the Executive Director at the direction of the President. If Board members would like items on the agenda they should notify the President and Executive Director.

- **Materials:** Delivered to Board at least 5 days prior to meeting.

- **Recordings:** All meetings will be recorded except for the portions held in executive session.

- **Special Meetings:** Meetings held at times other than the regular meetings. Can be called by the President or by three Board members.

- **Absences:** Let the Executive Director know if you will be absent from any meeting.

- **Contact:** Executive Director: Danielle Bailey
  bailey@alaskabar.org, (w) 907-272-7469, (c) 406-270-4770

5B

Election Update and U.S. Judge Poll Results

ALASKA BAR ASSOCIATION

To: Board of Governors

From: Danielle Bailey, Executive Director

Re: 2025 Election Update

Date: April 13, 2025

Nominations were accepted for the Alaska Bar Association Board of Governors, the Alaska Judicial Council (AJC), and the ABA Young Lawyer Delegate. The deadline was Friday, March 7, 2025. No election/advisory poll was needed because all individuals ran unopposed for the vacant positions. No individuals put in for the ABA Young Lawyer Delegate position, so the Bar extended solicitation until March 31, 2025. After re-solicitation, two individuals applied. Below are the applicants and their application materials are attached.

Board of Governors
1st Judicial District
Andrew Juneau
2nd/4th Judicial Districts
(2 seats)
Patrick Roach
Steven Hansen
3rd Judicial District
Rachel Espejo
New Lawyer Liaison
Chanel Simon

Alaska Judicial Council
2nd/4th Judicial Districts
Savannah Fletcher

ABA Young Lawyer Delegate
Patsy Shaha
Steven Tennison

New Lawyer Liaison

Ambriel Sandone's term as New Lawyer Liaison ends April 25, 2025. The policies to appoint a New Lawyer Liaison are set out in the Standing Policies of the Board of Governors.[1] In the past, the Board has not formed a nominating committee for the New Lawyer Liaison and has discussed appointments as the whole body in executive session.

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[1] III. Board Operating Procedures; New Lawyer Liaison
***
J. New Lawyer Liaison. There will be a non-voting New Lawyer Liaison to the Board of Governors, appointed by the Nominating Committee, as set out in these policies, to serve a two year term. To be eligible for the Liaison position, the lawyer must be a member of the Alaska Bar Association and have graduated from law school not more than five years prior to the date the term begins.

Historical New Lawyer Liaison List

Rob Stone	Anchorage	96-98
Mike Moberly	Anchorage	98-00
Jessica Carey Graham	Anchorage	00-02
Jason Weiner	Fairbanks	02-04
Janell Hafner	Juneau	04-05
Eric Jenkins	Anchorage	05-06
Maude Blair	Anchorage	06-08
Nevhiz Calik	Anchorage	08-10
Loren Hildebrandt	Anchorage	10-12
Leslie Need	Anchorage	12-14
David Wilkinson	Fairbanks	14-16
Morgan Griffin	Juneau	16-17
Mari Carpeneti	Juneau	17-18
Diana Wildland	Fairbanks	18-20
Sig Topkok	Nome	20-22
Ambriel Sandone	Anchorage	22-25

Staff Recommendation: The Board should decide if they would like to appoint Chanel Simon as the New Lawyer Liaison to the Board.

Alaska Judicial Council

The Alaska Judicial Council (AJC), is an independent citizen's commission created by Article IV, Section 8 of the Alaska Constitution. The AJC screens applicants for judicial vacancies and nominates the most qualified applicants for appointment by the governor, evaluates the performance of judges and recommends whether voters should retain judges for another term, and conducts research to improve the administration of justice in Alaska. The seven-member commission consists of three members of public (appointed by the Governor, subject to confirmation by the legislature), and three attorney members (appointed by the Bar). Each member serves six years. The Chief Justice of the Supreme Court is the seventh member and chairperson.

According to Article IX, Section B of the Standing Policies of the Alaska Bar Association:

> **Alaska Judicial Council**. The three attorney members appointed to the Council hold geographically designated seats and are appointed to six year terms by the Board of Governors. The Board conducts an advisory poll only in the judicial district (First, Third or combined Second and Fourth) in which the vacancy occurs prior to making its appointments.
>
> Except in extraordinary circumstances, the Board appoints the candidate with the most votes in the advisory poll.

A vacancy on the AJC occurred when Steven Hansen had to resign upon taking an employment position with the State of Alaska.

Staff Recommendation: Appoint the nominee to the Alaska Judicial Council.

ABA Young Lawyer Delegate

According to Article IX, Section 2 of the Bylaws of the Alaska Bar Association:

> The Board of Governors shall appoint a young lawyer delegate to the American Bar Association's House of Delegates. The term of office shall be two years. The young lawyer delegate must be an active member in good standing of the Alaska Bar Association and must have been admitted to his or her first bar within the past five years or be less than 36 years old at the beginning of his or her term. The young lawyer delegate shall be responsible for all expenses incurred by him or her as the Alaska Bar's young lawyer delegate to the American Bar Association's House of Delegates.

The vacant young lawyer delegate position is a two-year term that runs from 2025-2027. The Bar solicited for interest in this position and originally received no interest. After re-solicitation, the Bar received two applications. The applicant information is attached.

Staff Recommendation: The Board should appoint one of the two applicants as the ABA Young Lawyer Delegate.

ALASKA BAR ASSOCIATION

NOMINATING PETITION
Deadline: March 7, 2025

Alaska Bar Association Board of Governors;
AJC; ABA Young Lawyer Delegate

We, the undersigned, nominate (nominee): Andrew M. Juneau to serve as:

☒ **Alaska Bar Association Board of Governor** for the following judicial district:

☒ 1st ☐ 2nd/4th ☐ 3rd

☐ New Lawyer Liaison to the Board (nominee signatures are not needed for this position)

☐ **Alaska Judicial Council**[1] for the following jurisdiction:

☐ 2nd/4th

☐ **American Bar Association Delegate** for the following seat:

☐ Young Lawyer Delegate

Ben Hofmeister (Feb 15, 2025 16:45 AKST)	Ben Hofmeister
(Signature of Nominator)	(Print Name)
James Sheehan James Sheehan (Feb 16, 2025 16:50 AKST)	James Sheehan
Signature of Nominator)	(Print Name)
Mary Calderon Mary Calderon (Feb 18, 2025 16:16 AKST)	Mary Calderon
(Signature of Nominator)	(Print Name)

I hereby consent to the above nomination. If running for the AJC I am aware of the requirement to file a Conflict of Interest Statement with the Alaska Public Offices Commission if nominated.[1]

	Andrew M. Juneau
(Signature of Nominee)	(Print Name)

In addition to the above signatures, candidates should submit a resume and/or a letter with a statement of your background, which will be posted on the Bar's website. Materials must be received by Friday, March 7, 2025.

Mail to:
840 K Street, Suite 100
Anchorage, AK 99501

Email: bailey@alaskabar.org
Fax: (907) 272-2932

[1] PLEASE NOTE: Attorneys receiving a salary from the State of Alaska or from the U.S. Government are ineligible for appointment (Alaska Constitution, Article 4, Section 8). The person appointed to the Council is subject to the disclosure requirements of AS 39.50, the Conflict of Interest Law. An attorney may not serve on the Council and the Commission on Judicial Conduct simultaneously.

ANDREW M. JUNEAU

February 19, 2025

Alaska Bar Association
Danielle Bailey, Executive Director
bailey@alaskabar.org

Re: Board of Governors Candidacy

Dear Danielle:

I am seeking election as a governor from the First Judicial District, to fill the seat that will be vacated by Ben Hofmeister.

I am an associate attorney at Faulkner Banfield Law, P.C. My practice primarily involves advising nonprofit corporations, Native housing authorities, municipalities, and Alaska Native Corporations and their affiliated entities. I also represent individuals and businesses, mainly in small-business transactions and litigation. Prior to joining private practice, I clerked for the Honorable Philip M. Pallenberg (ret.) and the Honorable Marianna C. Carpeneti, both on the Alaska Superior Court.

I was born in Wisconsin, then went marginally west, to Minnesota. I worked in the Twin Cities, both at desk jobs (technical writing and business development) and restaurant jobs (washing dishes as well as preparing them) before graduating from the University of Minnesota Law School. During law school, I worked for a magistrate judge in the U.S. District Court for the District of Minnesota and a federal defender in the Western District of Missouri and the Eight Circuit. I then went decidedly further west, to live and work in Alaska.

Here, I have been blessed with unrivaled access to nature and a small but tight-knit community. To get here, I acquired the unfortunate distinction of having passed the bar exam a second time. Fortunately, doing so has opened me up to the gratification of a practice in which I have obtained favorable decisions from the IRS, secured judgments from tribal courts, and assisted clients with resolving disputes and providing services to the community. I have also availed myself of bar counsel, had the displeasure of instructing a client on how to satisfy a judgment, and lived in the torrent of a maritime rainforest. I have worked pro bono and am currently a member of the Alaska Bar Association's fee arbitration and mediation panels but know there is always more to do.

By serving on the Board of Governors, I can use my experience to give back to and strengthen the legal community from which I have received much. I would be honored to have the votes of fellow attorneys in the First Judicial District.

Sincerely,

Andrew M. Juneau
Alaska Bar no. 2206047

ALASKA BAR
ASSOCIATION

NOMINATING PETITION
Deadline: March 7, 2025

Alaska Bar Association Board of Governors;
AJC; ABA Young Lawyer Delegate

We, the undersigned, nominate (nominee): Patrick Roach to serve as:

☒ **Alaska Bar Association Board of Governor** for the following judicial district:

☐ 1st ☒ 2nd/4th ☐ 3rd

☐ New Lawyer Liaison to the Board (nominee signatures are not needed for this position)

☐ **Alaska Judicial Council**[1] for the following jurisdiction:

☐ 2nd/4th

☐ **American Bar Association Delegate** for the following seat:

☐ Young Lawyer Delegate

(Signature of Nominator)	Eric D. Yff (Print Name)
Signature of Nominator)	Hannah Marx (Print Name)
(Signature of Nominator)	Caleb Horn (Print Name)

I hereby consent to the above nomination. If running for the AJC I am aware of the requirement to file a Conflict of Interest Statement with the Alaska Public Offices Commission if nominated.[1]

(Signature of Nominee)	Patrick F. Roach (Print Name)

In addition to the above signatures, candidates should submit a resume and/or a letter with a statement of your background, which will be posted on the Bar's website. Materials must be received by Friday, March 7, 2025.

Mail to:
840 K Street, Suite 100
Anchorage, AK 99501

Email: bailey@alaskabar.org
Fax: (907) 272-2932

[1] PLEASE NOTE: Attorneys receiving a salary from the State of Alaska or from the U.S. Government are ineligible for appointment (Alaska Constitution, Article 4, Section 8). The person appointed to the Council is subject to the disclosure requirements of AS 39.50, the Conflict of Interest Law. An attorney may not serve on the Council and the Commission on Judicial Conduct simultaneously.

Patrick Roach

Alaska Bar Association
840 K St, Anchorage, AK 99501
RE: Board of Governors Vacancy, 4th Judicial District

To Whom It May Concern:

I have served on the Alaska Bar Association's Board of Governors for the last ten months, filling in the vacancy created when Diana Wildland left the state. It has been a fulfilling experience that I hope to continue. I was humbled and grateful when Ms. Wildland nominated me to take her spot. Hers were very big shoes to fill.

The Board of Governors helps to shape and define the legal profession in Alaska. The Board also advocates for and defends Alaskan lawyers and, when necessary, disciplines them. Those are heavy responsibilities which I will continue to take very seriously if I retain my seat.

I have served on the boards of a variety of other organizations. I understand how to reach a consensus without sacrificing my own beliefs while also maintaining a collegial and respectful atmosphere. I hope that any opposing counsel I have faced will say that I am always a zealous advocate in the courtroom but also always courteous and respectful as well. That is because I try not take the passion of any issue beyond that issue. I will fight for what I believe, but I understand the value of others' opinions and realize I am human and fallible.

I hope the 4th Judicial District will support my remaining on the Alaska Bar Association's Board of Governors.

Sincerely,

Patrick Roach

Fourth Judicial District

ALASKA BAR ASSOCIATION

NOMINATING PETITION
Deadline: March 7, 2025

Alaska Bar Association Board of Governors;
AJC; ABA Young Lawyer Delegate

We, the undersigned, nominate (nominee): Steven Hansen to serve as:

☒ **Alaska Bar Association Board of Governor** for the following judicial district:

☐ 1st ☒ 2nd/4th ☐ 3rd

☐ New Lawyer Liaison to the Board (nominee signatures are not needed for this position)

☐ **Alaska Judicial Council**[1] for the following jurisdiction:

☐ 2nd/4th

☐ **American Bar Association Delegate** for the following seat:

☐ Young Lawyer Delegate

(Signature of Nominator)	Gerard Kenna (Print Name)
Signature of Nominator)	Eric Yff (Print Name)
(Signature of Nominator)	Francis Sunderland (Print Name)

I hereby consent to the above nomination. If running for the AJC I am aware of the requirement to file a Conflict of Interest Statement with the Alaska Public Offices Commission if nominated.[1]

(Signature of Nominee)	Steven Hansen (Print Name)

In addition to the above signatures, candidates should submit a resume and/or a letter with a statement of your background, which will be posted on the Bar's website. Materials must be received by Friday, March 7, 2025.

Mail to:
840 K Street, Suite 100
Anchorage, AK 99501

Email: bailey@alaskabar.org
Fax: (907) 272-2932

[1] PLEASE NOTE: Attorneys receiving a salary from the State of Alaska or from the U.S. Government are ineligible for appointment (Alaska Constitution, Article 4, Section 8). The person appointed to the Council is subject to the disclosure requirements of AS 39.50, the Conflict of Interest Law. An attorney may not serve on the Council and the Commission on Judicial Conduct simultaneously.

Candidate Statement ABA Board of Governors– Steven S. Hansen

I have been an active member of the Alaska Bar Association since 2009 and wish to serve the remainder of Aimee Oravec's term on the Board of Governors.

After graduating law school in 2009 I moved to Alaska and have worked in both state and private practice. While my work has taken me to all jurisdictions in Alaska, my family and I are happy residents of Fairbanks, Alaska, where we have lived for the past 15 years.

Like many of you I am concerned with the limited number of young attorneys who come to and remain in our state. This has profound impacts on access to justice, as well as to the firms and agencies who rely on these attorneys. The ABA has made several important changes recently to ameliorate the problem and I would continue to support these and other steps toward ensuring a healthy future for the Alaska Bar.

Prior volunteer activities have included the Alaska Judicial Council, North Star Youth Court, Nordic Ski Club of Fairbanks, the Tutors Committee and as an alternate member of the Alaska Legal Services Corporation's Board of Directors.

Thank you for your consideration.

Steven Hansen

ALASKA BAR
ASSOCIATION

NOMINATING PETITION
Deadline: March 7, 2025

Alaska Bar Association Board of Governors;
AJC; ABA Young Lawyer Delegate

We, the undersigned, nominate (nominee): Rachel Espejo to serve as:

☒ **Alaska Bar Association Board of Governor** for the following judicial district:

☐ 1st ☐ 2nd/4th ☒ 3rd

☐ New Lawyer Liaison to the Board (nominee signatures are not needed for this position)

☐ **Alaska Judicial Council**[1] for the following jurisdiction:

☐ 2nd/4th

☐ **American Bar Association Delegate** for the following seat:

☐ Young Lawyer Delegate

Megan R. Webb
(Signature of Nominator)

Megan R. Webb
(Print Name)

Kelly Taylor
Signature of Nominator)

Kelly Taylor
(Print Name)

(Signature of Nominator)

Emily Jura
(Print Name)

I hereby consent to the above nomination. If running for the AJC I am aware of the requirement to file a Conflict of Interest Statement with the Alaska Public Offices Commission if nominated.[1]

Rachel W. Espejo
(Signature of Nominee)

Rachel W. Espejo
(Print Name)

In addition to the above signatures, candidates should submit a resume and/or a letter with a statement of your background, which will be posted on the Bar's website. Materials must be received by Friday, March 7, 2025.

Mail to:
840 K Street, Suite 100
Anchorage, AK 99501

Email: bailey@alaskabar.org
Fax: (907) 272-2932

[1] PLEASE NOTE: Attorneys receiving a salary from the State of Alaska or from the U.S. Government are ineligible for appointment (Alaska Constitution, Article 4, Section 8). The person appointed to the Council is subject to the disclosure requirements of AS 39.50, the Conflict of Interest Law. An attorney may not serve on the Council and the Commission on Judicial Conduct simultaneously.

Rachel Weckhorst Espejo
Central Council of Tlingit & Haida Indian Tribes of Alaska

March 7, 2025

Executive Director Danielle Bailey
Alaska Bar Association
P.O. Box 100279
Anchorage, AK 99510

Members of the Alaska Bar Association,

I am honored to have been nominated to serve another term on the Board of Governors for the Third Judicial District. For those members of the bar that don't already know me, I would like to introduce myself and let you know a little bit about me, and about the work I have done as a member of the Board of Governors since 2021. I have lived in Alaska since December 2013 and have been an active member of the bar since May 2014. I grew up in the military and spent the majority of my life in Japan until moving to Hawai'i as a teenager. I went to high school and college in Hawai'i, and then law school in San Diego. I am married to my high school sweetheart (also from Hawai'i) and we have two children, an almost three year old son and a six month old daughter. I also maintain my bar license in Hawai'i, although I am an inactive member of that bar.

I was a public defender for eight years before transitioning to work for Tlingit & Haida in January of 2022. I have spent all but the first 6 months of my career handling child welfare cases. While at the Public Defender Agency I also handled criminal and civil commitment cases, and I served on the rules committee to draft the first civil commitment rules for Alaska. Public Service has been my professional passion, and it is my intention to work my entire career in public interest.

In my time on the Board of Governors I have been proud to represent my colleagues in the Third Judicial District and would be very proud to continue my representation for another term. Some highlights of my time on the Board of Governors have been to participate in the strategic planning that led to the bar setting the admissions score of the Bar Exam to 270, keeping bar dues steady for over a decade, and voting to use available funding to pay off the Bar Building (thus saving members money).

I respectfully request your vote to serve another term as your representative on the Board of Governors,

Rachel Weckhorst Espejo

ALASKA BAR ASSOCIATION

NOMINATING PETITION
Deadline: March 7, 2025

Alaska Bar Association Board of Governors;
AJC; ABA Young Lawyer Delegate

We, the undersigned, nominate (nominee): **Savannah Fletcher** to serve as:

☐ **Alaska Bar Association Board of Governor** for the following judicial district:

☐ 1st ☐ 2nd/4th ☐ 3rd

☐ New Lawyer Liaison to the Board (nominee signatures are not needed for this position)

☒ **Alaska Judicial Council**[1] for the following jurisdiction:

☐ 2nd/4th

☐ **American Bar Association Delegate** for the following seat:

☐ Young Lawyer Delegate

(Signature of Nominator)	Steven Hansen (Print Name)
Signature of Nominator)	M. L. Kranenburg (Print Name)
(Signature of Nominator)	Jill S. Dolan (Print Name)

I hereby consent to the above nomination. If running for the AJC I am aware of the requirement to file a Conflict of Interest Statement with the Alaska Public Offices Commission if nominated.[1]

(Signature of Nominee)	Savannah Fletcher (Print Name)

In addition to the above signatures, candidates should submit a resume and/or a letter with a statement of your background, which will be posted on the Bar's website. Materials must be received by Friday, March 7, 2025.

Mail to:
840 K Street, Suite 100
Anchorage, AK 99501

Email: bailey@alaskabar.org
Fax: (907) 272-2932

[1] PLEASE NOTE: Attorneys receiving a salary from the State of Alaska or from the U.S. Government are ineligible for appointment (Alaska Constitution, Article 4, Section 8). The person appointed to the Council is subject to the disclosure requirements of AS 39.50, the Conflict of Interest Law. An attorney may not serve on the Council and the Commission on Judicial Conduct simultaneously.

SAVANNAH FLETCHER

EDUCATION

Stanford Law School, J.D. June 2018

Stanford Emmett Interdisciplinary Program in Environment and Resources, M.S. June 2018

Journal: Editor-in-Chief, Stanford Environmental Law Journal

Honors: Gerald Gunther Prize for Outstanding Performance: Environmental Law and Policy; Sustainable Management of Natural Resources; Water Law
Judge Thelton E. Henderson Prize for Outstanding Performance: Environmental Law Clinic
Outstanding Paper by Native American Grad Student, John M. Oskison Writing Competition

Columbia College, B.A., *summa cum laude*, in English and Archaeology, February 2014

Honors: Endorsed Rhodes and Marshall Scholar Candidate; Columbia University Dean's List (all semesters); Varsity Athletics' 4.0 Club; 2011 All-Ivy League Honors for Volleyball

EXPERIENCE

Northern Justice Project — Fairbanks, AK
Staff Attorney — April 2022 - Present

Member of Alaska Bar Association — October 2018 - Present

Assembly Member on Fairbanks North Star Borough Assembly — November 2021 - October 2024
Presiding Officer of FNSB Assembly — November 2023 - October 2024

Alaska Legal Services Corporation — Fairbanks, AK
Native Law Staff Attorney — August 2019-March 2022

The Alaska Supreme Court — Fairbanks, AK
Law Clerk to the Honorable Susan M. Carney — August 2018 - August 2019

Alaska Legal Services Corporation — Juneau, AK
Legal Clerk — August – September 2017

Earthjustice — Juneau, AK
Legal Clerk — June – August 2017

Office of Tribal Justice (Department of Justice) — Washington, DC
Legal Intern — June – August 2016

National Park Service: Western Archaeology and Conservation Center — Tucson, AZ
Curatorial Assistant — September 2014 – August 2015

Americorps: Klamath National Forest — Fort Jones, CA
Archaeology Intern — June – August 2014

CURRENT VOLUNTEER SERVICE

Fairbanks Hopelink Warming Center — Fairbanks, AK
Founding Board Member — December 2023 – Present

Alaska Fellows Program — Alaska
Board Member — February 2024 – Present

Various pro bono and "low bono" legal work provided across the State of Alaska, primarily to survivors of domestic violence and to foster youth.

ALASKA BAR
ASSOCIATION

NOMINATING PETITION
ABA Young Lawyer Delegate

We, the undersigned, nominate (nominee): Steven Tennison to serve as:

☒ **American Bar Association Delegate** for the following seat:
☒ Young Lawyer Delegate

(Signature of Nominator)	John Day ("Jack") (Print Name)
Signature of Nominator)	Sarah Gillstrom (Print Name)
(Signature of Nominator)	Barbara Simpson Kraft (Print Name)

I hereby consent to the above nomination. If running for the AJC I am aware of the requirement to file a Conflict of Interest Statement with the Alaska Public Offices Commission if nominated.[1]

(Signature of Nominee)	Steven Tennison (Print Name)

In addition to the above signatures, candidates should submit a resume and/or a letter with a statement of your background, which will be posted on the Bar's website. Materials must be received by Monday, March 31, 2025

Mail to:
840 K Street, Suite 100
Anchorage, AK 99501

Email: bailey@alaskabar.org
Fax: (907) 272-2932

Steven Tennison

1077 Tazlina Ct. Fairbanks, AK 99701
907-799-5999 • StevenTennison@dwt.com

EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL — Ann Arbor, MI
Juris Doctor — May 2024
Journal: *Michigan Journal of International Law* (Production Editor)
Publication: Nuclear Nonproliferation and the Need for Amending the NPT to Validate Nuclear Safeguards as an Ongoing Commitment Under International Law
Honors: Robert J. Currie Scholarship
Activities: Environmental Law and Sustainability Clinic; Research Assistant for Professor Emily Prifogle; Zell Entrepreneurship Clinic; Willem C. Vis International Commercial Arbitration Moot;

UNIVERSITY OF ALASKA FAIRBANKS — Fairbanks, AK
Master of Business Administration — Dec. 2019
Honors: Honor Society of Phi Kappa Phi

UNITED STATES MILITARY ACADEMY — West Point, NY
Bachelor of Science in Nuclear Engineering — May 2010
Honors: LTG Leslie R. Groves Award (Most Outstanding Performance in the Nuclear Engineering Major); Distinguished Cadet; Dean's List

EXPERIENCE

DAVIS WRIGHT TREMAINE LLP — Anchorage, AK and Seattle, WA
Associate — Sept. 2024 - Present
- Performed real property due diligence and assisted in drafting for various M&A transactions
- Analyzed title issues and provided counsel on how best to clarify legal rights of clients

Summer Associate — June 2023 – Aug. 2023
- Investigated and advised on various legal issue, to include the creation of easements, substantive due process violations, Seattle tenant rights, plat analysis of downstream water rights, and CERCLA settlement requirements

MATANUSKA-SUSITNA BOROUGH — Palmer, AK
Legal Intern — May 2022 – July 2022
- Researched and drafted legal memoranda, analyzing issues including FMLA designation, library collection review, electoral redistricting, and Alaska constitutional privacy limits

ALASKA RAILROAD CORPORATION — Anchorage, AK
Train Conductor/Train Dispatcher — Jan. 2016 – June 2021
- Served as the Alaska System General Chairman, American Train Dispatchers Association (2019-2021)
- Drafted an extensive revision of the Train Dispatcher's Manual

HALLIBURTON ENERGY SERVICES — Williston, ND
Associate Technical Professional — Nov. 2014 – Sept. 2015
- Responsible for quality control and troubleshooting during hydraulic fracturing treatments

US ARMY — Fort Wainwright, AK and Afghanistan
Junior Infantry Officer — May 2010 – Sept. 2014
- Developed training objectives and coordinated the tasking, supply, and support for a Stryker battalion of 700 soldiers conducting complex training exercises in austere field environments
- Led an infantry platoon of 45 soldiers on combat missions in support of Operation Enduring Freedom in Afghanistan and served as second in command of over 150 soldiers

ALASKA BAR
ASSOCIATION

NOMINATING PETITION
ABA Young Lawyer Delegate

We, the undersigned, nominate (nominee): Patsy Shaha to serve as:

☒ **American Bar Association Delegate** for the following seat:
☒ Young Lawyer Delegate

Katy Soden	Katy Soden
(Signature of Nominator)	(Print Name)
Signature of Nominator)	(Print Name)
(Signature of Nominator)	(Print Name)

I hereby consent to the above nomination. If running for the AJC I am aware of the requirement to file a Conflict of Interest Statement with the Alaska Public Offices Commission if nominated.[1]

	Patsy Shaha
(Signature of Nominee)	(Print Name)

In addition to the above signatures, candidates should submit a resume and/or a letter with a statement of your background, which will be posted on the Bar's website. Materials must be received by Monday, March 31, 2025

Mail to:
840 K Street, Suite 100
Anchorage, AK 99501

Email: bailey@alaskabar.org
Fax: (907) 272-2932

ALASKA BAR
ASSOCIATION

NOMINATING PETITION
ABA Young Lawyer Delegate

We, the undersigned, nominate (nominee): Patsy Shaha to serve as:

☒ **American Bar Association Delegate** for the following seat:
☒ Young Lawyer Delegate

(Signature of Nominator)	(Print Name)
Christina McDonogh (Mar 31, 2025 17:30 AKDT) Signature of Nominator)	Christina, McDonogh, ABA#2111120 (Print Name)
Aadika Singh (Mar 31, 2025 21:51 AKDT) (Signature of Nominator)	Aadika Singh, ABA#2405036 (Print Name)

I hereby consent to the above nomination. If running for the AJC I am aware of the requirement to file a Conflict of Interest Statement with the Alaska Public Offices Commission if nominated.[1]

(Signature of Nominee)	Patsy Shaha (Print Name)

In addition to the above signatures, candidates should submit a resume and/or a letter with a statement of your background, which will be posted on the Bar's website. Materials must be received by Monday, March 31, 2025

Mail to:
840 K Street, Suite 100
Anchorage, AK 99501

Email: bailey@alaskabar.org
Fax: (907) 272-2932

2025-nominating-petition-ABA-Young-Lawyers

Final Audit Report 2025-04-01

Created:	2025-03-31
By:	Patsy Shaha (yuraqlegal@gmail.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAQhzJ-1eOdzqTV0HlrYL2nN12oviF_JrV

"2025-nominating-petition-ABA-Young-Lawyers" History

Document created by Patsy Shaha (yuraqlegal@gmail.com)
2025-03-31 - 11:09:10 PM GMT

Document emailed to christina.mcdonogh@gmail.com for signature
2025-03-31 - 11:09:28 PM GMT

Email viewed by christina.mcdonogh@gmail.com
2025-04-01 - 1:29:33 AM GMT

Signer christina.mcdonogh@gmail.com entered name at signing as Christina McDonogh
2025-04-01 - 1:30:09 AM GMT

Document e-signed by Christina McDonogh (christina.mcdonogh@gmail.com)
Signature Date: 2025-04-01 - 1:30:11 AM GMT - Time Source: server

Document emailed to aadikasingh@gmail.com for signature
2025-04-01 - 1:30:12 AM GMT

Email viewed by aadikasingh@gmail.com
2025-04-01 - 5:51:15 AM GMT

Signer aadikasingh@gmail.com entered name at signing as Aadika Singh
2025-04-01 - 5:51:55 AM GMT

Document e-signed by Aadika Singh (aadikasingh@gmail.com)
Signature Date: 2025-04-01 - 5:51:57 AM GMT - Time Source: server

Agreement completed.
2025-04-01 - 5:51:57 AM GMT

PATSY R. SHAHA

M.Ed, MBA, JD

Yuraq Legal Services LLC
3500 LaTouche St
Unit 230A
Anchorage, AK 99508

907-302-4636

patsy@yuraqlegal.com

Humankind has not woven the web of life.
We are but one thread within it.
Whatever we do to the web,
we do to ourselves.
All things are bound together.
All things connect.
--Chief Seattle

Dear Members of the Alaska Bar:

I extend my gratitude in being able to potentially represent the young lawyers of Alaska as the Young Lawyers Delegate. It would truly be my honor to assist and serve the Young Lawyers, as well as the entire Alaska Bar as a delegate.

I graduated from Willamette College of Law in 2021, and have dabbled in different types of law, and have found that I am the greatest asset to my community as a family law attorney, a domestic violence attorney, and a landlord tenant attorney. Here is a bit of my story, which shows how I can be of full-circle service to my fellow Young Attorneys.

30 years ago, I graduated college with a bachelor's degree in Biology Composite Teaching – I was the first college graduate in my family's lineage; the first college graduate from my tribe, the Native Village of Perryville. I had one goal in mind: to serve others and make the world a better place. The trepidation was great, but my tenacity was greater.

Today, I attest that I met that goal as a classroom teacher. How? I have solid interpersonal skills. I am kind. I am a strong listener, and an excellent observer. I am actively engaged. I meet people in their energy space, honor it, and often become within it.

After teaching, I expanded my wingspan to serve others and make the world a better place, and earned the degree of Masters in Education Leadership. While the trepidation was still great, my tenacity was still greater. Thereafter, I was a school administrator for 14 years -- culminating as the principal of the Alaska Native Cultural Charter School in the Anchorage School District. The job required me to tirelessly build relationships, command my schedules, manage multimillion dollar budgets,

supervise, and evaluate others, build relationships with community members and grant funders, prepare and present copious-yet-succinct reports, and continually greet everyone with compassion, love, and a smile.

Thereafter, I went on to obtain a Master of Business Administration, and then a Juris Doctorate. I went after both degrees with a passion. I knew that I wanted to continue with my life goal of serving others, and I knew that both degrees would make me a better leader of change, and further empower my abilities to continue in the service to others -- it is because of these degrees that I have learned that one can accomplish *anything* they set their mind to.

I am a strong leader with a deep ability to listen as a communicator, and extend compassion. But, I am also a continual, humble learner. I have a deep sense of curiosity, with vibrant observational skills; and for me, those two things merge into a trajectory of spark, innovation, and change. In short, I love helping people.

It would be my honor to use my skills to serve the Alaska Bar.

With [a bit of] trepidation and [even more] tenacity,

Sincerely,

PATSY R. SHAHA

M.Ed, MBA, JD

Yuraq Legal Services LLC
3500 LaTouche St
Unit 230A
Anchorage, AK 99508

907-302-4636

patsy@yuraqlegal.com

Humankind has not woven the web of life.
We are but one thread within it.
Whatever we do to the web,
we do to ourselves.
All things are bound together.
All things connect.
--Chief Seattle

Professional Experience

September 2023 to present

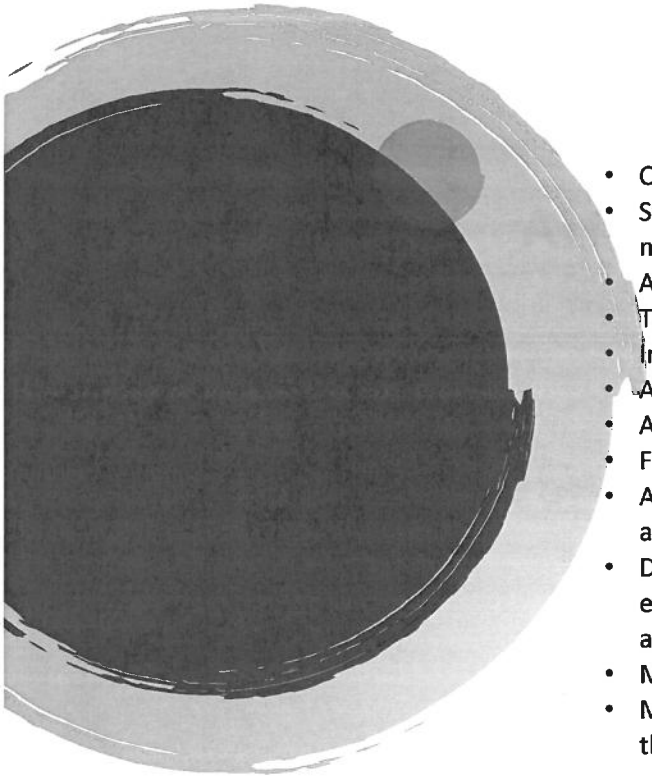
Owner and Sole Practitioner of Yuraq Legal Services LLC

- Practice Family Law, including
  - Divorce
  - Dissolution
  - Custody
  - Custody Modification
  - Simple Property Division
  - Complex Property Division
- Volunteer for ANSDVA, representing clients in divorce, custody, domestic violence, custody modification, and domestic partnership distribution of assets
- As a representative of ANDVSA, won an equalization payment for client of over $100,000
- Practice Domestic Violence cases, including:
  - Two court orders for long-term stalking protective orders
  - Representing the petitioner
  - Representing the respondent
  - 100% awards of attorneys fees when the petitioner prevails
- Practice Landlord Tenant cases, including:
  - Representing the landlord
  - Representing the tenant
  - Forcible Entry and Detainers
  - Damages Hearings
  - Awards of attorneys fees for prevailing parties
- Volunteer at 2024 and 2025 Lawyer Pro Bono MLK Day
- Volunteer at AFN 2024 Lawyer Pro Bono Day
- One of four lawyers to start the BIPOC affinity bar
- Active participant in the Family Law Bar
- Active participant in the Native Alaska Law Bar
- Bought an office space in January of 2025
- Remodeling the office space, opening hopefully in Spring of 2025

August 2022 – September 2023

Associate Attorney

- Collaborate with all levels of professionals on the team such as staff, researchers, other attorneys, and clients



- Cohesively communicate with team re goals, progress, and attainment
- Stay continually abreast of the balance of time and work demand by maintaining a consistent calendar and checklist of necessary tasks
- Analyze statutory requirements, and prepare corresponding report
- Transfer asset ownership in multimillion dollar family trust
- Investigate asset distribution in multimillion dollar divorce
- Analyze client's shareholder stock structure for accuracy and integrity
- Assist Alaska small business in corporate formation
- Further client's interest in the sale of Alaska small business
- Apply rigorous organizational skills to meet the evolving demands and accuracy of follow through for each client and their case
- Draft basic formation and foreign qualifications documents for business entities, including articles, bylaws, incorporation resolutions, shareholder agreements, operating agreements
- Maintain sound emotional intelligence with a calm, pleasant demeanor
- Maintain self -awareness and permissively adapt to most efficiently meet the needs of the client, the team, and the firm

October 2020 – June 2021

Legal Intern • The Office of General Counsel for Governor Kate Brown

- Active participant in weekly team meetings for the office of general counsel for the Governor of Oregon, including discussion of executive orders, review of clemency applications, and consideration of judicial appointments
- Assist in review and discussion of legal issues facing Governor Kate Brown and offer meaningful feedback regarding viability and advice regarding next steps
- Submit written summary briefs for the legal team and Governor Brown regarding pending legal issues, such as racial tensions, applications for clemency, and the early release program for adults in custody
- Attend Legislative Commission on Indian Affairs meetings with the Office of General Counsel
- Assist in the 2020 Annual Tribal-State Government-to-Government Summit

May 2019 – August 2019

Legal Intern • Bristol Bay Native Corporation

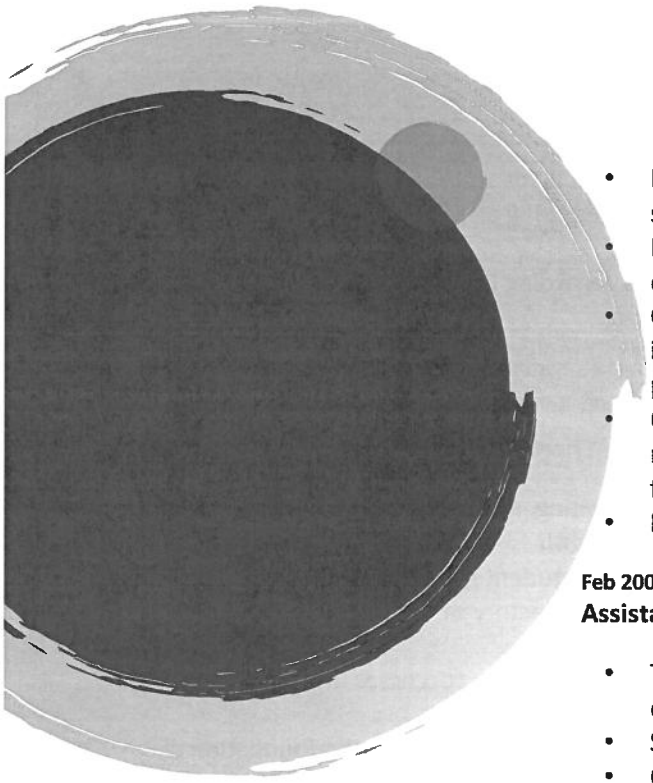
- Assist Bristol Bay Native Corporation in its day-to-day legal business
- Analyze the application of the Small Business Association 8a contracting options within the Alaska Native Claims Settlement Act
- Conduct in depth research that involved the Freedom of Information Act
- Establish comprehensive compliance standards for the 30+ subsidiary companies
- Attend legal department meeting with the heads of Alaska's Federation of Natives to discuss state and local issues impacting the advancement of Natives in Alaska
- Review and update numerous client business contracts

- Analyze client business contracts for statutory compliance
- Research federal statutory requiring all of Alaska's tribes share land profits with each other
- Review of federal statutes regarding Indian land in Alaska, and access to mineral and lumber wealth
- Prepare Human Resources Compliance report

August 2012 – June 2015

Principal • Alaska Native Cultural Charter School • Anchorage School District

- Create a student-friendly, inviting, nurturing learning environment for grades pre-school through eighth
- Work with focus on individual student growth and success
- Track the overall growth and trajectory of the overall educational performance of the school
- Advise the board and district about the successes and advancements
- Use data to establish realistic growth goals
- Elevate the quality of life of native families from the foundation of education of children and healthy connections with families
- Represent the school community at local, district, state, and national events with professionalism, positive energy, drive, and respect
- Stay abreast of the social services available to indigenous children and families
- Build strong connections with native families
- Apply personal knowledge of the social, health, educational, training, and cultural needs of the Alaska Native/American Indian community
- Forage strong connections with Alaska's educational leaders
- Lead the school family to achieve its mission to build student excellence through traditional cultural learning
- Juggle the continually changing demands of meeting the needs of the district, school, staff, parents, and students
- Maintain professional awareness of the needs of the professionals of four different labor unions
- Seek out appropriate educational grants, complete the arduous application process
- Ensure that grant funds are allocated in accordance with the grant
- Responsible for the allocation, balancing, and management of a multimillion-dollar annual budget
- Hire, supervise, evaluate, and discipline staff of 30+ people
- Maintain short-and-long-term data-focused goals regarding improved student achievement
- Anticipate, interview, and fill human resources needs/developments for unique staffing/curriculum
- Compliance-assurance with local, Federal, and corporate laws, policies, and procedures
- Analyze and embed new projects and processes, targeting higher efficiency and accountability
- Calibrate, organize, and fulfill many simultaneous projects and deadlines



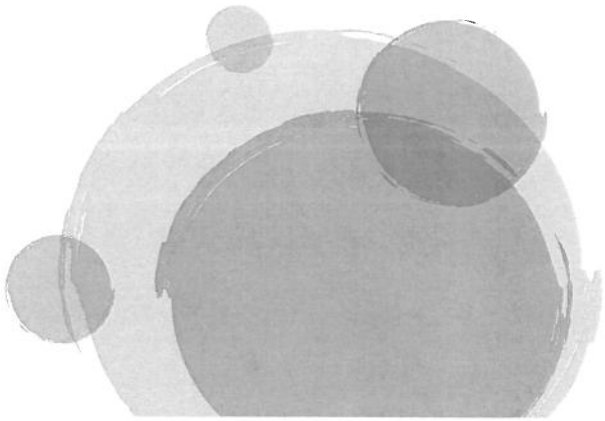
- Liaison for local Alaska Native leadership from all seven tribes regarding student advancement
- Presented to the Alaska Senate Finance Subcommittee regarding educational advancement of Native children
- Communicate with Native families regarding services available to Indians, including but not limited to education, training programs, housing programs, work programs, mental/dental health
- Complete a comprehensive annual report for the school district regarding budgets, personnel issues, job openings, connections with families, and student achievement
- Maintain awareness and familiarity with state and federal education statute:

Feb 2002 – August 2012
Assistant Principal • Anchorage School District

- Teamwork approach to leadership, including deference, collaboration, and compromise
- Sustain compliance with district and state expectations
- Communicate with multi-level stakeholders comparing present performance and long-range goals of student performance
- Cultivate a stimulating work environment through infectious positivity and engaging innovation
- Exhibit excellent critical thinking skills
- Demonstrate kind leadership through effective listening and appropriate res
- Stay abreast and comply with state and federal education regulations

Education

Doctor of Jurisprudence, *Willamette University College of Law*
Master of Business Administration, *Western Governors University*
Master of Education Leadership, *University of Alaska*
Bachelor of Science, Biology Composite Teaching, *Brigham Young University*
Associates, General Education, *Utah Valley University*



ALASKA BAR
ASSOCIATION

NOMINATING PETITION
Deadline: March 7, 2025

Alaska Bar Association Board of Governors;
AJC; ABA Young Lawyer Delegate

We, the undersigned, nominate (nominee): Chanel A. T. Simon to serve as:

☑ **Alaska Bar Association Board of Governor** for the following judicial district:

☐ 1st ☐ 2nd/4th ☐ 3rd

☒ New Lawyer Liaison to the Board (nominee signatures are not needed for this position)

☐ **Alaska Judicial Council**[1] for the following jurisdiction:

☐ 2nd/4th

☐ **American Bar Association Delegate** for the following seat:

☐ Young Lawyer Delegate

(Signature of Nominator)	(Print Name)
Signature of Nominator)	(Print Name)
(Signature of Nominator)	(Print Name)

I hereby consent to the above nomination. If running for the AJC I am aware of the requirement to file a Conflict of Interest Statement with the Alaska Public Offices Commission if nominated.[1]

Chanel Simon	Chanel A. T. Simon
(Signature of Nominee)	(Print Name)

In addition to the above signatures, candidates should submit a resume and/or a letter with a statement of your background, which will be posted on the Bar's website. Materials must be received by Friday, March 7, 2025.

Mail to:
840 K Street, Suite 100
Anchorage, AK 99501

Email: bailey@alaskabar.org
Fax: (907) 272-2932

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Chanel Alice Tuunralek Simon

Education

Arizona State University, Phoenix, AZ
Juris Doctor, *Indian Law Certificate*, May 2023

University of New Mexico, Albuquerque, NM
Juris Doctor, attended: 2020 - 2021

University of Alaska Anchorage, Anchorage, AK
Bachelor of Business Administration in Accounting, May 2018

Employment Experience

State of Alaska, Department of Law, Criminal Division, Bethel, AK
Assistant District Attorney
August 2024 – Present

Alaska Court System, Bethel, AK
Law Clerk
September 2023 – August 2024 (leave of absence from December - February)

United States Senate, Washington, D.C.
Intern
September 2022 - December 2022

Doyon, Limited, Fairbanks, AK
Legal Intern
May 2022 - August 2022

Alaska Court System, Fairbanks, AK
Court of Appeals Intern (part-time)
June 2021 - August 2021

Yukon-Kuskokwim Health Corporation, Bethel, AK
Accountant II, Accountant I
November 2018 - August 2020

Donlin Gold, LLC, Anchorage, AK
Survey Research Assistant (temporary position)
December 2017 – March 2018

Calista Corporation, Anchorage, AK
Legal and Accounting Intern (summer), *Accounting Clerk* (fall semester)
June 2017 – November 2017

First Alaskans Institute and **Doyon, Ltd.**, Fairbanks, AK
Accounting Intern
June 2016 – August 2016

Community Engagement

Yukon-Kuskokwim Fitness Center, *Front Desk Attendant*, 2024 – present
Arizona State University Native Am. Law Students Assoc., *Member*, 2021 - 2023
Fairbanks Native Association (FNA) - Indigenous Language Project, *volunteered to help develop Denaakk'e language classroom resources*, 2018
FNA, *Miss FNA* titleholder for the year, 2nd runner up for Miss World Eskimo-Indian Olympics, 2016 – 2017
University of Alaska Anchorage Native Student Council, *Treasurer*, 2016 - 2017
Projects Abroad, *volunteered in Fiji for a local kindergarten classroom for 3 weeks*, 2014

Constant Contact Survey Results

Campaign Name: Bar Poll - U.S. District Court Judge 2025

Survey Starts: 1075

Survey Submits: 407

MULTIPLE CHOICE

Jessica Moats Alloway

Answer Choice	0% 100%	Number of Responses	Responses Ratio
Extremely Well Qualified		47	11%
Well Qualified		24	5%
Qualified		16	3%
Not Qualified		14	3%
Don't Know		306	75%
	Total Responses	**407**	**100%**

MULTIPLE CHOICE

Joseph F. Busa

Answer Choice	0% 100%	Number of Responses	Responses Ratio
Extremely Well Qualified		31	7%
Well Qualified		16	3%
Qualified		7	1%
Not Qualified		11	2%
Don't Know		342	84%
	Total Responses	**407**	**100%**

MULTIPLE CHOICE

Robert W. Corbisier

Answer Choice	0% 100%	Number of Responses	Responses Ratio
Extremely Well Qualified		5	1%
Well Qualified		9	2%
Qualified		24	5%
Not Qualified		53	13%
Don't Know		316	77%
	Total Responses	**407**	**100%**

MULTIPLE CHOICE

Michael J. Heyman

Answer Choice	0% 100%	Number of Responses	Responses Ratio
Extremely Well Qualified		5	1%
Well Qualified		10	2%
Qualified		21	5%
Not Qualified		13	3%
Don't Know		358	87%
	Total Responses	**407**	**100%**

MULTIPLE CHOICE

Ronald W. Opsahl

Answer Choice	0% 100%	Number of Responses	Responses Ratio
Extremely Well Qualified		3	0%
Well Qualified		5	1%
Qualified		17	4%
Not Qualified		25	6%
Don't Know		357	87%
	Total Responses	**407**	**100%**

MULTIPLE CHOICE

Scott A. Oravec

Answer Choice	0% 100%	Number of Responses	Responses Ratio
Extremely Well Qualified		40	9%
Well Qualified		34	8%
Qualified		46	11%
Not Qualified		16	3%
Don't Know		271	66%
	Total Responses	**407**	**100%**

MULTIPLE CHOICE

Danée Lynn Pontious

Answer Choice	0% 100%	Number of Responses	Responses Ratio
Extremely Well Qualified		25	6%
Well Qualified		32	7%
Qualified		41	10%
Not Qualified		35	8%
Don't Know		274	67%
	Total Responses	**407**	**100%**

MULTIPLE CHOICE

Kyle Reardon

Answer Choice	0% 100%	Number of Responses	Responses Ratio
Extremely Well Qualified		40	9%
Well Qualified		26	6%
Qualified		25	6%
Not Qualified		8	1%
Don't Know		308	75%
	Total Responses	**407**	**100%**

MULTIPLE CHOICE

Ian Wheeles

Answer Choice	0% 100%	Number of Responses	Responses Ratio
Extremely Well Qualified		20	4%
Well Qualified		46	11%
Qualified		57	14%
Not Qualified		39	9%
Don't Know		245	60%
	Total Responses	**407**	**100%**

MULTIPLE CHOICE

Joan M. Wilson

Answer Choice	0% 100%	Number of Responses	Responses Ratio
Extremely Well Qualified		20	4%
Well Qualified		20	4%
Qualified		36	8%
Not Qualified		59	14%
Don't Know		272	66%
	Total Responses	**407**	**100%**

MULTIPLE CHOICE

Justin R. Works

Answer Choice	0% 100%	Number of Responses	Responses Ratio
Extremely Well Qualified		2	0%
Well Qualified		0	0%
Qualified		2	0%
Not Qualified		36	8%
Don't Know		367	90%
	Total Responses	**407**	**100%**

MULTIPLE CHOICE

Adolf V. Zeman

Answer Choice	0% 100%	Number of Responses	Responses Ratio
Extremely Well Qualified		98	24%
Well Qualified		81	19%
Qualified		49	12%
Not Qualified		21	5%
Don't Know		158	38%
	Total Responses	**407**	**100%**

5C

ABA Rule of Law Statements

ALASKA BAR
ASSOCIATION

To: Board of Governors

From: Danielle Bailey, Executive Director

Re: ABA Rule of Law Statement

Date: April 14, 2025

On March 18, 2025, the American Bar Association (ABA) released a *Joint Statement in Support of the Rule of Law* (attached). The American Bar Association had reached out to many mandatory, local, and affinity Bar Associations and encouraged them to sign on prior to the statement being released. For the initial release on March 18, 2025, just over 50 Bar Associations signed on. The list now has over 100 joint signers. Out of the 100 signers, three of the bars are mandatory bars: State Bar of New Mexico, Oregon State Bar Board of Governors, and Washington State Bar Board of Governors.

As a mandatory bar, the Alaska Bar Association must weigh its potential response considering its regulatory responsibilities and constitutional limitations on compelled speech. Generally, the Board of Governors of the Alaska Bar Association has three potential paths forward: (1) sign onto the ABA Joint Statement, (2) produce our own statement on the rule of law, or (3) no action.

While this memo will not go into the full background of *Keller* case law, it is important to remind the Board that the Ninth Circuit in *Crowe v. Oregon State Bar* noted that the Oregon State Bar would avoid First Amendment problems by only engaging in germane activities or, if it does engage in nongermane activities "in situations in which those activities might be attributed to its members it could include a disclaimer that makes it clear that it does not speak on behalf of all those members." 112 F. 4th 1219 at 1240 (9th Cir. 2024). This is likely why the Washington and Oregon Bars chose to sign on to the ABA Joint Statement only on behalf of the Board of Governors.

The Alaska Bar Association has a history of supporting rule of law education and advocacy. In 2014, the Board of Governors of the Alaska Bar Association, in coordination with the Fair and Impartial Courts Committee (FIC), adopted a resolution and committee guidelines which resolved support for Alaska's judicial selection and retention system and allowed the FIC members to take official positions of support before legislative bodies (attached). The guidelines specifically authorized the FIC to take an "official position to explain the rule of law, including the concept that judicial decisions should be made on the facts and the law, not on personal belief, political views, or public pressure."

While the State Bar of Michigan did not sign on to the ABA's Joint Statement, the officers of their Board of Commissioners did release a statement on March 21, 2025, in support of the rule of law. Their statement had an emphasis on the education of the rule of law and even included a link to the State Bar of Michigan's webpage on rule of law information. Both the statement and webpage are attached to this memo.

The Board of Governors of the Washington State Bar Association and the president of the Oregon State Bar also wrote separate statements in support of the rule of law despite signing on to the joint statement (attached).

Some Bar Associations are choosing to also commit to days of action on Law Day on May 1, 2025. Law Day, held annually on May 1, is a national day set aside to celebrate the rule of law. Law Day provides an opportunity to understand how law and the legal process protect our liberty, strive to achieve justice, and contribute to the freedoms that all Americans share. Law Day has been celebrated on May 1st annually since 1961.

The Alaska Bar Association has received three public comments (one signed on by five Bar members) which are included as attachments in the packet. In addition, the Bar has been contacted by other Bar members inquiring if this would be on our agenda or if a resolution would be made at the annual meeting. I have also been made aware of other Bar members who have contacted Board members about this topic.

The Board should consider whether and in what manner to proceed.

March 26, 2025

Bar organizations' statement in support of the rule of law

Share:

CHICAGO, March 26, 2025 — We the undersigned bar organizations stand together with and in support of the American Bar Association to defend the rule of law and reject efforts to undermine the courts and the legal profession.

In particular, as outlined by the ABA:

We endorse the sentiments expressed by the chief justice of the U.S. Supreme Court in his 2024 Year End Report on the Federal Judiciary, "[w]ithin the past year we have also seen the need for state and federal bar associations to come to the defense of a federal district judge whose decisions in a high-profile case prompted an elected official to call for her impeachment. Attempts to intimidate judges for their rulings in cases are inappropriate and should be vigorously opposed."

We support the right of people to advance their interests in courts of law when they have been wronged. We reject the notion that the U.S. government can punish lawyers and law firms who represent certain clients or punish judges who rule certain ways. We cannot accept government actions that seek to twist the scales of justice in this manner.

We reject efforts to undermine the courts and the profession. We will not stay silent in the face of efforts to remake the legal profession into something that rewards those who agree with the government and punishes those who do not. Words and actions matter. And the intimidating words and actions we have heard and seen must end. They are designed to cow our country's judges, our country's courts and our legal profession.

There are clear choices facing our profession. We can choose to remain silent and allow these acts to continue or we can stand for the rule of law and the values we hold dear. We call upon the entire profession, including lawyers in private practice from Main Street to Wall Street, as well as those in corporations and who serve in elected positions, to speak out against intimidation.

If lawyers do not speak, who will speak for our judges? Who will protect our bedrock of justice? If we do not speak now, when will we speak? Now is the time. That is why we stand together with the ABA in support of the rule of law.

American Bar Association
Alameda County (California) Bar Association
Alexandria (Virginia) Bar Association
Allegheny County Bar Association (Pennsylvania)
American Immigration Lawyers Association
Appellate Lawyers Association
Arab American Bar Association of Illinois
Association of Professional Responsibility Lawyers
Atlanta Bar Association
Bar Association of Erie County (New York)
Bar Association of Metropolitan St. Louis
Bar Association of San Francisco
Berks County (Pennsylvania) Bar Association
Beverly Hills Bar Association
Boston Bar Association
Boulder County (Colorado) Bar Association
California La Raza Lawyers Association
Chicago Bar Association
Chicago Council of Lawyers
Cleveland Metropolitan Bar Association
Columbus (Ohio) Bar Association
Connecticut Bar Association
Connecticut Criminal Defense Lawyers Association
Contra Costa (California) County Bar Association

Cook County Bar Association
Deaf and Hard of Hearing Bar Association
Delaware State Bar Association
Detroit Bar Association and Foundation
Durham County Bar Association
East Bay La Raza Lawyers (California) Association
Erie County (Pennsylvania) Bar Association
First Judicial District Bar Association (Colorado)
Filipino American Lawyers of San Diego
Florida Association of Criminal Defense Lawyers
Greensboro Bar Association
Hampden County Bar Association
Hawaii Women Lawyers
Hennepin County (Minnesota) Bar Association
Hispanic National Bar Association
Hudson County (New Jersey) Bar Association
Illinois State Bar Association
International Academy of Trial Lawyers
International Society of Barristers
The Iowa State Bar Association
Kansas Bar Association
Kansas City Metropolitan Bar Association
Kansas City Metropolitan Bar Foundation
Lawyers Club of San Diego
Long Beach (California) Bar Association
Los Angeles County Bar Association
Louisville Bar Association
Maine State Bar Association
Maricopa County Bar Association
Marin County Bar Association
Massachusetts Bar Association
Massachusetts LGBTQ Bar Association
Metropolitan Black Bar Association
Middlesex County (New Jersey) Bar Association
Milwaukee Bar Association

Minnesota State Bar Association
Monroe County (New York) Bar Association
Multnomah Bar Association (Portland, Oregon)
Muslim Bar Association of Chicago
Nassau County (New York) Bar Association
National ABS Law Firm Association
National Arab American Bar Association
National Arab American Bar Association - Michigan Chapter
National Asian Pacific American Bar Association
National Association of Women Lawyers
National Conference of Bar Presidents
National Conference of Women's Bar Associations
National Filipino American Lawyers Association
National LGBTQ+ Bar Association
National Native American Bar Association
New Jersey Women Lawyers Association
New Mexico Black Lawyers Association
New York City Bar Association
New York County Lawyers Association
North County (California) Bar Association
Ohio Women's Bar Association
Oregon State Bar Board of Governors
Palestinian American Bar Association
Passaic County (New Jersey) Bar Association
Pennsylvania Association of Criminal Defense Lawyers
Philadelphia Bar Association
Queen's Bench Bar Association of the San Francisco Bay Area
Queens County (New York) Bar Association
Ramsey County (Minnesota) Bar Association
San Diego County Bar Association
San Fernando Valley (California) Bar Association
Santa Clara County Bar Association (California)
Sonoma County Bar Association
South Asian Bar Association of North America
South Carolina Women Lawyers Association

Southwest Colorado Bar Association

State Bar of New Mexico

Virgin Islands Bar Association

Washington Council of Lawyers

Washington State Bar Board of Governors

Women's Bar Association of Massachusetts

Women's Bar Association of the District of Columbia

Women's Bar Association of the State of New York

Worcester County (Massachusetts) Bar Association

The ABA is one of the largest voluntary associations of lawyers in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law. View our privacy statement online. Follow the latest ABA news at www.americanbar.org/news and on X (formerly Twitter) @ABANews.

ALASKA BAR ASSOCIATION

ALASKA BAR ASSOCIATION
Standing Committee on Fair and Impartial Courts
Judge Elaine Andrews (Ret.), Chair

RESOLUTION

WHEREAS the Standing Committee on Fair and Impartial Courts is charged by the association's Bylaws with promoting the concept of judicial independence, through public education and other means; and

WHEREAS "appropriate educational activity" is described in the committee's guidelines to include, among other actions, *"[t]aking an official position in support of the judicial selection and retention process established in the Judiciary Article of Alaska's Constitution; and ... [t]aking an official position in support of merit selection generally, as the best way to ensure the best judges"*;

THEREFORE BE IT RESOLVED

THAT the Alaska Bar Association supports the current system of selection and retention of judges; and

THAT members of the Standing Committee on Fair and Impartial Courts should be authorized to testify before legislative bodies or communicate with legislators in their official capacities to convey the Association's official position in support of the current system of selection and retention.

Adopted by the Board of Governors of the Alaska Bar Association

September 5, 2014

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ALASKA BAR ASSOCIATION
Standing Committee on Fair and Impartial Courts
Judge Elaine Andrews (Ret.), Chair

COMMITTEE GUIDELINES

For outreach & education within the apolitical mandate of the Alaska Bar Association

The Alaska Bar Association's Standing Committee on Fair and Impartial Courts is charged by the association's Bylaws with making "recommendations to the Board for activities that the Bar can undertake to explain and promote the concept of judicial independence, and to undertake to educate the public about and promote the concept of judicial independence."

The primary goal of the committee to develop outreach and educational strategies for explaining, promoting, and educating about fair and impartial courts that can be implemented on an ongoing basis and sustained over time. To achieve this goal, it is in the interests of the Bar and the Committee to adopt guidelines that delineate as clearly as possible any initiatives, activities or positions that would run afoul of the Bar's apolitical mandate. Especially during an election year, when individual judicial candidates may stand for retention and other issues affecting an independent judiciary may appear on the ballot, clear guidelines will facilitate the Committee's important work and ensure that any concerns the Board may have about the committee's proper role are addressed in advance.

Members of the committee recommend the Board's approval of the following delineation between inappropriate political activity and appropriate educational activity by the committee and any communications on behalf of the committee:

I. Appropriate Educational Activity

1. Taking an official position in support of the judicial selection and retention process established in the Judiciary Article of Alaska's Constitution;
2. Taking an official position in support of the Alaska Judicial Council's role in the judicial selection and retention process;
3. Taking an official position in support of merit selection generally, as the best way to ensure the best judges;[1]
4. Taking an official position to explain the judicial and legal professional canons that serve to ensure fair and impartial courts;
5. Taking an official position to explain the rule of law, including the concept that judicial decisions should be made on the facts and

[1] American Judicature Society.

the law, not on personal belief, political views, or public pressure;
6. Taking an official position to explain difficult concepts of law that are often not publicly understood, such as bail and sentencing, when misunderstanding of these concepts fosters inaccurate or unfair attacks on the judiciary; and
7. Taking an official position to correct public statements about judges or the judiciary that are inaccurate or misleading, when these statements threaten to undermine public understanding of the role of courts and the importance of a fair and impartial judiciary.

II. Inappropriate Political Activity

1. Taking an official position for or against a candidate for judicial retention;
2. Taking an official position for or against a candidate for political office based on that candidate's statements on the role of the judiciary;
3. Taking an official position for or against an appointment to the Alaska Judicial Council;
4. Taking an official position for or against nominations for judgeships made by the Alaska Judicial Council;
5. Taking an official position for or against the appointment by the Governor of a judicial nominee;
6. Taking an official position for or against a specific judicial decision; or
7. Taking an official position for or against a public official's statements concerning a specific judicial decision.

Nothing in this section shall preclude the committee from conducting the educational activities outlined in Section I above during an election season.

Recommended to the Board of Governors of the Alaska Bar Association by the Committee on Fair & Impartial Courts on the 2nd day of December, 2011.

_____
Judge Elaine Andrews (Ret.), Chair

Adopted this 27th day of January, 2012, by the Board of Governors of the Alaska Bar Association.

_____
Donald W. McClintock III, President
Board of Governors, Alaska Bar Association

MENU

Statement from SBM Leadership on Unprecedented Threats to Rule of Law

Statement from SBM Leadership on Unprecedented Threats to Rule of Law

As officers of the State Bar of Michigan, we are committed to promoting the administration of justice and upholding the rule of law—core principles that are essential to the proper functioning of our democracy comprised of three co-equal branches of government.

The rule of law ensures that our legal system in the judicial branch of government operates with fairness, stability, and predictability, affording all individuals equal access to justice under established legal principles.

A strong and independent judiciary is fundamental to this framework, as it safeguards constitutional rights, resolves disputes impartially, and applies the law free from external influence. Judges must be able to decide cases based on the law and facts, rather than outside pressures. Efforts to undermine judicial independence—whether through threats to judicial security, calls for removal based on case outcomes, or actions that erode the public's trust in the courts—pose risks to the proper functioning of our justice system.

Equally fundamental to the rule of law and the proper administration of justice is the ability of lawyers to advocate for clients, even when those clients and their causes may be difficult or controversial. Our democracy depends on lawyers being able to provide representation to others as a means of ensuring that legal rights are properly asserted and that courts are presented with full and fair arguments.

We affirm the State Bar of Michigan's commitment to supporting the fair and impartial administration of justice in the proper functioning of the courts. We encourage respect for the judicial process and the roles of judges and lawyers in our legal system. We invite members of the bar and the public to visit the State Bar of Michigan's webpage for further information on the importance of the rule of law in our democracy.

In accordance with our mission and responsibilities at the State Bar of Michigan, we will continue to provide resources, education, and advocacy that support an independent judiciary, the legal profession, and the rule of law, in furtherance of the administration of justice and the proper functioning of our courts now and in the future.

This statement is made by the duly elected officers of the State Bar of Michigan's Board of Commissioners, not on behalf of all individual SBM members. It does not necessarily reflect the views of officers' employers.

Posted: March 21, 2025

MENU

Special Statement from SBM Leadership

March 21, 2025

Among the self-evident truths woven into the very fabric of American democracy is the need for an independent judiciary. The Declaration of Independence itself notes the importance of the rule of law and of government checks and balances to ensure that the unalienable rights of its citizens remain intact. This cornerstone of democracy is baked into the foundation of our government, our state and federal constitutions, and our way of life.

As officers of the State Bar of Michigan, we recognize our fundamental purpose as attorneys is to defend liberty and justice for all people, regardless of political persuasion and regardless of popular opinion. As such, we fundamentally oppose any action that could undermine an independent judiciary and our nation's long-held democratic values. Specifically, we believe:

- All people must be treated equally under the law.
- All branches of government are important and must follow the rule of law.
- Judges must never face threats or intimidation for rendering decisions.
- Lawyers and law firms must not face retaliation when advocating claims or defenses on behalf of any person or cause, even when the person or cause may be difficult or controversial.

This statement is made by the duly elected officers of the State Bar of Michigan's 2024-2025 Board of Commissioners, not on behalf of all individual SBM members. It does not necessarily reflect the views of officers' employers.

The Importance of the Rule of Law

"The government derives its just powers from the consent of the governed.
[...] No [person] in this country is above the law."

Mohrmann v Fry, 266 Mich 422, 432, 254 NW 153, 156 (1934)

In general terms, the "rule of law" refers to a political system involving a government of laws, not individuals. Its origins can be traced to Aristotle, who wrote, "It is more proper that law should govern than any one of the citizens." The rule of law implies that all members of society are equally subject to the law—presidents, governors, legislators, law enforcement, and judges are just as subject to the law as ordinary citizens. Governments based on the rule of law stand in contrast to monarchies and oligarchies where rulers are held to be above the law. Likewise, upholding the rule of law requires equal and fair access of all to the judicial system.

The rule of law means fairly and impartially applying and administering the law to all who are seeking justice. But is not enough for the rule of law to be upheld; the judicial process and its outcomes must also be perceived to be legitimate and fair by the general public, even if they disagree with the result. So when a judge rules, it is accepted as the law, not as a personal exercise of power or political in nature.

THE PUBLIC
AND THE RULE OF LAW

JUDGES
AND THE RULE OF LAW

LAWYERS
AND THE RULE OF LAW

ADDITIONAL RESOURCES

The Public and the Rule of Law

Understand how the rule of law is part of our constitutional system

Democracy in our constitutional republic is not always based upon simple majority rule. There are certain principles that are so important to the nation that the majority has agreed not to interfere in these areas. For instance, the Bill of Rights was passed because concepts such as freedom of religion, speech, equal treatment, and due process of law were deemed so important that, barring a constitutional amendment, not even a majority should be allowed to change them. Thus, a judge supports our Constitution by striking down a law, even a popular one, which violates these fundamental freedoms. Similarly, when a judge enforces a law passed by the legislature and signed by the governor,

that judge is also enforcing the rule of law: the statute, passed by the representatives of the people, is the law. It is not a judge's job to make the law in light of the statute, and the judiciary will not overturn it so long as it is not unconstitutional, even if the judge personally disagrees with it.

Participate as a citizen in our democracy: jury duty

John Adams wrote that, "Representative government and trial by jury are the heart and lungs of liberty." The founding fathers included jury trials in the Constitution because jury trials prevent tyranny. Jury trials are the opposite of tyranny because the citizens on the jury are given the power to make the final decision. A "jury must be drawn from sources reflecting a fair cross section of the community in order to effectuate the purpose of a jury: guarding against the exercise of arbitrary power [by making] available the commonsense judgment of the community as a hedge against the overzealous or mistaken prosecutor and in preference to the professional or perhaps overconditioned or biased response of a judge." *People v Bryant*, 491 Mich 575, 596, 822 NW2d 124, 134 (2012)(cleaned up). And most jurors who participate in a case find that they come away from the experience with a greater respect for and understanding of our justice system.

Work to improve our system

Like anything else, the judicial system can be improved, made more accessible and more just. The legislature, the court itself, the State Bar of Michigan, and various groups all work toward this goal.

- The Michigan Justice for All (JFA) Commission is committed to providing 100% access to our civil justice system and welcomes citizen input.
- The SBM has many resources available on civics and civic engagement.

Judges and the Rule of Law

The Founding Fathers created three independent and equal branches of government – the executive, the legislative and the judicial – specifically to establish checks and balances on other branches of government. The fact that a judge does or does not agree with the actions of another branch of government does not make the judiciary political – it simply reflects checks and balances at work.

What if a judge's ruling is unjust?

Sometimes a judge might make a wrong decision by misunderstanding the law or facts. We're all human. Our judicial system has various ways to review judges' decisions, including appeals to the Court of Appeals and the Supreme Court. And if a judge is truly acting outside of the law, the judge can be investigated and potentially removed from office. These safeguards are all part of our justice system.

But sometimes a judge rules in accordance with the law and people disagree with the outcome. That's okay, but it should not lead to personal attacks on the judge, especially by those in other branches of government. Nobody, especially dedicated public servants, should live in fear for trying to uphold our Constitution and laws. Everyone has the right to disagree with a court's decision. But those who openly mock a judge's legitimacy, engage in personal attacks, or threaten retaliation due to an unfavorable ruling not only contribute to public mistrust of the judiciary, but also undermine the very foundation of our democracy. Democracy can be dismantled by words as well as actions.

Should we look at judges' rulings as political?

The judge's role is to interpret and apply the law. On sensitive topics, these rulings can appear political because one side "won" and the other side "lost." But that is just a result of the judicial system applying the law. U.S. Supreme Court Chief Justice John Roberts said: "We do not have Obama judges or Trump judges, Bush judges or Clinton judges...what we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them. That independent judiciary is something we should all be thankful for." We should never presume that a judicial decision was a product of political affiliation. And if the ruling was wrong, that is why we have appellate courts.

Lawyers and the Rule of Law

When Shakespeare wrote, "The first thing we do, let's kill all the lawyers," it was a compliment; the line was spoken by a rebel who thought that if he disturbed law and order, he could become king. Lawyers have historically been the bulwark in support of the rule of law; eliminating them weakens the rule of law.

The Michigan Supreme Court has given the State Bar of Michigan the mission to aid in promoting improvements in the administration of justice and advancements in jurisprudence. Rule 1, Supreme Court Rules Concerning the State Bar of Michigan. To that end, numerous SBM committees engage directly in that work.

Why do lawyers defend people accused of horrible

Our system is built on principles like equality, fairness, tolerance, and freedom. These values are inherent in the legal profession; they are inculcated as a part of attorney training, they are socialized to understand that these principles transcend differences in matters of policy and politics. It's why Anthony Griffin, an African American lawyer at the ACLU, represented the Ku Klux Klan, or Ted Olsen, a prominent conservative and Republican, argued against California's ban on same-sex marriage in the Supreme Court. It's why John Adams defended British soldiers accused of killing colonists in the Boston Massacre. Lawyers are not defending the crime. They are defending rights and liberties—to which we all are entitled—that are enshrined in the Constitution. They are ensuring that the procedures are fair, that the accused has not been mistreated and that the government has met its burden of proof beyond any reasonable doubt. These safeguards ensure that justice is there for the innocent and the guilty, the sympathetic as well as the unsympathetic defendant. These rights are defended so that all of us can have confidence in the fairness of the rule of law.

What if I can't find or afford a lawyer?

The SBM Legal Resource and Referral Center has resources to help. If you cannot afford to hire an attorney, the Guide to Legal Help is a new tool developed by MichiganLegalHelp.org that can assist you in determining if you qualify for legal aid or other resources.

Additional Resources

Michigan Milestones in Defense of the Rule of Law

Many important legal milestones in Michigan reflect upon the rule of law. Here are links to four fascinating stories of our common legal heritage:

Ossian Sweet Trial

Protecting the Impaired

The Uninvited Ear

Sojourner Truth

The State Bar of Michigan and the Rule of Law

The State Bar of Michigan is a "public body corporate" and consists of all persons licensed to practice law in Michigan. MCL 600.901. The regulation of the practice of law, the maintenance of high standards in the legal profession, and the discharge of the profession's duty to protect and inform the public are fundamental purposes of the Bar. The Bar provides resources for the public and attorneys at www.michbar.org, including self-help and education resources, consumer tips and alerts, and guidance to help navigate the legal system. The Bar works to strengthen the rule of law in numerous ways in order to preserve and enhance its core value to all citizens of our State.

Other Resources

- Michigan Supreme Court Learning Center

- Michigan Bar Journal
  - Our Collective Longterm Investment by Jennifer M. Grieco
  - The Rule of Law – Never to be Taken for Granted by John T. Berry
  - The Good Lawyer: A Letter to My Son by Jon R. Muth
- U.S. Courts: Rule of Law
- American Bar Association: What is the Rule of law
- ABA: The Committee on the American Judicial System
- U.S. Court Shorts: Rule of Law (video)
- Federal Bar Association Statement on the Rule of Law and an Independent Judiciary

WASHINGTON STATE
BAR ASSOCIATION
Board of Governors

Statement in Support of an Independent Legal Profession Free from Government Retaliation

March 12, 2025

The foundation of our democracy is built on an independent legal profession and courts, which protect the liberty and rights of all people by holding the government accountable to its laws—first and foremost being the U.S. Constitution. Our legal system upholds the tenets that everyone is governed by the same laws, that the laws apply equally to all, and that nobody is above the law.

These safeguards rely on lawyers who are willing and able to represent all interests in good faith and to challenge government overreach without fear of penalization or retaliation. The preamble to the Rules of Professional Conduct that apply to all Washington state lawyers emphasizes: "An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice."

In this context, we, the leaders of the Washington State Bar Association, have grave concerns about two recent executive orders that seek to take action against specific lawyers and law firms on the basis of their legal work. This is not a partisan issue. Federal courts have often been called on to rule against overreach in executive orders issued by Democratic and Republican Presidents alike.

But when the executive branch wields its power to single out lawyers and law firms for representing specific clients, it is an especially dangerous strike against an impartial and independent justice system. The resolve and willingness of legal professionals to challenge government overreach and abuse of authority must not be chilled. Doing so leads to a distressing question: ***If lawyers and judges are not willing or able to defend liberty and freedom for all people under the law and Constitution, who will?***

As WSBA leaders, we are committed to promoting an independent legal profession and court system. We call on our members, judges, lawmakers, and government officials to do the same. We acknowledge that all members of our profession are and should be independently regulated to ensure we uphold our special responsibilities and the law.

To Washington's legal professionals, we proudly and unreservedly support your obligation to represent clients, across all political spectrums and walks of life, in good faith without fear of retaliation or retribution.

To the Washingtonians we serve, we proudly and unreservedly stand behind our WSBA mission: to serve the public, uphold the integrity of the legal profession, and champion justice. We will continue to promote a justice system and a legal profession committed to competent and well qualified representation for all, especially those who may be vulnerable or out of political favor.

This statement is made by the Washington State Bar Association's Board of Governors, not on behalf of all individual members of the WSBA. It does not reflect the views of the employers of the members of the Board of Governors.

Dear Colleague,

At the core of our legal system and profession is the notion that everyone is equal under the law – regardless of popularity or wealth or status – and that everyone should have access to an impartial court of law to bring their legal argument, and a lawyer to advocate on their behalf within the standards of professional conduct.

This month, an Executive Order was issued that seeks to punish the law firm Perkins Coie for doing what lawyers do: representing their clients within the bounds of the law. This Executive Order hits close to home for the Oregon State Bar, negatively impacting the firm's more than 80 Oregon State Bar members. It also signals to other firms that they too may be targeted by the Executive Branch if they represent clients who challenge federal actions.

Ultimately, it is not just one law firm or just the whole legal profession placed at risk by this action; it is also the public's ability to get legal help when faced with federal government action against them.

I am proud to be in community with the Oregon lawyers who challenge government action, whatever their politics, and including those who have taken issue with the OSB. I know it sometimes comes at great cost. I urge all Oregon lawyers to stand up and support one another during these types of challenges to our legal system and profession. I am concerned, the Board of Governors is concerned, and all lawyers should be concerned. For without lawyers willing to hold the government accountable to its laws, there would be no access to justice for the public.

Kind regards,

Myah Kehoe, President
Oregon State Bar

This statement is made by the President of the OSB, not on behalf of all individual members of the OSB.

April 2, 2025

SENT VIA EMAIL

Jeffrey W. Robinson, President

Alaska Bar Association Board of Governors

Re: Request to Adopt Proposed Public Statement Re: Rule of Law

Dear President Robinson:

We are writing to you in our individual capacities to highlight the escalation of attacks against the Rule of Law and to urge the Board of Governors to speak out forcefully against these attacks. There has been much public attention on federal courts nationwide, but these attacks are also on the rise here in Alaska. These attacks have taken three forms.

First, attacks against judges serving Alaska are escalating in their directness, severity, and frequency. In the past these tended to occur during judicial retention elections, but the threats now take place year-round as a means of intimidating judges for their rulings.

Second, there is a proliferation of threats against individual lawyers and law firms based on clients they represent or positions they have taken on behalf of those clients. At least one law firm with an Alaska office is a direct target. We firmly believe that threats against any lawyers misunderstands the fundamental nature of the role of attorneys in our legal system, and the importance thereof. 2

Third, the state's chief executive continues his campaign to weaken Alaska's merit selection and retention embodied in the State's judiciary article. Most recently, Governor Dunleavy proposed a constitutional amendment that would eliminate the Alaska Judicial Council's critically important role in vetting judicial applicants and nomination of the very top applicants for appointment.

We urge the Board of Governors to adopt the following public statement to signal to Alaskans that the Board takes all of these threats to our legal system seriously and believes in the Rule of Law:

"The Board of Governors of the Alaska Bar Association vigorously opposes any efforts to intimidate Alaska's courts, its judges, and members of its legal profession. We believe in and support the Rule of Law, which is the very foundation of our democratic system."

Thank you for considering our request.

Sincerely,

Donna J. Goldsmith

Bruce M. Botelho

Elaine Andrews

Michael C. Geraghty

Walter "Bud" Carpeneti

Dear President Robinson and Members of the Board of Governors,

I have been a lawyer for forty years, practiced law in Alaska for about 25 years, and am currently a retired member of both the Alaska and Washington Bar Associations.

I do not expect or want the Alaska Bar Association to take partisan stands on political issues. However, given recent calls by President Trump, Elon Musk, and others to impeach federal judges based solely on the outcome of their rulings, I believe lawyers have an ethical obligation to speak out in support of the independence of the judiciary.

The Preamble of The Alaska Rules of Professional Conduct states:

In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. (emphasis added).

The Alaska Bar Association also plays a role in communicating with the public. The Bar Association's website currently proclaims its role in "Enhancing the Integrity of Our Judicial System."

The Association's Bylaws list one of the Association's purposes as "Facilitat[ing] the administration of justice." (Section 3(3).

An attack on the independence of our judiciary is an attack on the Rule of Law. Calling for the impeachment of a federal judge simply because one thinks the ruling is wrong erodes the public trust in our judiciary and can have the effect of improperly influencing the outcome of future proceedings. It also suggests to the public that rulings are based on the judge's partisan beliefs, which in my experience as a trial lawyer and administrative law judge is rarely, if ever, accurate.

US Supreme Court Chief Justice Roberts recently stated:

For more than two centuries, it has been established that impeachment is not an appropriate response to disagreement concerning a judicial decision. The normal appellate review process exists for that purpose.

I am asking the Board of Governors to issue a statement condemning calls for the removal of federal judges based on their perceived political affiliation or based on a ruling issued in any particular proceeding. I don't make this request lightly because it will be seen by some as partisan action. But please don't let that unfounded fear stop you. Silence simply permits further erosion of our independent judiciary.

Thank you for your consideration,

Jeff Friedman

ABA # 8806131

From: Erica Ranchoff [redacted]
Sent: Wednesday, March 5, 2025 6:32 AM
To: info <info@alaskabar.org>
Subject: Possible Spam/Phishing - a request for the Alaska bar to stand with the ABA's statements on the rule of law

Hello,

As a member of the Alaska Bar (Erica Ranchoff, #1212144)- I write in my capacity as an individual bar member and apart from any employer affiliations that I have to ask the Alaska Bar to stand with the American Bar's statements on the rule of law.

The statements of the ABA are a necessary reaffirmation of the rule of law and role of courts and the right to counsel in severally challenging times. Lawyers in this state practice across the country and in all jurisdictions locally and the same forces described by the ABA may affect our practitioners. Our federal judges are not exempt from ruling on tough issues and being subjected to improper challenges to the propriety of their rulings and integrity of judicial process.

Both our bar and the public should be able to observe that the premise of a rule of law is echoed by our bar in Alaska. It is effectively a part of the oath of a lawyer to be barred - support of the Constitution of the United States -and many of our employers separately demand the same.

Thank you,

Erica Ranchoff, [redacted]

6A

Staff Reports

Executive Director

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Admissions

July 2025 Bar Exam Update

Oral Report

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Next Generation Bar Exam Update

NCBE National Conference of Bar Examiners

Building a competent, ethical, and diverse legal profession.

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TEL 608-280-8550 | FAX 608-280-8552 | TDD 608-661-1275

MEMORANDUM

To: Jurisdiction Administrators
From: Marilyn J. Wellington
Date: March 13, 2025
Subject: NextGen Update: Computer-Based Exam Delivery

Confidential: Please limit distribution to Supreme Court justices, Board members, and jurisdiction staff, as necessary.

I write to follow up on our February 18 web meeting and February 19 memo regarding NCBE's plans to ensure that the NextGen bar exam is delivered fairly, reliably, and securely on examinee laptops. A video of the web meeting is available online (please email Ellen Embertson at eembertson@ncbex.org for the link and password) and the memo is available under the NextGen tab of the NCBE secure site.

Thank you for the confidence that you and your Courts have shown toward NCBE and the NextGen exam. As you know, the NextGen exam will be delivered to examinees in person at jurisdiction-managed, live-proctored sites. Examinees will take the exam on their own laptops using software provided by Internet Testing Services and supported by ITS and NCBE. The exam will be available in a paper format only to those examinees granted accommodation as required by the ADA and decided by your admissions staff.

The bar exam's move to computer-based testing has been a long time coming. In most jurisdictions, examinees have been permitted to use their own laptops to write the bar exam for over 20 years. NCBE's shift from paper-based to computer-based bar exams has been in development for over ten years.

In 2019, following several years of development and pre-testing, NCBE shifted administration of the Multistate Professional Responsibility Examination to testing centers. Today, the MPRE is administered exclusively on computers for all examinees not

receiving accommodations requiring analog delivery. Over 300,000 examinees have taken the MPRE on computers, and repeated, externally-verified studies have shown that law students and graduates perform equally well on computer-based and paper-based multiple-choice questions.

As we shift to testing both multiple-choice and written-response questions on examinees' own laptops, we have engaged—and continue to engage—in multiple rounds of increasingly rigorous pre-testing to ensure a smooth and reliable computer-based experience for both jurisdictions and examinees. Our goal is a comprehensive exam program that supports examinees in demonstrating their proficiency to you and your Court.

NCBE has completed six testing events (pilot, field, and prototype testing) and will perform a minimum of four additional events through January 2026, culminating in a multi-site, end-to-end beta test of all NextGen exam systems prior to the July 2026 operational exam launch. Over 10,000 paid research participants (recent examinees and 3L/4L law students) from more than 250 US and international law schools will have contributed to these testing events by the time the exam launches. These testing events are:

- Single-site pilot test (19 participants), August 2022: assessment of exam instructions; question format, quality, and delivery; timing; grading rubrics.
- National pilot test (235 participants), November 2022: assessment of exam instructions; question format, quality, and delivery; timing; grading rubrics.
- National pilot test (251 participants), February 2023: assessment of question format, quality, and delivery; timing; grading rubrics.
- National pilot test (2,304 participants), April 2023: assessment of question format and delivery, psychometric properties of questions, timing, grading rubrics.
- National field test (4,016 participants), January 2024: final assessment of exam format, pre-test of questions and question types, psychometric properties of questions, pre-test of grading rubrics and processes.
- National prototype exam (2,040 participants), October 2024: full-length exam testing all question types, pre-testing questions for live administration, psychometric properties of questions, testing software delivery and reliability, administrator information and support systems, on-site technical support, test of refined grading rubrics and processes, risk analysis and contingency planning.

- Two single-site pilot tests (120 participants), April 2025: assessment of item quality to deepen item pool, test of new delivery platform.
- Single-site pilot test (70 participants), August 2025: assessment of item quality to deepen item pool, test of new delivery platform.
- Multi-site end-to-end beta test (1,500 participants), January 2026: assessment of all NextGen systems to include registration, jurisdiction data sharing, communications, and support systems; live exam administration; test of new delivery platform at scale; on-site technical support; grading systems; data analysis; scoring and score reporting.

NCBE anticipates that all post-beta optimization will be prioritized and completed shortly after the beta test is completed. The complete system, including any optimization, will be demonstrated to jurisdictions prior to the July 2026 launch.

Each research event was/is preceded by testing by NCBE employees acting as administrators and examinees and each new event builds on the analysis and insight developed from earlier events. NCBE may elect, based on analysis performed in 2025 and 2026, to conduct additional testing events focused on discrete questions of exam and/or software performance.

The following sections address the additional steps NCBE has taken in collaboration with ITS to produce a fair, secure, and reliable computer-based bar exam for all examinees taking the NextGen exam.

Exam Security

Threats to exam security, including malicious third-party attacks and denial-of-service disruptions, are of significant concern to examinees, jurisdictions, and NCBE. Leveraging ITS's long-term experience in computer-based testing, the NextGen exam platform is designed to minimize opportunities for bad actors to access the exam content, disrupt exam delivery, or interfere with examinee responses and grading.

At the start of each of the three exam sections, the full three hours of content will be securely preloaded onto each examinee's laptop through on-site Wi-Fi and removed at the end of each exam section. As examinees progress through the section, their responses will be automatically saved and transmitted to ITS's secure servers in real time (see also Exam-Room Connectivity, below). Despite being connected to the Wi-Fi throughout the exam, examinees will not be able to access files, browsers, or AI tools during the exam sections.

Unlike traditional offline exam modes, which require examinees to download the full exam onto their laptops days or weeks in advance, NextGen's online streaming model significantly reduces the risk of pre-exam content exposure. Offline delivery methods increase vulnerability by providing bad actors with extended access to encrypted exam files, creating a window of opportunity for hacking attempts or unauthorized decryption. The NextGen delivery system will limit the time that exam content sits on examinees' laptops to the period that they are under proctor supervision in the secure exam room.

By securely streaming exam content only at the start of each section, the ITS system minimizes this risk, making it extremely difficult for external threats to access or manipulate exam materials before test day. Real-time monitoring, network redundancies, and intrusion detection systems within the ITS system further mitigate the risk of external disruptions and ensure that exam integrity is maintained.

Account Security and Verification

NCBE and ITS are implementing a Single Sign-On (SSO) system to eliminate traditional login-related challenges, providing an efficient and secure authentication process for all examinees. With SSO, examinees will not need to create or manage separate login credentials for the exam platform, significantly reducing the risk of incorrect passwords, account lockouts, or authentication failures.

This system is currently being tested to verify stability, security, and efficiency, even under high-volume conditions. By integrating SSO with NCBE's existing examinee systems, examinees will be able to access their exams without the need for additional authentication steps, further streamlining the exam-day experience.

Additionally, redundancy measures and real-time support protocols are being put in place to quickly address any unexpected authentication issues, so that all examinees can begin their exam without delay. This approach enables examinees to focus entirely on their performance – and proctors to focus on exam administration – rather than technical barriers.

Exam-Room Connectivity

After extensive evaluation and rigorous testing, NCBE has determined that an online-only administration model is the most effective approach to serving both examinees and jurisdictions. This decision was driven by three key factors: ensuring the validity of score interpretations, maintaining the highest level of exam security, and providing an optimal experience for examinees. The model in use for the NextGen exam will include

redundancies to protect examinee responses should site Wi-Fi fail at any point during the exam administration. NCBE will soon share technical specifications that jurisdictions should share with their IT departments and test site staff; NCBE will also work with jurisdictions on solutions should the test site have insufficient Wi-Fi capacity (see Jurisdiction Technical Support and Training).

The NextGen exam will be delivered in an online mode with caching, a feature specifically designed to safeguard against unexpected downtime, bandwidth limitations, and localized network failures. As mentioned in the section on Exam Security, at the start of each of the three exam sections, the full three hours of content will be securely preloaded onto each examinee's laptop. As examinees progress through the section, their responses will be automatically saved and transmitted to ITS's servers in real time.

In the event of a network disruption, the system seamlessly switches to caching mode, allowing examinees to continue their work uninterrupted. Examinee responses will be securely saved to their laptops for the duration of the network disruption. Once connectivity is restored or bandwidth stabilizes, the cached responses will automatically sync; all data is securely uploaded without any action required from the examinee. Examinee responses are removed from the cache during this upload. This approach ensures that exam takers are not disrupted by temporary network instability, mitigating the risks associated with large-scale connectivity demands while maintaining the integrity and security of the exam.

In addition to the built-in caching functionality, NCBE is implementing a multi-layered contingency plan to address any potential connectivity disruptions. Each site will be equipped with dedicated hotspots to provide backup internet connection in the event of wireless signal interruptions or network instability. Should the primary Wi-Fi network experience sustained disruption, these hotspots will be deployed, enabling examinees to complete and upload their exams without delay. Each test site will have enough hotspots to support the total number of examinees at that test site, providing sufficient connectivity across all laptops. This program will be tested during the beta test and July 2026 exam and further refined prior to the February 2027 exam.

Server Capacity

NCBE is working closely with ITS to validate system capacity and performance under stress conditions, reinforcing our confidence that the platform will provide a secure, reliable, and uninterrupted testing experience.

ITS currently supports up to 90,000 simultaneous test-takers without issue, demonstrating its ability to handle high-volume, high-stakes assessments. We understand, however, that each jurisdiction has unique testing environments, infrastructure considerations, and test site variability between administrations. To address this, NCBE and ITS are implementing a multi-pronged approach to prepare jurisdictions for each administration:

- **Scalability and Load Testing:** ITS is conducting extensive load testing and simulations to validate system performance under anticipated peak conditions, verifying that the infrastructure can support the full nationwide rollout.
- **Jurisdiction-Specific Readiness Assessments**: NCBE is working directly with jurisdictions to evaluate test site-specific network capacity, latency risks, and bandwidth constraints, highlighting any necessary adjustments and addressing issues in advance.
- **Flexibility in Administration Logistics:** Recognizing that test sites may change between administrations, NCBE and ITS are building adaptive strategies that allow jurisdictions to select the most viable test sites and to effectively address varying network conditions.
- **Real-Time Monitoring and Contingency Plans:** ITS's platform includes real-time network monitoring to identify and mitigate potential latency or connectivity challenges on the day of the exam. Additionally, redundancy measures, including backup connectivity solutions, provide an extra layer of security.

By combining large-scale infrastructure capabilities with localized readiness assessments and flexible administration strategies, NCBE and ITS are working to ensure that NextGen is not only technically viable but also logistically adaptable across all jurisdictions—both in its first administration and beyond.

Jurisdiction Technical Support and Training

NCBE understands that accurate hardware and network infrastructure details are essential for jurisdictions to successfully administer the NextGen exam. During the exam site-selection process, jurisdictions should assess the number of available access points, maximum simultaneous connections per access point, and total bandwidth capacity at their selected test sites.

To simplify this process, ITS is developing a concise one-page technical requirements document that jurisdictions should share with their IT departments and testing sites. This document will include:

- Guidelines on access-point distribution
- Bandwidth requirements per examinee
- Total site bandwidth needs
- Recommendations for evaluating existing infrastructure
- Potential solutions for sites requiring additional network capacity

NCBE and ITS are available to assist jurisdictions in reviewing site-specific hardware details, answering technical questions, and providing expert guidance on optimizing test-day network performance. To assist jurisdictions in evaluating and preparing their exam sites, NCBE and ITS offer:

- **Direct Site Collaboration and Technical Assessments:** NCBE and ITS are available to consult with jurisdictions, assess site-specific needs, and conduct bandwidth evaluations to confirm that each selected test site can reliably support examinees on test day.
- **On-Site Visits & Infrastructure Validation:** If needed, NCBE and ITS are prepared to travel to jurisdiction-selected sites to perform hands-on assessments, ensuring that network capacity, connectivity stability, and backup solutions are properly evaluated.
- **Customized Technical Recommendations:** For jurisdictions needing alternative site solutions, we will work together to explore suitable test sites and provide technical recommendations to enhance testing reliability.
- **Ongoing Support and Planning:** As jurisdictions plan for future administrations, NCBE and ITS will continue to offer guidance and reassess site viability as needs evolve.

We encourage you to start the facilities planning process as soon as the technical requirements document is distributed; by starting this process now, jurisdictions should have ample time to evaluate their options and make any necessary adjustments. NCBE and ITS remain fully committed to providing the expertise, resources, and support necessary to make this transition successful for all jurisdictions and examinees.

NCBE further recognizes that comprehensive training and a well-prepared support infrastructure are essential for a successful NextGen exam launch in July 2026. To help ensure that all administrators and on-site technical teams are fully equipped to manage

the new exam format, NCBE and ITS are developing a Certified Technical Proctor (CTP) training program tailored specifically for NextGen administration.

This structured training initiative will include:

- **ITS Certified Technical Proctor (CTP) Program:** Completion of a formalized training and certification program that will be required for anyone providing technical support at NextGen test sites. This program will include training in exam software, connectivity troubleshooting, laptop management, and emergency protocols. All technical proctors provided by NCBE will have completed the training program. Jurisdictions may choose to have their in-house technical staff and/or current technical proctors participate in this training.
- **Hands-on Experience in the Beta Test**: Before full-scale launch, Certified Technical Proctors will actively support the beta test, which includes 1,500 examinees across multiple jurisdictions. This will provide a real-world testing experience to refine processes, identify any gaps, and optimize support strategies.
- **Six-Month Optimization Period:** Following the beta test, NCBE and ITS will use the remaining six months before launch to refine training materials, optimize support workflows, and implement jurisdiction-specific technical readiness plans.
- **Ongoing Administrator Training:** In addition to technical proctors, jurisdictional exam administrators will receive dedicated training and resources, ensuring that all stakeholders understand exam protocols, technology workflows, and emergency response measures.

This phased, data-driven approach is designed to align with jurisdiction protocols, so that by the time NextGen launches, every test site will have highly trained personnel, well-established troubleshooting protocols, and the necessary technical infrastructure to support a smooth and secure exam administration.

Examinee Resources and Support

The NextGen exam is designed to provide a consistent, secure, and equitable testing experience for all examinees, regardless of their laptop or test site. ITS's technology provides a standardized user interface across both Mac and PC platforms; no examinee will be disadvantaged due to their laptop's type of operating system.

Prior to exam day, every examinee will be required to complete a mock exam, which serves two purposes:

1. To familiarize them with the exam software, the presentation of exam questions, and features including highlighting, strike-through, text formatting, spell check, copy-paste, and note-taking.
2. To verify that their laptop conforms to technical requirements.

A walk-through tutorial will help guide examinees as they explore the mock exam; this tutorial will also be available prior to registration.

Examinee support will be bolstered by NCBE's Candidate Services department, which serves as an important point of contact for the MPRE and NCBEs investigation services. Candidate Services staff will receive training and resources to assist examinees prior to and after exam day.

Starting in August 2025, NCBE will launch a series of examinee-focused monthly emails that cover key elements of NextGen content and administration. Future examinees, legal educators, and bar prep professionals will be able to opt into this email program at any time. You will also receive these emails.

Contingency Planning

Comprehensive contingency planning, redundancy measures, and failover strategies are critical to ensuring a secure and disruption-free administration of the NextGen exam. That is why we began working with ITS 18 months in advance of the first NextGen administration, allowing for extensive planning, testing, and validation well ahead of launch.

To thoroughly de-risk the exam administration process, NCBE and ITS are conducting multiple large-scale tests under real-world conditions, including:

- Two pilot tests (200 total examinees) to validate system functionality, caching performance, and test-day workflows across different jurisdictional environments.
- One large-scale beta test (1,500 examinees) to stress-test the system under higher-load conditions, evaluating scalability, security, and examinee experience.
- Site-specific assessments at each jurisdiction to evaluate bandwidth capacity, network stability, and contingency readiness.

- Comprehensive failover planning, including redundant internet connections, on-site backup hotspots, and spare laptops (minimum 10% per test site) to quickly resolve any unforeseen technical issues.

While the bar exam's decentralized administration model presents unique challenges, these testing phases will allow NCBE and ITS–working with jurisdiction administrators–to identify and resolve potential risks before launch, ensuring that every jurisdiction has a clear and tested contingency plan in place. By the time NextGen is operational, the system, infrastructure, and backup measures will have been validated across thousands of test takers and multiple test environments, reinforcing our commitment to delivering a secure, reliable, and fair examination process.

NCBE and ITS have implemented multiple layers of redundancy to mitigate risks and prevent single points of failure during the administration of the NextGen exam. A well-structured backup plan ensures that potential Internet outages, server failures, or local disruptions do not compromise the exam experience for examinees.

As mentioned above, key safeguards include:

- **On-site and on-call ITS Certified Technical Proctor support:** Experts in the NextGen platform will be present in every exam room and connected to a central technical support team.
- **Online mode with caching:** At the start of each exam section, the full content is securely preloaded onto each examinee's laptop, allowing them to continue working even if network connectivity is temporarily lost. Once connectivity is restored, responses are automatically synced to ITS's servers.
- **Hotspots in every testing room:** Each test site will be equipped with dedicated backup hotspots to provide an alternative internet connection in the event of network instability. These hotspots are strategically scaled to support all examinees in the room, providing uninterrupted exam delivery.
- **Backup laptops on-site:** NCBE will have spare laptops on hand (at least 10% of total test-takers per site), allowing for immediate replacement in case of hardware issues, further reducing disruption risks.
- **ITS's robust infrastructure:** ITS has proven experience handling large-scale testing environments, with built-in server redundancies and failover systems that prevent downtime due to infrastructure failures.
- **Built-in redundancies:** The online mode with caching, backup hotspots, and on-site spare laptops (at least 10% per site) help to ensure that any technical issue can be immediately addressed without impacting the overall exam administration.

- **Large-scale infrastructure testing:** Before launch, over 10,000 examinees will have tested the system on a wide range of laptops and network environments to validate performance, security, and reliability.
- **Comprehensive contingency planning:** Every jurisdiction will have documented response protocols, real-time support, and infrastructure assessments to proactively address any unforeseen issues.

Through these rigorous testing, redundancy, and contingency measures, NCBE is working to deliver a NextGen exam that is not only technologically sound but also operationally resilient, maintaining stakeholder confidence and protecting the integrity of the legal licensure process.

I welcome any questions you may have about this memo and look forward to further discussions at the Annual Bar Admissions Conference in Seattle and at our regular online meetings throughout the next few years. Please feel free to email me at any time at mwellington@ncbex.org.

6C

CLE

AK Bar CLE

Let's Create, Learn, Elevate together!

April 7, 2025

To: Alaska Bar Association Board of Governors

From: Kara Bridge, CLE Director

Re: 2025 CLE report YTD

2025 CLE Programs

Date	Title/Topic	Platform	General Credits	Ethics Credits	Attendance	Price	Profit/Loss
1/10	CLE Rerun: What a Road Trip thru the USA Teaches about Legal Ethics	In-person	0	3.0	2	$115	$230
1/14	Best Practices for Keeping Data Safe	Virtual	0	1.0	8	$45	$270
1/15	Clio: Financial Management Essentials for Small Law Firms in 2025	Virtual	1.0	0	Registration thru Clio	$0	$0
1/23	5 Things to Make 2025 Great for Solo & Small Firms	Virtual	1.0	0	12	$45	($550)
1/28	History of Access to Justice in Alaska	Virtual	1.0	0	51	$0	$0
1/29	Foreclosure for the Generalist	Virtual	1.0	0	14	$45	$585
2/10	Clio: Legal AI Virtual Summit	Virtual	4.0	.75	Registration thru Clio	$0	$0
2/12	Law & Culture	In-person	5.0	.75	50	$50	($3,488.24)
2/20	CLE Rerun: Understanding Alaska's IOLTA Program & Ethical Responsibilities for Community Support	In-Person	0	1.75	1	$0	$0
3/04	vLex Fastcase Basic Training	Virtual	1.0	0	17	$0	$0
3/06	Clio: How to Use Tools to Simplify Documents Drafting	Virtual	1.0	0	Registration thru Clio	$0	$0
3/11	Clio: Criminal Defense Law Firm Virtual Summit	Virtual	3.5	0	Registration thru Clio	$0	$0

Date	Title/Topic	Platform	General Credits	Ethics Credits	Attendance	Price	Profit/Loss
3/21	Free Ethics with ALPS (Expenses out of MCLE budget)	Virtual	0	3.0	184	$0	($350)
4/26	ALPS: How to Avoid Conflict of Interest Malpractice Missteps	Virtual	0	1.0	Registration thru ALPS	$0	$0
4/1	ALR: Volume in Review	Virtual	1.5	0	52	$0	$0
4/8	Clio: Perfecting Client Intake	Virtual	1.0	0	Registration thru Clio	$0	$0
5/8	Clio: Solo & Small Firm Virtual Summit	Virtual	3.0	.75	Registration thru Clio	$0	$0
5/15	Free Ethics Replay	In-person	0	3.0		$0	$0
May	Outreach CLE – Matsu (Pamler)	In-person				$0	$0
June	Outreach CLE – Homer	In-person				$0	$0
8/14	FBA – AK Chapter District Conference	In-person					
9/3	OTR: Alaska Supreme Court	Hybrid				$0	$0
9/16	Aging & Mental Health	Virtual					
9/25	Legal Writing & AI	Virtual					
Sept	Free Ethics Replay	In-person	0	3.0		$0	$0
Sept	Outreach CLE – Ketchikan/Juneau	In-person					
Oct 20-24	Pro Bono Week (5 CLEs)	Virtual					
Oct	Law & Culture (Fairbanks)	In-person					
12/12	Ethics- Teicher	Virtual	0	3.0		$115	
12/17	Free Ethics Replay	In-person	0	3.0		$0	$0
12/30	Free Ethics Replay	In-person	0	3.0		$0	$0

2025 CLE topics in additional to established annual CLEs:

- Bankruptcy 101
- Legal Accounting/Finance
- Set up a Law Firm
- Labor Relations Agency
- Section CLEs/For the Generalist
- Contract Writing/AI
- Courtroom Practice/Expectation
- OTR – 3rd JD include Magistrate Judges

- Boot Camp – new admittees
- What Lawyers Need to Know about Judicial Ethics
- Stress Management/increased case load
- Experts
- Settlement Skills
- Interpreters
- Free Services - Good & Bad
- Issues with other side unrepresented
- Ethics Opinion Update
- Joan Wilson – Adm Law
- Communicating with Judges
- Joel Oster/Ethics /Comedy
- Pro Bono/CLE with clinics
- Bankruptcy Chapter 7, 13 & US Trustee

Annual CLE Events:

- Free Ethics
- Federal Bar Assn Conference
- Off the Record: Appellate
- Off the Record: each JD
- Technology
- Wellness
- Alaska Native Law
- Alaska Judicial Council
- Alaska Law Review
- Pro Bono week
- Diversity Luncheon
- Historians Committee
- Workers' Comp
- December Ethics
- Monthly Clio
- ALPS (Free access)
- Fastcase (x4)
- Monthly Re-runs
- Travel CLE/Rural

CLE Summary

AK Bar CLE Summary

Year	Total	Free Programs	Total Attendance	Credits	Location	Profit/Loss (Direct Expenses only)
2022	32 Virtual: 26 In-person: 2 Hybrid: 4	15 (9 General Credits & 11.5 Ethics Credits)	1633	30 General 23.5 Ethics	ANC: 6 FBX: JNO: Other:	$10,258.89
2023	34 Virtual: 27 In-person: 6 Hybrid: 1	20 (7 General Credits & 13 Ethics Credits)	1665+	28.25 General 38.75 Ethics	ANC: 6 FBX: JNO: Other:	$7,707.19

2024	73 Virtual: 45 In-person: 14 Hybrid: 14	61 (56 General Credits & 36 Ethics Credits)	2175+	74.25 General 45.75 Ethics	ANC: 22 FBX: JNO: 2 Other: 3	$12,262.31
2025 YTD	18 Hosted 40 Schedule Virtual: 14 In-person: 4 Hybrid: 0	14 (17 General Credits & 10.25)	388+	24 General 15 Ethics	ANC: 4 FBX: JNO: Other:	($2,953.24)

CLESharedED/Video on Demand Summary

CLESharedED*

Year	Shared	Attendance	Credits	Profit/Loss (Direct Expenses only)
2022	104	79	48.5 General 83.75 Ethics	$5,919.00
2023	37	56	13.5 General 32.5 Ethics	$514.25
2024	30 (20 Live; 10 VOD)	80	22.75 General 13 Ethics	$726.15
2025 YTD	7	34	7.0 General 3.0 Ethics	See VOD Profit/Loss**

* Before 2024, the only shared program available was CLEWebinars. However, in 2024, CE21 introduced a shared marketplace, allowing CLE providers to share content across jurisdictions. The Alaska Bar CLE department has since participated by sharing programs from other providers.

** Beginning January 1, 2025, all CE21 programs—including shared and VOD offerings—will be consolidated under a single accounting code.

Video on Demand (VOD)

Year	Products sold	Profit/Loss (Direct Expenses only)
2022	1892 (Free Ethics = 1119)	$12,442.38
2023	2450 (Free Ethics = 1034)	$24,275.24
2024	3289 (Free Ethics = 984)	$13,566.90
2025 YTD	639 (Free Ethics = 13)	$7,086.00

2025 AK Bar Convention

April 23-25, 2025
Sheraton Hotel Anchorage
Keynote: Neal Katyal
Agenda included

Year	Total Attendance	Credits	Location	Exhibitors & Sponsorship	Profit/Loss (Direct Expenses only)
2022	406 (include 83 Judges)	10.5 General 4.5 Ethics	Anchorage	$21, 715.00 26 Sponsors 16 Exhibitors (5 Non-profits)	$ -10,258.89
2023	203	8 General 3 Ethics	Fairbanks	$20,580.00 20 Sponsors 10 Exhibitors (4 Non-profits)	$12,833.23
2025	306	10.25 General 3.0 Ethics	Anchorage	$24,000.00 22 Sponsors (11 Law firms) 11 Exhibitors (2 Non-profits)	

Future Conventions

2026 AK Bar Convention
April 29 – May 1, 2026
Centennial Hall, Juneau

2027 AK Bar Convention
April 28-30, 2027
Dena'ina Convention Center, Anchorage

Section Summary

Year	Total # Meetings	General Credits	Ethics Credits	Total Zoom Attendance
2022	86	75.5	6	Did not track
2023	72	63	7	2877
2024	107	82	5	2449+
2025 YTD	36	28.25	3.5	855+

Sections Update: Hosted the Section Chair Meeting via Zoom on April 7, with 27 attendees representing 21 of the 28 sections.

ALASKA BAR ASSOCIATION

2025 AK Bar Convention

April 23-25, 2025

Sheraton Anchorage Hotel, Anchorage

(updated 4/8/2025)

Wednesday, April 23

4:30 – 5:30 p.m.	**Registration Open** Sheraton, 2nd Floor Lobby
6:00 – 8:00 p.m.	**Opening Reception** Sheraton, The Summit, 15th Floor Join us for the Opening Reception, where you can connect with colleagues in a relaxed and inviting atmosphere. Enjoy light appetizers and great conversation. A cash bar will be available. Sponsored by Clio
8:00 p.m.	**Hospitality Suite** Sheraton, Suite 1315 Hosted by Anchorage Bar Association

Thursday, April 24

All events hosted on the 2nd floor unless noted

7:30 – 8:20 a.m.	**Registration & Exhibits Open** Light Breakfast

8:20 - 8:30 a.m.	**Welcome Address** Jeffrey Robinson President, Board of Governors Partner, Ballard Spahr
8:30 – 10:00 a.m.	**U.S. Supreme Court Opinions Update** (1.5 credits) A comprehensive review of recent decisions of the United States Supreme Court. *Dean Erwin Chemerinsky* University of California Berkeley Law School *Professor Laurie Levenson* Loyola Law School, Los Angeles Sponsored by Banker Law Group
10:00 – 10:25 a.m.	**Networking Break/Exhibits Open**
10:25 – 10:30 p.m.	**Clio Introduction** Join Kevin Connell for a brief introduction to Clio, a legal technology solution recommended by the Alaska Bar Association. Members receive a 15% discount on Clio products (excluding Clio Draft).
10:25 a.m. – 12:00 p.m.	**U.S. Supreme Court Opinions Update (Con't)** (1.5 credits) *Dean Chemerinsky and Professor Levenson*
12:00 – 1:30 p.m.	**Lunch: Federal & State Courts Update** (1.0 credits) A report on current issues, successes, and happenings in both the state and federal courts of Alaska. *Chief Justice Susan Carney* Alaska Supreme Court

Senior U.S. District Judge Ralph Beistline
US District Court; District of Alaska

Sponsored by Davis Wright Tremaine LLP

1:30 – 3:00 p.m. **Alaska Appellate Law Update** (1.5 credits)

A comprehensive review of recent decisions of the Alaska Supreme Court and the Alaska Appellate Courts.

Dean Erwin Chemerinsky
University of California Berkeley Law School

Sponsored by Banker Law Group

3:00 – 3:25 p.m. **Networking Break/Exhibits Open**

3:25 – 3:30 p.m. **vLex Fastcase Introduction**

Join TJ Diggins for a quick introduction, a preview of Friday's legal research training, and a conversation about how AI tools like Vincent are shaping the future of legal research.

3:30 – 5:00 p.m. **Ethics: Succession Planning**
(1.5 Ethics credits)

Join Mark and a panel of Alaska Bar members for an insightful discussion on succession planning. Whether you're a solo or small firm attorney, a government lawyer, or in private practice, planning for retirement and a smooth transition is essential. Learn how to identify the right successor, transfer your clients seamlessly, and wrap up loose ends effectively. Gain valuable best practices and expert advice to ensure a successful transition.

Mark Bassingthwaighte, Esq.
Risk Manager, ALPS

Kara Nyquist
Nyquist Law Group

Brent Cole
Law Office of Brent R. Cole

Sponsored by Foley & Pearson P.C.

5:00 – 7:00 p.m. **Awards Reception**

Light appetizers and cash bar while we celebrate the 2024 & 2025 award winners:

- Bryan P. Timbers Pro Bono Awards
- Judge Nora Guinn Award
- Rabinowitz Public Service Award
- Board of Governors Awards
- Benjamin Walters Distinguished Service Award
- 25, 50, 60 Year Membership Recognition
- In memoriam recognition

Sponsored by Birch Horton Bittner & Cherot, PC

7:00 p.m. **Hospitality Suite**
Sheraton, Suite 1315
Hosted by Anchorage Bar Association

Friday, April 25

All events hosted on the 2nd floor unless noted

7:30 – 8:20 a.m. **Registration & Exhibits Open**
Light Breakfast

8:20 - 8:30 a.m. **Welcome Address**
Jeffrey Robinson
President, Board of Governors
Partner, Ballard Spahr

8:30 - 10:00 a.m. **Keynote Address - The Modern Supreme Court and the Rule of Law** (1.5 credits)

Neal Katyal
Lawyer, Professor, Former Acting Solicitor General & Author

Sponsored by Jermain Dunnagan & Owens P.C. and Sonosky, Chambers, Sachse, Miller & Monkman LLP

10:00 – 10:30 a.m. **Networking Break/Exhibits Open**

10:30 a.m. – 12:00 p.m. **Ethics: Thinking Ethically About AI** (1.5 Ethics credits)

Are you aware of the Rules of Professional Conduct that apply to AI use in legal practice? Join us to explore the ethical implications, ensure compliance, and navigate this evolving AI landscape—both for yourself and opposing counsel.

Jason Brandeis
Senior Counsel, Birch Horton Bittner & Cherot

Phil Shanahan
Bar Counsel, Alaska Bar Association

Sponsored by Rogers Law Group LLC

12:00 – 1:30 p.m. **Lunch: AK Bar Update & Annual Bar Meeting/Passing of the Gavel** (0.5 credits)

1:30 – 3:00 p.m. **How to Make Pro Bono a Part of Your Practice** (1.5 credits)

Join our keynote speaker and a panel of Alaska Bar members for an engaging discussion on integrating pro bono work into your practice. Learn practical strategies, hear real-world experiences, and discover how giving back can enhance your career while serving the community. Whether

you're in private practice, government, or a firm, find ways to make pro bono a meaningful and sustainable part of your work.

Moderated by Lea McKenna
Pro Bono Director, Alaska Bar Association

Panelists:

- *Neal Katyal, Keynote speaker*
- *Ben Hofmeister, Attorney General's Office*
- *Chelsea Riekkola, Foley & Pearson*
- *Leslie Need, Landye Bennett Blumstein*

Sponsored by Ballard Spahr-Lane Powell

3:00 – 3:15 p.m. **Networking Break/Exhibits Open**

3:15 – 4:30 p.m. **vLex Fastcase Training** (1.25 credits)

Join us for an engaging in-person training designed to help you harness the full potential of the vLex Fastcase platform, included in your member benefit with the Alaska Bar Association! Explore our cutting-edge legal research tools, discover customizable features, and experience game-changing AI-driven insights like Case Analysis with Headnotes.

Led by T.J. Diggins, your dedicated Customer Success Representative, this session will provide actionable insights and tips to save time and supercharge your legal research process!

T.J. Diggins
Customer Success Representative
vLex Fastcase

4:30 p.m. **Convention ends**

The 2025 Alaska Bar Convention provides a total of 13.25 CLE credits of which 3.0 credits are Ethics credits.

The 2025 Alaska Bar Convention agenda is subject to change.

6D1

Discipline

Discipline 4th Quarter Report

ALASKA BAR
ASSOCIATION

April 9, 2025

Via Email Only

The Honorable Susan M. Carney
Chief Justice of the Alaska Supreme Court
303 K Street, 5th Floor
Anchorage, AK 99501

Re: Quarterly Reports

Dear Chief Justice Carney:

Enclosed with this letter are Discipline, Fee Arbitration, and Other Proceedings Reports for the 1st Quarter of 2025, as well as an index with explanation of terms.

Our office has prepared a report with the number of discipline cases filed and closed during the quarter, including status of pending cases, disposition of closed cases, and subject of the grievances. (Alaska Bar Rule 11). Also, please find the quarterly report for Fee Arbitration, including the number of petitions filed and arbitrations concluded, status of pending petitions, disposition of arbitrations, and the amounts of the disputes involved. (Alaska Bar Rule 36).

Bar discipline lawyers have answered 209 ethics calls this quarter. The past five years of the COVID-19 pandemic have changed our former work routines, in some ways even creating new efficiencies, but I am grateful that our staff has continued to provide this beneficial service to the membership despite the challenges. If you have any questions concerning these reports, please feel free to contact me.

Sincerely,

ALASKA BAR ASSOCIATION

Philip E. Shanahan
Bar Counsel

840 K Street, Suite 100 • Anchorage, Alaska 99501-3353
907-272-7469 • Fax 907-272-2932 • http://www.alaskabar.org

PES/gw
Attachments

cc: *via email*
Justice Dario Borghesan
Justice Jennifer S. Henderson
Justice Jude Pate
Justice Aimee A. Oravec
Meredith Montgomery, Clerk of the Appellate Courts
Danielle Bailey, Executive Director
(for distribution to Board of Governors)
Fee Arbitration Executive Committee Members
Mark Woelber, Assistant Bar Counsel
Louise R. Driscoll, Assistant Bar Counsel

G:\Ds\QUARTERLY REPORTS\2025\Quarter 1 2025\quarterlyreport.1Qcvr.doc

INDEX OF TERMS

DISCIPLINE

D1 Discipline Report Summary

D2 Discipline Open Caseload Analysis (Case Count)
This report provides the number of open cases as well as the number of attorneys involved at each status code per quarter to date.

D3 Discipline Closed Caseload Analysis (Case Count)
This report shows the number of closed/dismissed cases as well as the number of respondent attorneys involved at each status code per quarter to date.

D4 Open Cases by Nature of Grievance
This report shows open cases by their NOBC (National Organization of Bar Counsel) classification code.

FEE ARBITRATION

F1 Fee Arbitration Open Caseload Analysis
This report shows the number of open cases as well as the number of respondent attorneys involved at each status code.

F2 Fee Arbitration Closed Caseload Analysis
This report shows the number of closed cases as well as the number of respondent attorneys involved at each status code.

OTHER PROCEEDINGS

This report shows the number of open matters in Disability, Trustee Counsel, and Lawyers' Fund for Client Protection (LFCP).

DISCIPLINE REPORT ABBREVIATIONS

Abbreviation:	Description:
FILED/UNDER REVIEW	Grievance under review to determine whether investigation should be opened.
RESPONDENT 1ST RESPONSE	Pending required response by respondent attorney to grievance.
COMPLAINANT RESPONSE	Pending reply by complainant to respondent's response.
RESPONDENT 2ND RESPONSE	Pending response by respondent attorney to complainant's reply.
BC INVESTIGATION	Pending investigation or decision on investigation by bar counsel.
LAC REFERRAL	Lawyer referred to the Lawyers' Assistance Committee.
ADM APPEAL REVIEW (CODE 11)	Complainant appealed assistant bar counsel's decision to close the investigation of a grievance without taking action.
LIAISON REVIEW (CODE 10)	Complainant appealed assistant bar counsel's decision not to open a grievance for investigation.
ORIGINAL APPLICATION	Complainant appeals to the Supreme Court a decision not to open a grievance for investigation or to close an ongoing investigation without taking action.
ABEYANCE	Investigation in abeyance pending outcome of related court case.
INTERIM SUSPENSION	Attorney is suspended by order of the Supreme Court on an interim basis.
REQUEST WPA APPROVAL	Request approval by area division member of bar counsel's request to issue written private admonition.
PEND WPA ACCEPT	Pending acceptance of written private admonition by respondent.
PEND PFFH APPROVAL	Pending approval by area division member of bar counsel's request to file petition for formal hearing.
PFFH APPROVAL RECEIVED	Petition for formal hearing is approved by the discipline liaison.
STIPULATION NEGOTIATION BC/RA	Pending stipulation negotiations between bar counsel and respondent.
PEND STIP DISC. BOARD	Pending Disciplinary Board review of stipulation between bar counsel and respondent.
STIP SUPREME CT. REVIEW	Pending Supreme Court review of stipulation between bar counsel and respondent forwarded by Disciplinary Board.

PEND AREA HEARING COMM.	Pending hearing before area hearing committee or pending hearing committee report.
PEND DISC. BOARD REVIEW	Pending hearing before Disciplinary Board or pending Board decision/recommendation.
PEND SUPREME CT. REVIEW	Pending review/final action by Supreme Court.
RESPONDENT ON PROBATION	Attorney serving probationary period.
DISBARMENT	Attorney ordered disbarred by Supreme Court.
SUSPENSION	Attorney ordered suspended by Supreme Court.
PROBATION ENDED	Attorney's probation ended by order of Supreme Court.
PUBLIC CENSURE	Attorney ordered censured by Supreme Court.
PUBLIC REPRIMAND	Attorney publicly reprimanded by Disciplinary Board.
PRIVATE REPRIMAND	Attorney privately reprimanded by Disciplinary Board.
WRITTEN PRIVATE ADMONITION	Attorney given written private admonition by bar counsel.
DISMISSED	Grievance dismissed by bar counsel.
NOT ACCEPTED	Grievance not accepted by bar counsel.
DISMISSED LAC COMPLIANT	LAC file closed after the attorney is in compliance with its recommendations.

DISCIPLINE REPORT SUMMARY			
Quarter 1 2025			
Open cases at beginning of quarter	165		
New cases initiated	+ 32		
Grievances appealed	+ 4		
Total Open + New Cases + Grievances Appealed	201		
Cases closed or dismissed by discipline	- 8		
Grievances Not Accepted	- 26	201 - (8 + 26) = 167	
Total cases Open & Filed under review at end of quarter	167	Under Investigation 89	Filed Under Review 78

Volume of New Cases Initiated		Deficient Grievances Returned	Contacts with the Public
Quarter 1	32	9	88
Quarter 2			
Quarter 3			
Quarter 4			
This Year to Date	32	9	88
Last Year To Date	49	5	48

DISCIPLINE CASELOAD ANALYSIS - OPEN CASE & ATTORNEY COUNT								
	Qtr 1 2025		Qtr 2 2025		Qtr 3 2025		Qtr 4 2025	
	Cases	Attys	Cases	Attys	Cases	Attys	Cases	Attys
Resp. 1st Response	12	8	0	0	0	0	0	0
Comp. Response	0	0	0	0	0	0	0	0
Resp. 2nd Response	0	0	0	0	0	0	0	0
BC Investigation	40	15	0	0	0	0	0	0
LAC Referral	1	1	0	0	0	0	0	0
ADM Appeal Rev.	0	0	0	0	0	0	0	0
Liaison Rev.	4	4	0	0	0	0	0	0
Original Application	0	0	0	0	0	0	0	0
Abeyance	5	2	0	0	0	0	0	0
Interim Suspension	13	2	0	0	0	0	0	0
Req WPA Approval	0	0	0	0	0	0	0	0
Pend WPA Accept	0	0	0	0	0	0	0	0
Pend PFFH Approval	0	0	0	0	0	0	0	0
PFFH Approval Rec.	0	0	0	0	0	0	0	0
Stip. Neg. BC/RA	0	0	0	0	0	0	0	0
Pend. Stip. Disc. Bd.	12	1	0	0	0	0	0	0
Stip. Sup. Ct. Review	0	0	0	0	0	0	0	0
Pend Area Hrg Comm	1	1	0	0	0	0	0	0
Pend Disc. Bd. Review	0	0	0	0	0	0	0	0
Pend Sup. Ct. Review	0	0	0	0	0	0	0	0
Resp. on Probation	1	1	0	0	0	0	0	0
Total Open	89	35	0	0	0	0	0	0

DISCIPLINE CASELOAD ANALYSIS - CLOSED CASE & ATTORNEY COUNT								
	Qtr 1 2025		Qtr 2 2025		Qtr 3 2025		Qtr 4 2025	
	Cases	Attys	Cases	Attys	Cases	Attys	Cases	Attys
Disbarment	4	3	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0
Probation Ended	0	0	0	0	0	0	0	0
Public Censure	0	0	0	0	0	0	0	0
Public Reprimand	0	0	0	0	0	0	0	0
Private Reprimand	0	0	0	0	0	0	0	0
Written Priv. Admon.	1	1	0	0	0	0	0	0
Dismissed	1	1	0	0	0	0	0	0
Not Accepted	27	24	0	0	0	0	0	0
Dismissed LAC Comp	0	0	0	0	0	0	0	0
Administrative Closure	2	2	0	0	0	0	0	0
Total Closed	35	31	0	0	0	0	0	0

ALASKA RULES OF PROFESSIONAL CONDUCT

Table of Contents

LAW FIRMS AND ASSOCIATIONS

PUBLIC SERVICE

INFORMATION ABOUT LEGAL SERVICES

MAINTAINING THE INTEGRITY OF THE PROFESSION

NOBC GRIEVANCE CODES

01 Trust violations
(commingling, mismanagement of client funds and property, failure to maintain records and to account to client, withholding client's property, embezzlement, conversion)

02 Conflict of interest

03 Neglect
(failure to perform, delay, lack of communication)

04 Relationship with client
(disclosing confidential information, failure to protect interests of client, improper withdrawal, refusal to release documents, abandonment)

05 Misrepresentation/Fraud

06 Excessive fees

07 Interference with justice
(overzealous representation, failing to represent a client within bounds of the law, prosecutorial misconduct, communicating with one of adverse interest, threatening criminal prosecution to obtain advantage in civil matter (pre-July 15, 1993 grievances), trial misconduct, trial publicity, improper communication with jurors, witnesses, officials, aiding unauthorized practice of law.

08 Improper advertising and solicitation

09 Criminal conviction

10 Personal behavior

11 Willful failure to cooperate with discipline authorities

12 Medical incapacity

13 Incompetence

14 No jurisdiction or referred to other agency

15 Other

NOBC and ARPC Codes Report

Quarter 1 2025

ARPC Code:	Code Description	Number of Cases:
1.2	Scope	1
1.3	Diligence	21
1.4	Communication	5
1.6	Confidentiality	1
1.8	Conflicts Specific Rules	3
1.9	Conflicts Former Clients	1
1.15	Safekeeping Property	13
3.3	Candor Tribunal	1
4.4	Respect for Other's Rights	3
8.4	Misconduct	15

NOBC Code:	Code Description:	Number of Cases:
01	Trust Violations	11
02	Conflict of Interest	6
03	Neglect	26
05	Misrepresentation/Fraud	6
07	Interference with Justice	5
09	Criminal Conviction	4
13	Incompetence	1

FEE ARBITRATION REPORT ABBREVIATIONS

Abbreviation:	Description:
FILED/UNDER REVIEW	Petition under review to determine whether arbitration file should be opened.
PENDING PET. COMPLETION	Petition returned to petitioner for completion.
PENDING RESOLVE EFFORTS	Petitioner advised that efforts to resolve fee dispute with attorney necessary before petition may be accepted.
PENDING OBTAIN STAY	Petitioner advised that a stay of civil proceedings on same fee issues necessary before petition may be accepted.
PENDING 10 DAY SETTLE	Petition accepted for arbitration; parties given 10 days to settle dispute or matter will be scheduled for arbitration.
PEND MEDIATION	Mediator assigned to voluntary mediation between petitioner and attorney.
PENDING PANEL ASSIGN	Pending assignment of arbitrator(s) by bar counsel.
PENDING PANEL HEARING	Arbitration panel assigned; pending hearing by panel.
PENDING PANEL DECISION	Hearing completed; pending written decision of panel.
PANEL DECISION ISSUED	Panel decision distributed to parties; pending time for appeal by parties.
PEND REMAND	Pending further proceedings by panel following remand by court as a result of appeal.
PENDING RECON/CLARIF.	Pending reconsideration or clarification by panel.
PENDING CT. APPEAL	Pending consideration of appeal by court.
CLSD CT. DECISION ISSUED	Matter closed; court issues final decision on appeal ending proceeding.
CLSD PANEL DECISION FINAL	Matter closed; time for appeal/modification expired.
CLSD SETTLED BY PARTIES	Matter closed; dispute settled by the parties.
CLSD SETTLED BY MEDIATION	Matter closed, dispute settled through mediation.
CLSD PET. WITHDRAWN	Matter closed; petition withdrawn by complainant.
CLSD BANKRUPTCY PROCEED.	Matter closed; fee matter subject to bankruptcy court jurisdiction.
NOT ACCEPTED	Petition not accepted for arbitration by bar counsel.

FEE ARBITRATION CASELOAD ANALYSIS - OPEN CASE & ATTORNEY COUNT

	Qtr 1 2025		Qtr 2 2025		Qtr 3 2025		Qtr 4 2025	
	Cases	Attys	Cases	Attys	Cases	Attys	Cases	Attys
Petition Rec'd	17	14	0	0	0	0	0	0
Petition Incomplete	0	0	0	0	0	0	0	0
Resolution Efforts	5	5	0	0	0	0	0	0
Court Stay	0	0	0	0	0	0	0	0
Settle Period	13	10	0	0	0	0	0	0
Mediation	9	5	0	0	0	0	0	0
Panel Assign	6	6	0	0	0	0	0	0
Panel Hearing	3	3	0	0	0	0	0	0
Panel Deliberation	0	1	0	0	0	0	0	0
Panel Decision	0	0	0	0	0	0	0	0
Court Remand	0	0	0	0	0	0	0	0
Mod Request	0	0	0	0	0	0	0	0
Court Appeal	0	0	0	0	0	0	0	0
Total Open	54	44	0	0	0	0	0	0

FEE ARBITRATION CASELOAD ANALYSIS - CLOSED CASE & ATTORNEY COUNT

	Qtr 1 2025		Qtr 2 2025		Qtr 3 2025		Qtr 4 2025	
	Cases	Attys	Cases	Attys	Cases	Attys	Cases	Attys
Court Decision	0	0	0	0	0	0	0	0
Panel Decision Final	2	2	0	0	0	0	0	0
Settled by Parties	1	1	0	0	0	0	0	0
Mediation Settled	0	0	0	0	0	0	0	0
Petition Withdrawn	0	0	0	0	0	0	0	0
Bankruptcy	0	0	0	0	0	0	0	0
Not Accepted	0	0	0	0	0	0	0	0
Total Open	3	3	0	0	0	0	0	0

FEE ARBITRATION REPORT SUMMARY
Including Number of Respondent Attorneys Involved

Quarter 1 2025

Open cases at beginning of quarter		43
New cases initiated	(+)	14
Cases closed	(-)	3
Open cases at end of quarter		54

Open Cases:	**Cases:**	**Attys:**
Petition Rec'd	17	14
Petition Incomplete	0	0
Resolution Efforts	5	5
Court Stay	0	0
Settle Period	14	10
Mediation	9	5
Panel Assign	6	6
Panel Hearing	3	3
Panel Deliberation	0	1
Panel Decision	0	0
Court Remand	0	0
Mod Request	0	0
Court Appeal	0	0
Total:	**54**	**44**

Closed/Dismissed Cases:	**Cases:**	**Attys:**
Closed Ct. Decision Issued	0	0
Closed Panel Decision Final	2	2
Closed Settled by Parties	1	1
Closed Settled by Mediation	0	0
Closed Petition Withdrawn	0	0
Closed Bankruptcy Proceed	0	0
Not Accepted	0	0
Total:	**3**	**3**

Fee Arbitration Caseload Detail for Quarter 1, 2025
Reduction Asked and Reduction Awarded

FA 16 Panel Dec. Final

Status As Of:	File No:	Date Filed:	Award Asked:	Award Received:	BC:
01/02/2025	2023F014	03/02/2023	$2,300.00	$0.00	SBC
02/26/2025	2024F005	04/08/2024	$6,000.00	$346.50	SBC

FA 16 subtotal: 2

FA 14 Settled by Parties

Status As Of:	File No:	Date Filed:	Award Asked:	Award Received:	BC:
02/24/2025	2024F024	09/27/2024	$2,500.00	$2,500.00	SBC

FA 14 subtotal: 1

Other Proceedings Caseload Detail
Without Names
Quarter 1 2025

Lawyers Fund for Client

LFCP 95 Filed Review

Status As Of:	File No:	Date Filed:	BC:
02/20/2024	2024L001	02/20/2024	PES
08/27/2024	2024L016	08/27/2024	PES
01/21/2025	2025L001	01/21/2025	PES

LFCP 95 subtotal: 3

LFCP 70 Comm. Hearing

Status As Of:	File No:	Date Filed:	BC:
05/09/2024	2024L007	05/03/2024	PES
06/05/2024	2024L008	05/17/2024	PES
06/27/2024	2024L014	06/11/2024	PES
11/01/2024	2024L017	10/02/2024	PES
11/26/2024	2024L011	05/21/2024	PES
12/26/2024	2024L018	08/23/2024	PES

LFCP 70 subtotal: 6

LFCP 11 Award Approved

Status As Of:	File No:	Date Filed:	BC:
02/03/2025	2024L004	03/27/2024	PES
02/03/2025	2024L009	05/17/2024	PES
02/03/2025	2024L010	05/20/2024	PES
02/03/2025	2024L012	06/03/2024	PES
02/03/2025	2024L013	06/05/2024	PES

02/03/2025	2024L015	07/24/2024	PES

LFCP 11 subtotal: 6

Lawyers Fund for Client total: 15

Reinstatement Discipline

R 55 Supreme Ct. Review

Status As Of:	File No:	Date Filed:	BC:
02/27/2025	2024R002	05/15/2024	PES

R 55 subtotal: 1

R 16 Reinstatement Grant.

Status As Of:	File No:	Date Filed:	BC:
01/21/2025	2023R001	03/15/2023	LRD

R 16 subtotal: 1

Reinstatement Discipline total: 2

Trustee Counsel

TC 85 Pend Report

Status As Of:	File No:	Date Filed:	BC:
03/08/2021	2021T001	03/04/2021	PES
10/03/2023	2023T002	09/28/2023	PES
12/18/2023	2023T003	12/18/2023	PES
12/29/2023	2023T004	12/27/2023	PES
02/22/2024	2024T001	02/20/2024	PES
04/16/2024	2024T002	04/04/2024	PES
06/11/2024	2024T003	05/31/2024	PES

06/11/2024	2024T004	06/03/2024	PES
07/31/2024	2024T005	07/26/2024	PES
08/20/2024	2024T007	08/12/2024	PES
09/13/2024	2024T006	08/12/2024	PES
12/19/2024	2024T008	12/18/2024	PES

TC 85 subtotal: 12

TC 12 Closed

Status As Of:	File No:	Date Filed:	BC:
01/07/2025	2019T003	07/23/2019	PES
02/03/2025	2023T001	06/19/2023	PES

TC 12 subtotal: 2

Trustee Counsel total: 14

6D2

Summary 2023D091

ALASKA BAR
ASSOCIATION

MEMORANDUM

TO: Board of Governors

FROM: Phil Shanahan, Bar Counsel PS

DATE: April 7, 2025

RE: Closed case summary to be reviewed at the April 23, 2025 Board Meeting.

2023D091

840 K Street, Suite 100 • Anchorage, Alaska 99501-3353
907-272-7469 • Fax 907-272-2932 • http://www.alaskabar.org

SUMMARY OF ABA FILE NO. 2023D091

By: Louise R. Driscoll, Assistant Bar Counsel LRD

NATURE OF ALLEGED VIOLATION:

ARPC 1.6 (Confidentiality of Information)

OPENED: 10/7/24 DISMISSED: 3/4/25

An attorney filed a grievance against Attorney X and another attorney, alleging that they breached confidentiality of client information when Attorney X and the other associate left one firm to join another firm. Investigation showed that the attorneys did not strictly comply with Alaska Ethics Opinion No. 2005-2 which sets out steps for a departing lawyer leaving a firm.

The complainant attorney notified Bar Counsel that he wished to withdraw his grievance as to Attorney X, not the other attorney. Investigation had shown that Attorney X was not the primary offender and that no client was harmed based on her conduct.

Bar counsel agreed to dismiss the grievance based on Complainant's request, but wrote a strong dismissal letter to Attorney X and cautioned Attorney X that Bar Counsel reserved the right to reopen its investigation if we learn of other facts that demonstrate other violations of the rules of professional conduct.

6E

Pro Bono

7

Alaska Bar Rule 65 Proposal:

Pro Bono Service for CLE Credit

Proposed Amended Alaska Bar Rule 65
to Include CLE Credit for Pro Bono Service

Alaska Bar Rule 65

(a) Mandatory Continuing Legal Education. In order to promote competence and professionalism in members of the Association, the Alaska Supreme Court and the Association require all members to engage in Mandatory Continuing Legal Education (MCLE) . Every active member of the Alaska Bar Association shall complete at least twelve credit hours per year of approved MCLE . Three of those twelve MCLE credit hours must be in approved ethics CLE (MECLE). Qualifying ethics educational topics may include professional responsibility, workplace ethics, law office management, attention to cases and clients, time management, malpractice prevention, collegiality, general attorney wellness, and professionalism.

Commentary. To protect the public, to ensure that lawyers stay informed about changes in the law and mindful of their obligations to their clients, and to maintain the public's confidence in the legal profession, the Supreme Court is imposing a mandatory CLE requirement of 12 credit hours per year for all active Bar members. This requirement can be satisfied with a wide variety of legal education activities described in subsection (e) of this rule, including preparing and teaching CLE, working on certain committees, attending monthly bar section meetings, participating in legal mentorship activities, and more. To help ensure that lawyers can meet the CLE requirements and readily access CLEs at their convenience, the Association will record and provide several hours of approved CLE at no cost to members each year.

(b) Carryforward of Credit Hours. An active Bar member may carry forward from the previous reporting period a maximum of 12 credits. To be carried forward, the credit hours must have been earned during the calendar year immediately preceding the current reporting period.

(c) Mandatory Reporting. By February 1 of each year, each member must certify on a form prescribed by the Association whether the member has completed the required minimum of three hours of approved MECLE during the preceding year or carried over from the prior year as provided in subsection (b) of this rule. The member must also certify whether the member has completed nine hours other approved CLE during the preceding year or carried over from the prior year as provided in subsection (b). A member shall maintain records of approved MCLE hours for the two most recent reporting periods, and these records shall be subject to audit by the Association on request.

(d) Time Extensions. A member may file a written request for an extension of time for compliance with this rule. A request for extension shall be reviewed and determined by the Association.

(e) CLE Activities. The MCLE standards of this rule may be met either by attending approved courses or completing any other continuing legal education activity approved for credit under these rules. If the approved course or activity or any portion of it relates to ethics as described in (a) of this rule, the member may claim MECLE credit for the course or activity or for the ethics-

related portion of it. Any course or continuing legal education activity approved for credit by a jurisdiction, other than Alaska, that requires continuing legal education is approved for credit in Alaska under this rule. The following activities may be considered for credit when they meet the conditions set forth in this rule:

(1) preparing for and teaching approved CLE courses and participating in public service broadcasts on legal topics; credit will be granted for up to two hours of preparation time for every one hour of time spent teaching;

(2) studying audio or video tapes or other technology-delivered approved CLE courses;

(3) writing published legal articles in any publication or articles in law reviews or specialized professional journals;

(4) attending substantive Section or Inn of Court meetings;

(5) participating as a volunteer in Youth Court or similar law-related educational youth activities;

(6) attending approved in-house continuing legal education courses;

(7) attending approved continuing judicial education courses;

(8) attending approved continuing legal education courses including local bar association programs and meetings of professional legal associations;

(9) participating as a mentor in a relationship with another member of the Alaska Bar Association for the purpose of training that other member in providing effective pro bono legal services;

(10) participating as a member of the Alaska Bar Association Law Examiners Committee, the Alaska Bar Association Ethics Committee, the Alaska Rules of Professional Conduct Committee, or any standing or special rules committees appointed by the Alaska Bar Association or the Alaska Supreme Court; **and**

(11) providing free civil legal services under the supervision of a "qualified legal services provider" as defined in Alaska Bar Rule 43.2(c)(2), or at a free legal clinic sponsored by a qualified services provider. A member may receive 1 general credit hour for every 2 hours of pro bono service as provided in this rule, not to exceed 9 general credit hours per year. To be eligible to receive general CLE credit under this rule, a member:

a. Must be in good standing of the Alaska Bar Association; and

b. May neither ask for nor receive personal compensation of any kind for the legal services rendered under this rule. If allowed by law, the pro bono attorney may seek attorney's fees on behalf of the client but may not personally retain them. Any attorney's fees awarded shall be donated to the sponsoring qualified legal services provider.

(f) Approval of CLE Programs. The Association shall approve or disapprove all education activities for credit. CLE activities sponsored by the Association are deemed approved. Forms for approval may be submitted electronically.

(1) An entity or association must apply to the Board for accreditation as a CLE provider. Accreditation shall constitute prior approval of CLE courses offered by the provider, subject to amendment, suspension, or revocation of such accreditation by the Board.

(2) The Board shall establish by regulation the procedures, minimum standards, and any fees for accreditation of providers, in-house continuing legal education courses, and publication of legal texts or journal articles, and for revocation of accreditation when necessary.

(g) Effective Date; Reporting Period; Inapplicability to New Admittees.

(1) This rule will be effective January 1, 2026. The reporting period will be the calendar year, from January 1st to December 31st. Qualifying pro bono service done from January 1, 2025 through December 31, 2025 may be reported as general CLE credit consistent with this rule.

(2) This rule does not apply to a new member of the Alaska Bar Association during the calendar year in which the member is first admitted to the practice of law in Alaska.

Alaska Bar. R. 65

Added by SCO 1366 effective 9/2/1999; amended by SCO 1640 effective 1/1/2008; amended by SCO2016 effective 1/1/2025; **and SCO____ effective 1/1/2026.**

Rule 65 - **[Effective 1/1/2026]** Continuing Legal Education, Alaska Bar. R. 65

MEMORANDUM

TO: **Board of Governors of Alaska Bar Association**

FROM: **Alaska Bar Association's Pro Bono Services Committee**

DATE: **April 14, 2025**

RE: **Proposed Amendment to Alaska Bar Rule 65 to Authorize CLE Credit Hours for Pro Bono Service**

I. Introduction

The Alaska Bar Association's Pro Bono Services Committee (the "Committee") proposes that the Board of Governors recommend that the Alaska Supreme Court amend Alaska Bar Rule 65 to permit certain types of pro bono service to count toward general CLE credit hours. This change would incentivize pro bono work, enhance access to justice, and support attorney professional development.

II. Background and Rationale

A. Increasing Access to Justice

Access to legal services is extremely limited in Alaska, particularly in rural and remote communities. *Pro se* litigants now represent more than 70% of family law matters in the Alaska Court System and 85% of all family law cases involving child support. Only about 50% of people who are eligible receive free legal services. Pro bono service can help fill this gap, ensuring that underserved communities have access to the legal representation they need. Authorizing CLE credit for pro bono service would amplify the Bar's efforts to increase access to justice.

The Alaska Bar Association has a longstanding commitment to increasing access to justice and improving the legal profession's contributions to the public good, including broad support for pro bono services. Such services play a critical role in addressing the barriers that many Alaskans face to accessing adequate legal representation. The importance of pro bono service is reflected in Alaska Rule of Professional Conduct 6.1, which states, "Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono public legal service per year." By offering CLE credit for pro bono service, the Alaska Bar Association can incentivize attorneys to volunteer to help Alaskans of limited means.

B. Furthering the Purpose of Continuing Legal Education Requirements

This proposal comports with the goals of mandatory continuing legal education credit hours. The Commentary to Alaska Bar Rule 65 states, "The Alaska Supreme Court and the Association are convinced that CLE contributes to lawyer competence and benefits the public and

the profession by assuring that attorneys remain current regarding the law, the obligations and standards of the profession, and the management of their practices." A rule granting CLE credit for pro bono service also aligns with the mission of the Alaska Bar Association, which includes seeking to "encourage continuing legal education for the membership" and "increase the public service and efficiency of the Bar." The proposed rule amendment is also consistent with other activities that are already approved for CLE credit. Alaska Bar Rule 65(g) permits, among other activities, the following activities to earn CLE credit: mentoring another attorney in providing pro bono services, publishing a legal article, serving on certain committees, presenting a continuing legal education course, and volunteering with Anchorage Youth Court. The existing rule reflects the value the Bar and our community place on public service. Twenty other states have already adopted similar CLE credit for pro bono service rules, recognizing the dual benefits of supporting pro bono work and fostering professional development.[1]

Attorneys who engage in pro bono service not only provide a valuable public service but also develop their legal skills. Pro bono cases may present novel issues or issues outside an attorney's usual practice area, enabling attorneys to expand their legal knowledge and gain experience in areas they may not otherwise encounter in their regular practice. Newer attorneys may get exposure to in-depth client contact and courtroom experience through pro bono work, an opportunity that may not be offered until years later by their firms. Many of the qualified legal services providers offer mentorship, CLE coursework, brief banks, and other support for their pro bono attorneys, thereby teaching volunteer attorneys new legal skills without depleting additional training and supervision resources from their law firms. Taking on a case for pro bono representation is particularly useful training for newer attorneys who seek to go into litigation. Allowing CLE credit for pro bono service recognizes the hands-on professional skills gained through this work.

C. Overcoming Barriers to Pro Bono Service

The proposed rule amendment also addresses barriers to pro bono service that attorneys face. According to the ABA's Standing Committee on Pro Bono and Public Service, earning CLE credit for pro bono work is among the top five out of twenty actions that would motivate attorneys to engage in more pro bono service.[2] That report found that although most of the 19,000 attorneys surveyed held positive views of pro bono and are motivated to do pro bono, lack of time was the

[1] *See* https://www.americanbar.org/groups/probono_public_service/policy/cle_rules/; https://www.cpbo.org/wp-content/uploads/2024/11/Pro-Bono-and-CLE-Credit-Guide.pdf, accessed on April 1, 2025.
[2] *See* ABA Standing Committee on Pro Bono and Public Service, "Supporting Justice V: A Report on the Pro Bono Work of America's Lawyers," at page 24 (November 2024) https://www.americanbar.org/content/dam/aba/administrative/probono_public_service/other-documents/supporting-justice-v.pdf

most discouraging factor for providing pro bono services (56.4%) followed by having family or other personal obligations (41.2%).[3] In Alaska, a 2024 Bar survey of Bar members revealed that only 15% of respondents reported meeting the 50 hours of pro bono service recommended by Alaska Bar Rule 6.1.[4] Allowing pro bono work to count as CLE credit will ease the burden of time constraints felt by so many attorneys.

The new Alaska mandatory CLE rule may have the unintended consequence of making it even less likely that attorneys will do pro bono service if they already feel they have limited time that they could dedicate to volunteer work and must now also attain an additional nine CLE credit hours. Many attorneys, especially those in private practice, may feel the burden of balancing client work with the additional credit hours. Allowing pro bono service to count toward general CLE credit hours may ease this pressure, make it more likely that attorneys will be motivated to volunteer, and will incentivize attorneys to continue to engage in pro bono activities over the long term. In addition, 70-90% of Bar members opposed the imposition of mandatory general CLEs, so a rule expanding the ways in which members can earn CLE credit is likely to be met with approval by Bar members.[5]

III. Implementation

The details the Board will need to decide regarding adoption of a CLE credit for pro bono service rule include:

1. The number of CLE hours to credit for pro bono service annually;
2. The maximum number of CLE hours that can be earned through pro bono service each year;
3. Reporting of pro bono service for CLE credit hours;
4. Defining what type of pro bono service counts for CLE credit; and
5. Other eligibility requirements for CLE credit for pro bono service.

The Committee proposes that Alaska Bar Rule 65 be amended to add the following new Section (c)(11), allowing the following activity to be approved for general CLE credit:

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[3] *See id*, at p. 23.

[4] 2024 Alaska Bar Membership Survey Results," memorandum from Danielle Bailey to Members of the Alaska Bar Association, November 18, 2024. Nationwide, 18.3% of attorneys provide more than 50 hours per year of pro bono service. *See supra* note 2, at page 9.

[5] *See* "Board proposes mandatory CLE requirements," by Diana Wildland, Alaska Bar Rag, April – June 2023 at p.2 (explaining that the mandatory general CLE rule was passed after three legislative audits recommending an increase in MCLE; the BOG declined to take action after the 2011 Bar poll showing a 90% opposition to the increase but ultimately proposed mandatory CLE after a 2022 poll showed 70% of Bar members opposed the increase in MCLE).

(11) providing free civil legal services under the supervision of a "qualified services provider" as defined in Alaska Bar Rule 43.2(c)(2), or at a free legal clinic sponsored by a qualified services provider. A member may receive 1 general credit hour for every 2 hours of pro bono service as provided in this rule, not to exceed 9 general credit hours per year. To be eligible to receive general CLE credit under this rule, a member:

a. Must be in good standing of the Alaska Bar Association; and

b. May neither ask for nor receive personal compensation of any kind for the legal services rendered under this rule. If allowed by law, the pro bono attorney may seek attorney's fees on behalf of the client but may not personally retain them. Any attorney's fees awarded shall be donated to the sponsoring qualified legal services provider.

A. CLE Credit Hours for Pro Bono Service

The committee recommends a rule that permits one general CLE credit hour per two hours of pro bono work. Of the twenty states that have adopted rules providing CLE credit for pro bono service, states require between two and six hours of pro bono service to earn one CLE credit, with an average of 4.1 hours and a median of five hours of pro bono service for each CLE credit.[6]

The committee recommends the lower two hours of pro bono service per CLE credit to strike a balance between incentivizing attorneys who can only provide limited engagement pro bono service while maximizing the number of pro bono hours donated. Limited engagement pro bono projects, such as hotlines and legal clinics, often require a two-hour minimum time commitment for pro bono attorneys. Of attorneys who engage in pro bono work, 42.4% provide limited scope representation.[7] An attorney who volunteers once per year at a clinic or hotline could thus earn one CLE credit. If the number of pro bono service hours per credit were four to six hours per CLE credit, the rule may not have the intended effect of encouraging pro bono service for those with limited availability. On the other hand, only requiring one hour of pro bono service per CLE credit may not increase pro bono service. For these reasons, the committee recommends two hours of pro bono service per general CLE credit as a midpoint.

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[6] *See* Table 1, attached, Hours of Pro Bono Service Per CLE and Annual Caps – By State, compiled by Lea McKenna based on the ABA's "CLE Credit for Pro Bono," accessed on 2/28/25 on https://www.americanbar.org/groups/probono_public_service/policy/cle_rules/; see also https://www.cpbo.org/wp-content/uploads/2024/11/Pro-Bono-and-CLE-Credit-Guide.pdf. Note that five jurisdictions in the U.S. do not have a CLE mandate: District of Columbia, Maryland, Massachusetts, Michigan, and South Dakota. https://www.cpbo.org/wp-content/uploads/2024/11/Pro-Bono-and-CLE-Credit-Guide.pdf

[7] *See supra* note 2, at p. 10.

B. Cap for CLE Hours Earned Through Pro Bono Service

All states that allow CLE credit for pro bono service also impose a cap on the number of CLE credits that may be earned for pro bono service, which ranges from two to ten CLE credits per year.[8] A cap serves to ensure that general CLE credit is not earned solely through pro bono service.

The Committee recommends a cap of 9 general CLE credit hours for pro bono service. This will leave 3 ethics CLE credits to be earned through other activities approved under Bar Rule 65. Using a conversion rate of 2 hours of pro bono service per CLE credit earned, an attorney would have to volunteer 18 hours per year before they would attain the maximum CLE credits that may be earned through pro bono service. This cap is consistent with the stated goals of the MCLE requirements and will likely be met with approval from members of the Bar, who largely disfavored adoption of the mandatory CLE rule.[9]

C. Reporting of Credits Earned Through Pro Bono Service

Consistent with the existing Rule 65(c) requiring only self-certification for CLE reporting, the Committee recommends that credit for pro bono service be self-certified.[10] The Alaska Bar Association may provide tools or guidance to members to encourage self-certification compliance, such as supplying a template affidavit with the number of hours of pro bono service, the name of the qualified services provider, and a brief description of the pro bono services rendered. The Bar may also wish to add an additional section to the CLE reporting section of its website where members can report the number of hours of CLE credit earned through pro bono service, which may provide valuable data to the Bar and convenient tracking for members. However, no additional language needs to be added to Rule 65 for these suggestions to be implemented.

D. Defining Pro Bono Service

The Committee proposes that the definition of pro bono service that will count toward CLE credit remains consistent with Alaska Bar Rule 43.2 on Emeritus Attorneys and Alaska Bar Rule 43.6 on out-of-state attorneys. Alaska Bar Rule 43.2(c)(1)(A) defines an Emeritus Attorney as one who "provides free civil legal services in Alaska under the supervision of a qualified legal services provider as defined in this rule." Alaska Bar Rule 43.6 includes identical language for pro bono

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[8] *See id.*

[9] *See* "Board proposes mandatory CLE requirements," by Diana Wildland, Alaska Bar Rag, April – June 2023 at p.2.

[10] *See* Alaska Bar Rule 65(c) ("A member shall maintain records of approved MCLE for the two most recent reporting periods, and those records shall be subject to audit by the Association on request.")

work that attorneys who are licensed in another jurisdiction may perform in Alaska. Alaska Bar Rules 43.2(c)(2) and 43.6(4) define a "qualified legal services provider" as "a not-for-profit legal assistance organization that is approved by the Board of Governors." Both rules state that a legal assistance organization that wants to be a "qualified legal services provider" must file a petition with the Board of Governors with specific information to qualify.[11]

The proposed amended Rule 65 will refer to the definition of a "qualified legal services provider" in Alaska Bar Rule 43.2(c)(2) and adds that pro bono service will also include "providing free civil legal services . . . at a free legal clinic sponsored by a qualified services provider." The current qualified legal services providers are Alaska Legal Services Corporation, Alaska Network on Domestic Violence and Sexual Assault, Alaska Institute for Justice, ACLU of Alaska, Alaska Free Legal Answers, Disability Law Center, and Alaska Native Justice Center. The committee is unaware of any other legal services providers that currently provide pro bono legal assistance to Alaskans. Volunteering for one of these providers or at free legal clinics sponsored by these qualified service providers, including the MLK Day Free Legal Help events and the Elizabeth Peratrovich Legal Clinic, would also count toward CLE credit under the proposed amended rule.

Alaska Rule of Professional Conduct 6.1 states that in fulfilling the 50 hour of recommended pro bono service per year, "the lawyer should (a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to: (1) persons of limited means or (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means." Limiting credit to pro bono service performed under the supervision of a qualified legal services provider or at a legal clinic sponsored by a qualified legal services provider is consistent with ARPC 6.1.

The Committee recommends that pro bono service be defined as service where the pro bono attorney

> May neither ask for nor receive personal compensation of any kind for the legal services rendered under this rule. If allowed by law, the pro bono attorney may seek attorney's fees on behalf of the client but may not personally retain them. Any

[11] The Board may wish to consider removing the definition of a qualified legal services provider in Alaska Bar Rule 43.2(c)(2) and 43.6(4), instead creating a stand-alone definition, perhaps as a new Alaska Bar Rule 43.7. This would make it easier to cross-reference in other rules and would avoid duplication of identical language in the rules. A new stand-alone rule defining qualified legal services providers could also define some of the benefits to being a qualified legal services provider to help Bar members understand why certain organizations are given certain benefits, such as recruiting volunteers and announcing CLEs sponsored by those organizations in the Bar's E-news and on its website.

attorney's fees awarded shall be donated to the sponsoring qualified legal services provider.

This language of not permitting payment by the client is identical to the definition of an Emeritus Attorney under Alaska Bar Rule 43.2(c)(1)(C).[12]

Attorneys may seek attorney's fees under Alaska Rule of Civil Procedure 82 if they are the prevailing party. ANDVSA reports that most pro bono attorneys who are awarded attorney's fees choose to donate such fees to ANDVSA. The Committee recommends that a pro bono attorney be required to donate an award of attorney's fees to the qualified services provider to earn CLE credit for their pro bono service. This requirement will provide vital resources to qualified legal services providers to enable them to serve more persons of limited means. The proposed language ensures that the pro bono service remain consistent with ARPC 6.1's language of aspiring to perform 50 hours of "legal services without fee or expectation of fee." The attorney may opt to instead retain an award of attorney's fees and not accept CLE credit.

E. Other Eligibility Requirements

The amended Rule requires a member seeking CLE credit for pro bono service be in good standing with the Alaska Bar Association. One may argue that a member should also be required to have no record of public discipline in any jurisdiction, as required by Rule 43.2(c)(B) for Emeritus Attorneys (no public discipline for 15 years) or Rule 43.6 for out-of-state attorneys engaged in pro bono service (no record of public discipline for professional misconduct in any jurisdiction where the attorney has ever been licensed). The committee opines that imposing such a rule for pro bono service is unnecessary and adds a layer of complication regarding whether the qualified legal services provider or the Bar would be responsible for collecting such certificates. For this reason, the committee does not recommend adding this requirement to the proposed rule.

IV. Arguments Against Permitting Pro Bono Service for CLE Credit Hours

One may argue that CLE credit hours should only be awarded for coursework, and not for pro bono service, because the purpose of CLEs is to keep attorneys appraised of new developments

[12] *See* Alaska Bar Rule 43.2(d) ("An emeritus attorney shall not be paid by the qualified legal services provider, but the qualified legal services provider may reimburse the emeritus attorney for actual expenses incurred while rendering services. If allowed by law, the emeritus attorney may seek attorney's fees on behalf of the client, but may not personally retain them. The emeritus attorney and the client shall enter into a written fee agreement under Rule of Professional Conduct 1.5 for the disposition of such fees. Collection of any money from the client, including but not limited to reimbursements for expenses incurred, shall be handled exclusively by the qualified legal services provider.")

in the law. However, the proposed rule amendment does not seek to only allow pro bono service to count as CLE credit. It is simply one of several options that exist that help broaden an attorney's understanding of substantive law and procedure to facilitate competent representation. Often, the best way to learn new material is by applying it. One of the barriers to getting attorneys to do pro bono work is their lack of knowledge in the subject area (e.g. corporate attorneys doing a pro bono family law or public benefits case). The hope is that this rule will motivate attorneys to branch out to new areas of law under the guidance of the qualified service providers, who provide free mentorship and training.

One may also argue that the proposed rule may lead to attorneys volunteering who may be solely motivated by the desire to earn CLE credit rather than competently and diligently representing their client. However, the proposed rule does not propose a one-for-one CLE credit per hour of pro bono service. For those who may seek to just want to quickly get their CLE hours done, it would be more efficient to do coursework or other CLE-approved activities rather than pro bono service. In addition, the Alaska Rules of Professional Conduct address attorneys' obligations regarding, among other requirements, competence and diligence.[13] Thus, the risk to clients and qualified service providers of having to work with volunteer attorneys with questionable motives is minimal.

V. Conclusion

The proposed amendment to Alaska Bar Rule 65 to allow CLE credit for pro bono service would increase pro bono participation, enhance attorney professional development, and improve access to justice while maintaining the integrity of Alaska's MCLE requirements. We urge the Board to publish this rule for member comment in the *Bar Rag*.

[13] Alaska Rules of Professional Conduct 1.1 and 1.3.

Hours of Pro Bono Service per CLE and Annual Caps - By State

	Hours of pro bono service = 1 CLE	Annual Cap on CLE Credit through Pro Bono	
Alabama	6	3	
Arizona	5	5	
Arkansas	3	3	
Colorado	5	3	(9 every 3 years)
Delaware	2	10	(20 every 2 years)
Florida	1	1.7	(5 every 3 years
Louisiana	5	3	
Minnesota	6	2	(6 every 3 years)
New Hampshire	5	6	
New York	2	5	
Nevada	3	4	
North Dakota	6	1	(3 every 3 years)
Ohio	6	3	(6 every 2 years)
Oregon	2	2	(6 every 3 years)
Pennsylvania	5	3	
Tennessee	5	3	
Washington	1	10	(45 total credits required over 3 years with 15 in the form of approved courses)
West Virginia	3	3	
Wisconsin	5	6	
Wyoming	5	3	
20 states total with:			
Average:	**4.1**	**4.0**	
Median:	**5**	**3**	

This Table 1 was compiled by Alaska Bar Association Pro Bono Director Lea McKenna based on the ABA's "CLE Credit for Pro Bono," accessed on 2/28/25, https://www.americanbar.org/groups/probono_public_service/policy/cle_rules/

8

Alaska Rules of Professional Conduct 1.2 & 1.16 Rule Proposal

MEMORANDUM

DATE: April 11, 2025

TO: Board of Governors

FROM: Phil Shanahan, Bar Counsel PES

RE: Proposed Amendment to ARPCs 1.2(d) and 1.16

At the Board's last meeting in January, John Murtagh, Chair of the Alaska Rules of Professional Conduct Committee ("Rules Committee") presented a rule change proposal that would amend ARPC 1.2(d) and ARPC 1.16. The amendments were proposed in an attempt to address concerns that led the American Bar Association to amend Model Rule 1.16. The Board agreed to send the proposed ARPC amendments to the membership to solicit comments.

In order to reach as many members as possible, the request for comments was included in the Alaska Bar Association's weekly E-News from February 13, 2025 through March 27, 2025. The request for comment was also posted on the Bar's website under "Latest News" for several weeks. Lastly, it was published in the January-March 2025 edition of *The Alaska Bar Rag* on pp.6-8.

A total of one (1) comment from a retired bar member was received and is attached hereto. I have also included the materials that were provided to the Board at the January meeting.

At the upcoming meeting, Mr. Murtagh will again be present and ready to address any questions or concerns from the Board. The Rules Committee is now requesting that the Board approve the amendments and forward them along to the Alaka Supreme Court for its consideration.

MEMO TO THE ALASKA BOARD OF GOVERNORS REGARDING PROPOSED AMENDMENTS TO ALASKA RULES OF PROFESSIONAL CONDUCT 1.2 AND 1.16

This examination of Rules 1.2 and 1.16 was triggered by an amendment by the ABA to Model Rule 1.16

On October 6, 2023, the American Bar Association Center for Professional Responsibility sent a letter to Chief Justice Maassen recommending that Alaska Rules of Professional Conduct 1.16 be amended to conform with a recent Amendment to the Model Rules.[1]

The Alaska Rules of Professional Conduct Committee (hereinafter "the Committee") met for 90 minutes on six occasions, beginning on December 1, 2023. The final meeting was held on July 11th. As is always the case with the Committee, significant discussions also took place via email, including the final voting on the proposed drafts presented today.

The Rationale for the ABA Revision

ABA Report 100, issued in support of the proposed amendment makes clear that the impetus for these revisions was the pending Congressional action on a bill entitled "The ENABLERS Act" which was designed to address concerns about money laundering. Its intent was to

> close loopholes that allowed "enablers" to launder elicit funds in the U.S. by extending reporting anti-money laundering [AML] requirements to professional service providers, including accountants, lawyers, and third-party payment services. This extension sought to hold these

[1]It is likely that similar letters were sent to each chief justice or Bar Counsel nationwide. Nothing in that letter or the ABA report on the change to the Model Rule suggests that the issue is unique to Alaska.

> professionals accountable and encourage greater transparency. https://alessa.com/blog/enablers-act/

ABA Report 100 notes that the rule amendments were proposed in order to meet the stated goals of the ENABLERS Act, making passage of that act unnecessary. Outgoing ABA Treasurer Kevin Shepherd urged the ABA to pass this resolution noting that without this it would result in

> Treasury (exploring) every means available in its regulatory toolkit to impose regulations on the legal profession. It's not a threat – it's just a simple fact and political reality. We ignore it at our peril. ABA Journal August 8, 2023.

In its report urging adoption of the amendments, the ABA asserted that the new language would not change the heretofore present requirements of 1.16.

The Committee's Initial Observations of present Rule 1.16

Rule 1.16 is titled Declining or Terminating Representation. The first sentence proposed by the ABA provides[2]

> A lawyer shall inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation.

The Committee quickly noted that this rule does not make clear the distinction between the required inquiry prior to accepting a representation and a later duty to determine whether a representation may continue. The ABA proposal does not state what circumstances would trigger the duty for a further inquiry once representation has begun. The Committee recognizes that a detailed inquiry is necessary in determining whether a representation can be accepted. Issues such as conflict of interest have to be studied.

[2] The revised Model Rule 1.16 is attached in legislative format.

The question that arises is what are the specific duties in this regard once a representation is in place? Must the lawyer diligently inquire at each client contact, or does the duty of inquiry regarding continuing representation come into play when new information is learned? This was discussed extensively at both the December 1st and March 6th meetings.

It was also observed that the ABA addition to 1.16, that the lawyer shall not accept or continue a representation if

> (4) the client or prospective client seeks to use of persists in using the lawyer's services to commit or further a crime or fraud, despite the lawyer's discussion pursuant to rule 1.2 (d) and 1.4(a)(5) regarding the limitations on the lawyer assisting with the proposed conduct

did not include a mental state.

Is the lawyer required to take action if

- they actually know of the intent to commit or further a crime
- or if they suspect it
- or if it only might be possible?

The Committee and Bar Counsel are very familiar with the need to make the mental state supporting discipline very clear, and found the ABA rule to fall short in that regard.

The analysis and conclusions regarding mental state and new duties

The ABA report[3] concludes that the revised rule merely provides clarification and does create any new duties.

[3] Attached

Judge David Mannheimer's research of ABA Formal Opinion 20-491, *Obligations Under Rule 1.2(d) to Avoid Counseling in a Crime or Fraud in Non-Litigation Settings*[4] demonstrates that the revised rule does create new duties for attorneys. As it would do a disservice to summarize his analysis, the portion of his report to the Committee on this points follows

> ABA Opinion 491 describes how, historically, discipline has been imposed on lawyers in three different situations: (1) situations where a lawyer *knew* (*i.e.*, had actual knowledge) that their client's activity was criminal or fraudulent, (2) situations where a lawyer was aware of a high probability that their client's activity was criminal or fraudulent, and the lawyer consciously and deliberately decided not to investigate the matter further (what the ABA drafters call "willful blindness" to a client's crime or fraud), and (3) situations where a lawyer *negligently* failed to discover that their client's activity was criminal or fraudulent -- that is, situations where the lawyer was aware of facts that would have "suggested" to a reasonable attorney that the client was engaged in a crime or fraud, and the lawyer failed to investigate this potential problem.
>
> Although ABA Opinion 491 discusses these three potential grounds for imposing discipline, the authors of Opinion 491 only endorse the imposition of discipline in situations (1) and (2) -- that is, when a lawyer acts either with actual knowledge or with willful blindness to a client's crime or fraud.
>
> With regard to situation (3) -- *i.e.*, a lawyer's *negligent* failure to discover a client's crime or fraud -- the authors of Opinion 491 concede that several jurisdictions "have rejected a negligence standard for Rule 1.2(d)", and then the ABA authors expressly disavow any intention of approving -- or even advocating -- a "negligence" or "reasonably should have known" test for attorney discipline under Model Rule 1.2.

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[4] Attached

(You have to search carefully for this portion of ABA Opinion 491: it's found in the final paragraph of footnote 22, at the bottom of page 5 of the Opinion.)

So with this in mind, let's consider anew the ABA's Report on Resolution 100 -- the Report where the proponents of the amendment to Model Rule 1.16 claim that the new language of the Rule does not impose any new obligation on lawyers -- and compare this assertion to the actual content of the amended Model Rule 1.16.

As amended, Model Rule 1.16(a) begins with the following new language: "A lawyer shall inquire into and assess the facts and circumstances of *each representation* to determine whether the lawyer may accept or continue the representation." And, according to the new language that the ABA inserted into Comment [1] to Rule 1.16, this obligation to inquire into and assess the legality of a client's activities "continues throughout the [lawyer's] representation [of the client]".

In other words, Model Rule 1.16(a) now requires lawyers to inquire into and assess the legality of a client's activities *in every case*, and the Rule declares that this duty is a continuing one, potentially requiring further inquiry and re-assessment until the day the lawyer stops representing the client.

But ABA Opinion 491 (issued in the spring of 2020) declares that a lawyer's affirmative duty of inquiry is triggered only when a lawyer is aware of a "high probability" that a client is committing a crime or fraud. As I have already explained, footnote 22 of Opinion 491 declares that a lawyer *should not be disciplined* for negligence -- that is, should not be disciplined for failing to inquire further into a client's activities if the facts known to the lawyer merely "suggest" that a client might be committing a crime or fraud.

> Thus, the amended version of Model Rule 1.16 does indeed impose a new obligation on lawyers.

The Committee does not support the ABA amendment to 1.16 and, instead, proposes changes to 1.2(d) and 1.16 to meet the stated goals

The Committee spent several meetings determining if edits to the ABA Revised Rule 1.16 would be the appropriate approach. Several members drafted amendments to the revised rule which were discussed by the group. After many collective hours, the Committee concluded that "revising the Revision" would not achieve the desired results.

The principal, but not only, reasons this conclusion was reached were

- the failure to distinguish the lawyers duty of inquiry in deciding whether to accept a representation and whether to withdraw from a representation, and
- the lack of clarity regarding the mental state required to trigger the responsibility to decline a representation or to withdraw from a representation
- the failure of the ABA to address the issue of "deliberate ignorance" when a question is presented whether an attorney had knowledge that would trigger a responsibility

The Committee turned to a different approach.

The Committee's Amendment of ARPC 1.2

Alaska Rule of Professional Conduct 1.2 is titled Scope of Representation and Allocation of Authority Between Client and Lawyer. Subsection (d) of the present rule already provides

> ...a lawyer shall not counsel or assist a client to engage in conduct that the lawyer knows is criminal or fraudulent[.]

The conduct targeted by the ENABLERS Act falls within this prohibition.

Committee member Lacey Jane Brewster should get much of the credit for observing that Rule 1.2(d) is the proper forum for the rules about what a lawyer must do in the face of potential questionable conduct by a potential or actual client. The Committee then, as can be seen in our draft, inserted language into 1.2(d) that specifically covers the concerns of the ENABLERS Act and ABA Report 100:

> (d) Except as provided in paragraph (f), a lawyer shall not counsel or assist a client to engage in conduct ~~that~~ if the lawyer knows that the conduct is criminal or fraudulent or if the lawyer chooses to remain deliberately ignorant as to whether the conduct is criminal or fraudulent. For purposes of this Rule, a lawyer is "deliberately ignorant" if the lawyer (1) is aware of a high probability that the client is using or plans to use the lawyer's services to accomplish or facilitate a crime or fraud and, acting with this awareness, (2) the lawyer deliberately chooses not to pursue readily available means of investigating this matter (3) for the purpose of avoiding confirmation of the lawyer's suspicions. A lawyer is not "deliberately ignorant" if the lawyer's failure to investigate is the result of the lawyer's honest belief, despite reasons to suspect otherwise, that the client is not using or planning to use the lawyer's services to accomplish or facilitate a crime or fraud. ~~, but~~ This paragraph does not prohibit a lawyer ~~may discuss the legal~~ from discussing the legality or the potential legal consequences of any proposed course of conduct with a client, nor does it prohibit a lawyer ~~and may counsel or assist~~ from counseling or assisting a client to make a ~~good faith~~ good-faith effort to determine the validity, scope, meaning, or application of ~~the~~ any law.

The Committee, guided by Judge David Mannheimer who did most of the research and drafting, included language making the mental state clear and specifically addressing the notion of "deliberate ignoran(ce)." The Committee considered amending the rule to include a specific definition of knowledge applicable just to this rule. Doug Johnson researched how often the term "knowledge" or "knowingly" is found in other rules. That total is twenty-nine other places in the Rules of Professional Conduct.

That led the Committee to conclude that when a term is used that widely in the rules, it should have a single meaning and not a special "as used in this rule" meaning.

The Committee was also very concerned with the circumstance where an attorney was presented with objectively troublesome facts but claims they did not actually "know." As a result, the Committee concluded that 'deliberate/willful blindness' should not be a defense.

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The Committee Also Proposes Changes to the Comment to Rule 1.2

The proposed additions to the Comment to Rule 1.2 also expand on this concept and include specific references for practitioners to review to learn about money laundering. The proposed Comment, which includes language in the existing Comment to Rule 1.2, is provided below, and a legislative version is included as an attachment.

Criminal, Fraudulent, and Prohibited Transactions

A lawyer is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses a lawyer's advice in a course of action that is criminal or fraudulent does not, of itself, make the lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity. But a lawyer must not assist a client in conduct that is criminal or fraudulent when the lawyer knows that the conduct is criminal or fraudulent or when the lawyer chooses to remain deliberately ignorant of this fact.

As defined in paragraph (d), a lawyer is "deliberately ignorant" of a client's criminal or fraudulent conduct if the lawyer (1) is aware of a high probability that the client is using (or plans to use) the lawyer's services to accomplish or facilitate a crime or fraud and, acting with this awareness, (2) the lawyer deliberately chooses not to pursue readily available means of investigating this matter (3) for the purpose of avoiding confirmation of the lawyer's suspicions.

To constitute "deliberate ignorance", the lawyer's decision not to investigate must be motivated by the lawyer's conscious goal of avoiding further knowledge that might confirm the lawyer's suspicions that the client is engaged in a crime or fraud. This means that a lawyer is not "deliberately ignorant" if the lawyer's failure to investigate is the result of the lawyer's honest belief, despite reasons to suspect otherwise, that the client is not using or planning to use the lawyer's services to accomplish or facilitate a crime or fraud. Likewise, a lawyer does not act with "deliberate ignorance" if the lawyer *does* undertake a reasonable investigation and, based on this investigation, the lawyer concludes in good faith that the client is not using the lawyer's services to commit or to further a crime or fraud.

The concept of deliberate ignorance differs in important ways from the lesser standards of negligence and recklessness.

To constitute deliberate ignorance, the lawyer's duty of inquiry must be triggered by the lawyer's awareness of a "high probability" — a high likelihood — that the client is using the lawyer's services (or planning to use the lawyer's services) to accomplish or facilitate a crime or fraud. A lawyer is not "deliberately ignorant" if the lawyer simply acts negligently — *i.e.*, if the lawyer fails to perceive a substantial risk of illegal activity that a reasonable lawyer would have perceived.

Even when a lawyer reasonably believes that the client is using (or planning to use) the lawyer's services to accomplish or facilitate a crime or fraud, this reasonable belief, standing alone, does not mean that the lawyer acts with "deliberate ignorance" if

the lawyer decides to continue representing the client. In such situations, Rule 1.16(b)(2) declares that a lawyer has the *right*, but not the *duty*, to terminate the representation. The lawyer's decision to continue representing the client does not constitute "deliberate ignorance" of the client's crime or fraud unless (1) the facts giving rise to the lawyer's reasonable belief are so compelling that the lawyer is aware of a "high probability" that the client is using the lawyer's services for illegal purposes, and (2) the lawyer's failure to investigate further is motivated by the lawyer's conscious goal of avoiding confirmation of the lawyer's suspicions. In short, "reasonably believes" is the standard that triggers a lawyer's right of permissive withdrawal under Rule 1.16(b)(2), while "knowledge" or "deliberate ignorance" is the standard that triggers a duty of mandatory withdrawal under Rule 1.16(a)(1).

If a duty of investigation is triggered under paragraph (d) of this Rule, the reasonableness of the lawyer's investigation will depend on the degree of risk that the client is using or seeking to use the lawyer's services to commit or further a crime or fraud. In evaluating this level of risk, a lawyer may reasonably consider

- the identity of the client (*i.e.*, whether the client is a natural person or an entity — and, if an entity, the identity of the directors and/or beneficial owners of that entity),
- the lawyer's experience and familiarity with the client,
- the nature of the legal services that the client is requesting,
- the identity and reputation of the jurisdictions involved in the representation,

- (*e.g.*, whether that jurisdiction is known to be linked to money laundering or terrorist financing), and
- the identities of the people or entities who are depositing funds into, or who are receiving funds from, the lawyer's trust account or other accounts in which client funds are held.

For further guidance in assessing the risk that a client is using a lawyer's services to commit or further acts of money laundering or a scheme to finance terrorism, a lawyer may consult resources such as the *Financial Action Task Force Guidance for a Risk-Based Approach for Legal Professionals*, the American Bar Association's *Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing*, *A Lawyer's Guide to Detecting and Preventing Money Laundering* (a collaborative publication of the International Bar Association, the American Bar Association, and the Council of Bars and Law Societies of Europe), the Organization for Economic Cooperation and Development's *Due Diligence Guidance for Responsible Business Conduct*, and the U.S. Treasury Department's list of "Specially Designated Nationals and Blocked Persons," and similar legal resources, as they may be updated and amended.

When the client's criminal or fraudulent course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is not permitted to reveal the client's wrongdoing except when permitted by Rule 1.6. However, the lawyer is required to avoid furthering the client's

unlawful purpose — for example, by suggesting how the crime or fraud might be concealed. A lawyer must not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. Withdrawal from the representation, therefore, may be required by Rule 1.16(a)(1)(A), and remedial measures may be required by Rule 4.1.

Where the client is a fiduciary, the lawyer may have special duties to a beneficiary. See Rule 4.1.

Paragraph (d) of this Rule applies whether or not the defrauded party is a party to the transaction. However, paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or proper interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

The Recommended Amendments to Rule 1.16

This can best be studied by looking at the draft in legislative format that is attached. Many of the edits are just to use clearer language:

- (2) is to make clear the steps a retained attorney must take when discharged[5]

[5] A criminal defendant with court-appointed counsel does not have the absolute right of discharge. *See, e.g.,* Coleman v. State, 621 P.2d 869, 878 (Alaska 1980) ("[I]ndigent defendants are not constitutionally entitled to counsel of their choice").

- (3) is the concept in the opening sentence of the revision in the Model Rule regarding accepting a representation, with the insertion of the phrase directing attention to the applicable underlying rule

- (4) is the paragraph related to responsibilities during an ongoing representation

Actions taken by other states

Three states have taken action on this ABA proposal: Massachusetts has a proposed rule change out for comment, Oregon has formally adopted a new version of Rule 1.16, and Wyoming has adopted the Model Rule verbatim adding just a cite to a local rule to paragraph [3] of the Comment.

While the Committee was meeting, Massachusetts proposed modifying its Rule 1.16, which was discussed by the Committee. Their final product is attached in double legislative format, with the blue being the ABA changes made to the Massachusetts rule and the red being the changes proposed by Massachusetts to the final ABA Model Rule.

The proposal in Massachusetts makes minor changes, including: dividing the introductory language into two parts (a) and (b); inserting "or" after subsection (2) moving the designation of the disjunctive, and changing the withdrawal language from "employment" to "the representation" or "engagement." Massachusetts appears to have proposed adopting the ABA changes to the Comment to Rule 1.16 with the exception of the listing of legal relevant authorities.

This language omitted by Massachusetts discussing legal authorities has been moved by the Committee, with a minor addition advising the practitioner to also look to more recent authority, to the proposed Comment to Alaska Rule 1.2.

Oregon revised its rule after the Committee completed its work. The Oregon modification to its prior rule adds the first sentence of the ABA

Model Rule to its 1.16(a) with one important change. As did the Committee, Oregon noted the potential issues regarding mental state. The ABA Model rule begins "a lawyer shall inquire into…" and Oregon inserted the term "reasonably" making its rule begin – "a lawyer shall reasonably inquire into…." It also adds section (a)(4) verbatim. Unlike the ABA and Alaska, Oregon does not adopt Comments to accompany each rule.

Bar Counsel's recent contact with the ABA about whether other jurisdictions have acted in response to the new Model Rule 1.16 resulted in this response:

> A recommendation to amend might soon be on horizon: Massachusetts, New York, North Dakota, and Washington.
>
> Jurisdictions that are still considering whether to amend 1.16: the District of Columbia, Ohio, Texas, Wisconsin.

ABA Opinion 513 – Issued August 23, 2024

This opinion entitled *Duty to Inquire Into and Assess the Facts and Circumstances of Each Representation*, 'interprets' the revisions to Model Rule 1.16(a). Its Introduction notes:

> In August 2023, this previously implicit duty to inquire and assess the facts and circumstances of a representation was made explicit by amendments to Rule 1.16.

The Opinion is attached and should be reviewed. Much of it discusses the motivating factor for the amendment to the Model Rule, and states, near the end of the Introduction:

> … the revised Rule does not impose any new obligations; instead, it adds existing obligations – as detailed in past ethics opinions and other Rules and Comments – to the text of Rule 1.16 and its Comments.

As noted above, the Committee respectfully disagrees with this analysis, as it has concluded that the ethics opinions cited – ABA

Formal Opinions 13-463 and 20-491 did not actually trigger inquiry notice.

This opinion may, however, provide helpful guidance in its section III.A – *What does it mean to "inquire into and assess the facts and circumstances"?*

The ABA also notes – as did the Committee in its drafting – that the nature of the lawyer's duties between assessing accepting a representation and continuing a representation are different. *See* section III.B – *What triggers the obligation to inquire into and assess whether a lawyer may continue an existing representation under Rule 1.16.*

The Committee finished its work, other than small final edits, prior to the issuance of this ABA Opinion. The Opinion was shared with the Committee but has not been considered by the Committee as a whole at a meeting. The Chair and Bar Counsel do not believe remand to the Committee to do so would be necessary or productive.

Conclusion

The rule revisions as unanimously recommended by the Committee further several goals. They make clear the difference between what a lawyer is required to do prior to accepting a representation and the requirements to determine what must be done in an ongoing representation. The Amendments to 1.2 specifically address the concerns of the ENABLERS Act and, unlike the ABA Model Rule, carefully set out the mental states required to initiate action regarding the appropriateness of a representation.

The proposed amendment, unlike the Model Rule, addresses in detail the rule that "deliberate ignorance" of circumstances that would require inquiry into whether the lawyer's services were being used "to accomplish or facilitate a crime or fraud" is a violation of the rule. It defines "deliberate ignorance" in significant detail.

The extended additional new Comment to Rule 1.2 is a combination of the existing Comment, new language added to discuss the changes made by the Committee, and language adopted as the Comment to Model Rule 1.16. The Committee's intent is that the Comment will provide helpful guidance to lawyers who might be confronted with these issues in their practice.

Attachments:

ABA Model Rule 1.16 legislative format
ABA Model Rule 1.16 clean copy
ABA Revised Report 100
ABA Ethics Opinion 20-491
ABA Ethics Opinion 24-513
Committee Rule 1.2 legislative format
Committee Rule 1.2 clean copy
Committee Rule 1.16 legislative format
Committee Rule 1.16 clean copy
MASSACHUSETTS PROPOSED RULE
OREGON AMENDED RULE
WYOMING AMENDED RULE

ABA Model Rule 1.16: Declining or Terminating Representation

(a) A lawyer shall inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation. Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; ~~or~~

(3) the lawyer is discharged; or

(4) the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud, despite the lawyer's discussion pursuant to Rules 1.2(d) and 1.4(a)(5) regarding the limitations on the lawyer assisting with the proposed conduct.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

Comment

[1] Paragraph (a) imposes an obligation on a lawyer to inquire into and assess the facts and circumstances of the representation before accepting it. The obligation imposed by Paragraph (a) continues throughout the representation. A change in the facts and circumstances relating to the representation may trigger a lawyer's need to make further inquiry and assessment. For example, a client traditionally uses a lawyer to acquire local real estate through the use of domestic limited liability companies, with financing from a local bank. The same client then asks the lawyer to create a multi-tier corporate structure, formed in another state to acquire property in a third jurisdiction, and requests to route the transaction's funding through the lawyer's trust account. Another example is when, during the course of a representation, a new party is named or a new entity becomes involved. A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.1, 1.2(c) and 6.5. See also Rule 1.3, Comment [4].

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation. Under paragraph (a)(4), the lawyer's inquiry into and assessment of the facts and circumstances will be informed by the risk that the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud. This analysis means that the required level of a lawyer's inquiry and assessment will vary for each client or prospective client, depending on the nature of the risk posed by each situation. Factors to be considered in determining the level of risk may include: (i) the identity of the client, such as whether the client is a natural person or an entity and, if an entity, the beneficial owners of that entity, (ii) the lawyer's experience and familiarity with the client, (iii) the nature of the requested legal services, (iv) the relevant jurisdictions involved in the representation (for example, whether a jurisdiction is considered at high risk for money laundering or terrorist financing), and (v) the identities of those depositing into or receiving funds from the lawyer's client trust account, or any other accounts in which client funds are held. For further guidance assessing risk, see, e.g., as amended or updated, Financial Action Task Force Guidance for a Risk-Based Approach for Legal Professionals, the ABA Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing, A Lawyer's Guide to Detecting and Preventing Money Laundering (a collaborative publication of the International Bar Association, the American Bar Association and the Council of Bars and Law Societies of Europe), the Organization for Economic Cooperation and Development (OECD) Due

Diligence Guidance for Responsible Business Conduct, and the U.S. Department of Treasury Specially Designated Nationals and Blocked Persons List.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.15.

ABA Model Rule 1.16: Declining or Terminating Representation

(a) A lawyer shall inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation. Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;

(3) the lawyer is discharged; or

(4) the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud, despite the lawyer's discussion pursuant to Rules 1.2(d) and 1.4(a)(5) regarding the limitations on the lawyer assisting with the proposed conduct.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

Comment

[1] Paragraph (a) imposes an obligation on a lawyer to inquire into and assess the facts and circumstances of the representation before accepting it. The obligation imposed by Paragraph (a) continues throughout the representation. A change in the facts and circumstances relating to the representation may trigger a lawyer's need to make further inquiry and assessment. For example, a client traditionally uses a lawyer to acquire local real estate through the use of domestic limited liability companies, with financing from a local bank. The same client then asks the lawyer to create a multi-tier corporate structure, formed in another state to acquire property in a third jurisdiction, and requests to route the transaction's funding through the lawyer's trust account. Another example is when, during the course of a representation, a new party is named or a new entity becomes involved. A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.1, 1.2(c) and 6.5. See also Rule 1.3, Comment [4].

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation. Under paragraph (a)(4), the lawyer's inquiry into and assessment of the facts and circumstances will be informed by the risk that the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud. This analysis means that the required level of a lawyer's inquiry and assessment will vary for each client or prospective client, depending on the nature of the risk posed by each situation. Factors to be considered in determining the level of risk may include: (i) the identity of the client, such as whether the client is a natural person or an entity and, if an entity, the beneficial owners of that entity, (ii) the lawyer's experience and familiarity with the client, (iii) the nature of the requested legal services, (iv) the relevant jurisdictions involved in the representation (for example, whether a jurisdiction is considered at high risk for money laundering or terrorist financing), and (v) the identities of those depositing into or receiving funds from the lawyer's client trust account, or any other accounts in which client funds are held. For further guidance assessing risk, see, e.g., as amended or updated, Financial Action Task Force Guidance for a Risk-Based Approach for Legal Professionals, the ABA Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing, A Lawyer's Guide to Detecting and Preventing Money Laundering (a collaborative publication of the International Bar Association, the American Bar Association and the Council of Bars and Law Societies of Europe), the Organization for Economic Cooperation and Development (OECD) Due Diligence Guidance for Responsible Business Conduct, and the U.S. Department of Treasury Specially Designated Nationals and Blocked Persons List.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.15.

REVISED REPORT

Introduction

The Standing Committee on Ethics and Professional Responsibility (the "Ethics Committee") and the Standing Committee on Professional Regulation (the "Regulation Committee") propose amendments to the Black Letter and Comments to ABA Model Rule of Professional Conduct 1.16, Declining or Terminating Representation.

This Resolution constitutes another piece of the ABA's longstanding and ongoing efforts to help lawyers detect and prevent becoming involved in a client's unlawful activities and corruption, as described in this Report. In February 2023, the ABA House of Delegates adopted Resolution 704 proposed by the Working Group on Beneficial Ownership. Resolution 704 updates ABA policy on entities providing the federal government with information about the identity of the entity's beneficial owners. Resolution 704, like this Resolution, represents a compromise among those with diverse and strongly held views. This Resolution presents a balanced approach to ensuring that lawyers conduct inquiry and assessment - appropriate to the circumstances - to detect and prevent involvement in unlawful activities and corruption.

The proposed amendments to the Black Letter clearly state for lawyers their obligations to inquire about and assess the facts and circumstances when considering whether to undertake a representation and their ongoing obligations throughout the representation. The amendments further state that the lawyer must decline the representation or withdraw when the prospective client or client seeks to use or persists in using the lawyers' services to commit or further a crime or fraud after the lawyer has advised of the limitations on the lawyer's services.

These are not new obligations. Lawyers already perform these inquiries and assessments every day to meet their ethical requirements. For example, they do so to identify and address conflicts of interests. They also do so to ensure they represent clients competently (Rule 1.1); to develop sufficient knowledge of the facts and the law to understand the client's objectives and to identify means to meet the client's lawful interests (Rule 1.2(a)); and, if necessary, to persuade the client not to pursue conduct that could lead to criminal liability or liability for fraud (Rule 1.2(d)).[1] Implicit duties – like unwritten rules – do not serve lawyers or the public well. Therefore, the Committees present these amendments to the Black Letter of Model Rule 1.16 from which both lawyers and the public will benefit.

In addition to the proposed changes to the Black Letter of Rule 1.16, proposed new language in Comment [1] elaborates on the duty to inquire about and assess the facts and circumstances of the representation. The Comment makes clear that the duty is one that continues throughout the course of the representation.[2]

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[1] *See also* ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 463 (2013) & 491 (2020).

[2] GEOFFREY C. HAZARD JR., W. WILLIAM HODES & PETER R. JARVIS, LAW OF LAWYERING § 21.02 (4th ed. 2021) ("Rule 1.16 often plays a role *during* representation of a client as well. By focusing attention on situations

New language proposed in Comment [2] explains that under new Black Letter paragraph (a)(4) of Rule 1.16, the scope of the lawyer's inquiry and assessment is informed by the risk that the prospective client or current client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud. The use of a risk-based inquiry and assessment of the facts and circumstances of each representation set forth in Comment [2] ensures that the scope and depth of the inquiry and assessment a lawyer must make will be based on the unique facts and circumstances presented by each client or prospective client. There is no "one-size-fits-all" obligation. Proposed amendments to Comment [2] provide examples for lawyers to consider in assessing the level of risk posed to determine whether lawyers must decline the representation or withdraw from an ongoing representation.

While the impetus for these proposed amendments was lawyers' unwitting involvement in or failure to pay appropriate attention to signs or warnings of danger ("red flags") relating to a client's use of a lawyer's services to facilitate possible money laundering and terrorist financing activities, it is clear that lawyers' existing obligations to inquire and assess apply broadly to all lawyers. The proposed amendments will help lawyers avoid entanglement in criminal, fraudulent, or other unlawful behavior by a client, including tax fraud, mortgage fraud, concealment from disclosure of assets in dissolution or bankruptcy proceedings, human trafficking and other human rights violations, violations of U.S. foreign policy sanctions and export controls, and U.S. national security violations.

In developing this Resolution, the Standing Committees on Ethics and Professional Responsibility and Professional Regulation circulated widely for comment, inside and outside the ABA, three Discussion Drafts of possible amendments to the Model Rules of Professional Conduct addressing these obligations. The Committees held four public roundtables to obtain testimony regarding the Discussion Drafts.[3] The Committees are grateful to all who commented. Their comments and testimony informed the substance of this Resolution and Report.[4]

Background

Concerns Underlying This Resolution

As noted, the impetus for this Resolution related to lawyers' unwitting involvement in money laundering and terrorist financing or their failure to pay appropriate attention to "red flags" relating to the proposed course of action by a client or prospective client. Money laundering occurs when criminals obscure the proceeds of unlawful activity (dirty

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in which the lawyer either may or must withdraw, it serves as a reminder to lawyers and clients alike that they must continually communicate with each other and monitor their relationship, to minimize the likelihood that such withdrawals will occur.").

[3] These meetings were held in February and August 2022 and February 2023.

[4] Comments received and recordings of the public roundtables are available on the Center for Professional Responsibility website for public viewing at: www.americanbar.org/groups/professional_responsibility/discussion-draft-of-possible-amendments-to-model-rules-of-profes/ (last visited Apr. 28, 2023).

money) using "laundering" transactions so that the money appears to be the "clean" proceeds of legal activity. Terrorist financing is just that, providing funds to those involved in terrorism.[5] The proceeds of money laundering are used to facilitate terrorism and other illegal activities, including human trafficking, drug trafficking, and violations of U.S. government sanctions.

Lawyers' services can be used for money laundering and other criminal and fraudulent activity. One common way to do so is by asking a lawyer to hold money in a client trust account pending completion of the purchase of real estate or equipment, or to fund another transaction. After a period of time, the client asks the lawyer to return the funds because the "transaction" has fallen apart. By holding money in a law firm trust account then disbursing the money back to the client when the transaction does not close, the money has been laundered through the lawyer's client trust account. Of course, more sophisticated means exist by which individuals seek to use lawyers' services to launder money, either with or without the lawyer's knowledge. It is illegal and unethical for lawyers to knowingly launder money, finance terrorism, or knowingly assist another in doing so. It is also unethical for a lawyer to ignore facts indicating a likelihood that the client intends to use the lawyer's services to assist the client in engaging in illegal or fraudulent conduct.

Domestic and international laws and regulations are designed to prevent, detect, and prosecute money laundering. Anti-money laundering and counter terrorism financing laws and regulations applicable to lawyers are a complex subject.[6] Generally, the issues can be divided into three overarching topics: (1) client due diligence; (2) disclosure of entity beneficial ownership information; and (3) suspicious activity reporting.

In the U.S., the primary anti-money laundering laws are the Bank Secrecy Act ("BSA") and the Money Laundering Control Act. The U.S. Department of Treasury created the Financial Crimes Enforcement Network ("FinCEN") to implement, administer, and enforce compliance with the BSA. Most recently, Congress enacted the Corporate Transparency Act ("CTA") to enhance the identification and disclosure of certain beneficial ownership information. The CTA is part of the Anti-Money Laundering Act of 2020, which is part of the National Defense Authorization Act for Fiscal Year 2021.[7]

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[5] The U.S. Department of Treasury's 2018 National Money-Laundering Risk Assessment estimated that $300 billion is laundered every year in the U.S. alone, with that amount growing and methodologies of money-launderers ever evolving and becoming more sophisticated according to the Department's 2022 National Money-Laundering Risk Assessment. *See* U.S. DEPARTMENT OF THE TREASURY NATIONAL MONEY LAUNDERING RISK ASSESSMENT (2018), https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf and U.S. DEPARTMENT OF THE TREASURY NATIONAL MONEY LAUNDERING RISK ASSESSMENT (Feb. 2022), https://home.treasury.gov/system/files/136/2022-National-Money-Laundering-Risk-Assessment.pdf.

[6] Additional resources may be found at ABA TASK FORCE ON GATEKEEPER REGULATION AND THE PROFESSION, https://www.americanbar.org/groups/criminal_justice/gatekeeper/ (last visited Apr. 19, 2023); ABA GATEKEEPER REGULATIONS ON ATTORNEYS, https://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/independence_of_the_legal_profession/bank_secrecy_act/ (last visited Apr. 19, 2023).

[7] The full name of the NDAA is the WILLIAM M. (MAC) THORNBERRY NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2021, Pub. L. No. 116-283 (H.R. 6395), *available at* https://www.congress.gov/116/plaws/publ283/PLAW-116publ283.pdf. 116th Cong. 2d Sess. Congress' override of the President's veto was taken in Record Vote No. 292 (Jan. 1, 2021). The CTA consists of §§

Outside the U.S., the Financial Action Task Force ("FATF") is a powerful inter-governmental entity that coordinates efforts to prevent money laundering or terrorism financing among and between its member countries. The U.S. is a charter member of the FATF. The FATF exerts tremendous pressure on member countries, even though it has no "official" legislative or enforcement power. A primary way in which it does so is through its Mutual Evaluation Reports of countries' compliance with the FATF Recommendations.[8] The most recent Mutual Evaluation Report of the U.S. was in 2016, and the FATF found the US. noncompliant in four areas, including the lack of sufficient client due diligence by the legal profession and lack of enforceable obligations in that regard.[9]

The Organization for Economic Cooperation and Development ("OECD") is another international organization that has been active in this arena. The OECD is not a standard-setting entity like the FATF. While a primary focus of the OECD is fighting international tax evasion, it is supportive of the FATF's critiques of the legal and other professions on the subjects of money laundering and other white-collar crime.

These groups, along with U.S. and international governments, continue to focus in very public ways on lawyers as facilitators of money laundering, terrorism financing, and other related illegal and fraudulent conduct. They point to the 2016 FATF Report's recommendations, and events like the Paradise Papers, the Panama Papers, and the more recent Pandora Papers and FinCEN Files, as necessitating further and enforceable action by the legal profession.[10]

The ABA has long supported state-based judicial regulation of lawyers and the practice of law and opposed federal legislative or executive branch efforts to regulate the practice of law at the federal level.[11] National and international concerns about lawyers unwitting

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6401-6403 of the NDAA. Section 6402 of the NDAA sets forth Congress' findings and objectives in passing the CTA and § 6403 contains its substantive provisions, primarily adding § 5336 to Title 31 of the United States Code.

[8] *See* THE FATF RECOMMENDATIONS, https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html (last visited Apr. 28, 2023).

[9] FATF UNITED STATES' MEASURES TO COMBAT MONEY LAUNDERING AND TERRORIST FINANCING (2016), https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-united-states-2016.html.

[10] *See, e.g.*, PARADISE PAPERS: SECRETS OF THE GLOBAL ELITE, INTERNATIONAL CONSORTIUM OF INVESTIGATIVE JOURNALISTS, https://www.icij.org/investigations/paradise-papers/ (last visited Apr. 28, 2023); THE PANAMA PAPERS: EXPOSING THE ROGUE OFFSHORE FINANCE INDUSTRY, INTERNATIONAL CONSORTIUM OF INVESTIGATIVE JOURNALISTS, https://www.icij.org/investigations/panama-papers/ (last visited Apr. 28, 2023); PANDORA PAPERS, INTERNATIONAL CONSORTIUM OF INVESTIGATIVE JOURNALISTS, https://www.icij.org/investigations/pandora-papers/ (last visited Apr. 28, 2023); and FINCEN FILES, INTERNATIONAL CONSORTIUM OF INVESTIGATIVE JOURNALISTS, https://www.icij.org/investigations/fincen-files/ (last visited Apr.19, 2023).

[11] *See, e.g.*, COMM'N ON EVALUATION OF DISCIPLINARY ENFORCEMENT, AM. BAR ASS'N, LAWYER REGULATION FOR A NEW CENTURY 2 (1992) [hereinafter MCKAY REPORT], *available at* http://www.americanbar.org/groups/professional_responsibility/resources/report_archive/mckay_report.html; AM. BAR ASS'N COMM'N ON MULTIJURISDICTIONAL PRACTICE REPORT TO THE HOUSE OF DELEGATES Report 201A (2002), *available at* https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mjp_migrated/20

involvement in client crimes like money laundering and terrorism finance greatly raise the risk of federal legislative and regulatory action.

The U.S. Congress has demonstrated its willingness to act in this regard. For example, initial versions of the Corporate Transparency Act ("CTA") would have required lawyers to disclose beneficial ownership information relating to their clients to the federal government, in contravention of their ethical obligations under ABA Model Rule 1.6. Additionally, various Members of Congress have sought enactment of the ENABLERS Act, which would have regulated many lawyers and law firms as "financial institutions" under the BSA.[12] Such regulation could require those lawyers and law firms to report to the federal government information protected by the attorney-client privilege or Model Rule 1.6 by requiring them to comply with some or all of the BSA's requirements for financial institutions, such as submitting Suspicious Activity Reports (SARs) on clients' financial transactions and establishing due diligence policies.[13]

To date, the ABA has successfully advocated against such incursion on the regulatory authority of state supreme courts. In response to concerns raised by the ABA and others, the sponsors of the final version of the CTA that became law omitted the language from previous versions of the bill that would have directly regulated lawyers. Therefore, the final version of the CTA passed by Congress in early 2021 only requires "reporting companies"—not their lawyers or law firms—to report the companies' beneficial ownership information to the government.[14] Similarly, in response to objections by the ABA[15], numerous state and local bar associations, and many small business groups,

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1a.pdf; and JUDICIAL OVERSIGHT OF THE LEGAL PROFESSION, https://www.americanbar.org/advocacy/governmental_legislative_work/letters_testimony/independence/ (last visited Apr. 19, 2023).

[12] The original ENABLERS Act legislation, introduced on October 8, 2021, by Rep. Tom Malinowski (D-NJ) as H.R. 5525, is available at https://www.congress.gov/bill/117th-congress/house-bill/5525/text?s=1&r=1. A revised version of the ENABLERS Act, sponsored by Rep. Maxine Waters (D-CA) and included in the House-passed version of the FY 2023 National Defense Authorization Act (H.R. 7900) as Section 5401, is available at https://amendments-rules.house.gov/amendments/GATEKEEPERS_NDAA_xml%20v3220711190941114.pdf. A third version of the ENABLERS Act, sponsored by Sen. Sheldon Whitehouse (D-RI) and offered as an amendment to the Senate version of the FY 2023 National Defense Authorization Act (H.R. 7900 and S. 4543) as SA 6377, is available at https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/whitehouse-enablers-act-amendment-to-ndaa-september2022.pdf.

[13] *See* ABA URGES SENATORS TO OPPOSE ENABLERS ACT AMENDMENT TO DEFENSE AUTHORIZATION BILL, ABA WASHINGTON LETTER (Oct. 31, 2022), *available at* https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/oct22-wl/enablers-1022wl/.

[14] *See* Corporate Transparency Act (CTA), available at H.R.6395 - 116th Congress (2019-2020): William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 | Congress.gov | Library of Congress (contained in Title LXIV of the National Defense Authorization Act for FY 2021, P.L. 116-283) (Jan. 1, 2021). Division F of the FY 2021 National Defense Authorization Act is the Anti-Money Laundering Act of 2020, which includes the CTA.

[15] *See* ABA letter to Senate leaders opposing the ENABLERS Act amendment to the FY 2023 National Defense Authorization Act and urging them not to include it in the final version of the legislation. Letter to Majority Leader Schumer, et al. re: Opposition to ENABLERS Act Amendment to the FY 2023 National Defense Authorization Act (H.R. 7900 and S. 4543) (Oct. 5, 2022), *available at*

Congress declined to include the ENABLERS Act in the final version of the FY 2023 National Defense Authorization Act (P.L. 117-263, H.R. 7776) or the FY 2023 Consolidated Appropriations Act (P.L. 117-328, H.R. 2617) that were signed into law in December 2022.

ABA Responses in the Context of the Model Rules of Professional Conduct

2013 Ethics Opinion

In 2013, the Ethics Committee issued ABA Formal Ethics Opinion 463 focusing on efforts to require U.S. lawyers to perform "gatekeeping" duties to protect the domestic and international financing system from criminal activity arising out of worldwide money-laundering and terrorism financing activities. Opinion 463 explained that "[i]t would be prudent for lawyers to undertake Client Due Diligence ("CDD") in appropriate circumstances to avoid facilitating illegal activity or being drawn unwittingly into a criminal activity. . . . [16] An appropriate assessment of the client and the client's objectives, and the means for obtaining those objectives, are essential prerequisites for accepting a new matter or continuing a representation as new facts unfold."[17]

2020 Ethics Opinion

In 2020, the Ethics Committee issued Formal Ethics Opinion 491 in response to ongoing concerns regarding lawyers' obligations to inquire and assess. As explained in the Formal Opinion, a lawyer's duty to inquire into and assess the facts and circumstances of each representation is not new and is applicable before the representation begins and throughout the course of the representation. This obligation already is implicit in the following Rules:

- Rule 1.1 and the duty to provide competent representation. Comment [5] explains, "Competent handling of a particular matter requires inquiry into and analysis of the factual and legal elements of the problem."
- Rule 1.2(d) and the prohibition against knowingly assisting a client in a crime or fraud.
- Rule 1.3 and the duty to be diligent which "requires that a lawyer ascertain the relevant facts and law in a timely and appropriately thorough manner."
- Rule 1.4 and the duty to communicate which requires "consultation with the client regarding 'any relevant limitation on the lawyer's conduct' arising from the client's expectation of assistance that is not permitted by the Rules of Professional Conduct or other law."
- Rule 1.13 which requires "further inquiry to clarify any ambiguity about who has authority and what the organization's priorities are."

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https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/aba-letter-to-senate-leaders-opposing-enablers-act-amendment-to-ndaa-october52022.pdf.

[16] ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 463 (2013).

[17] *Id.*

- Rule 1.16(a) and the duty to withdraw when the representation will result in a violation of the law or the Rules.
- Rule 8.4(b) and (c) in the prohibition against committing a criminal act or engaging in dishonesty, fraud, deceit, or misrepresentation.

The Proposed Amendments to Model Rule 1.16 and Its Comments

After careful consideration over several years of concerns raised by ABA members and outside groups that the ABA Model Rules of Professional Conduct lacked sufficient clarity on lawyers' obligations to inquire about and assess the facts and circumstances relating to a matter, the Committees concluded that Model Rule of Professional Conduct 1.16 should be amended to make explicit that which is already implicit.

Amendments to Paragraph (a)

The proposed amendments to the Black Letter of Rule 1.16(a) include a statement addressing the nature and scope of lawyers' inquiry and assessment obligations when the lawyer is deciding whether to accept a representation, deciding whether to terminate the representation, and considering the matter throughout the course of a representation. The following statement is added to the beginning of Rule 1.16(a):

> A lawyer shall inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation.

In addition to the proposed change to the Black Letter of Rule 1.16(a), new language in Comment [1] provides guidance on the duty to inquire about and assess the facts and circumstances of the representation. The addition to Comment [1] reads:

> Paragraph (a) imposes an obligation on a lawyer to inquire into and assess the facts and circumstances of the representation before accepting it. The obligation imposed by Paragraph (a) continues throughout the representation. For example, a client traditionally uses a lawyer to acquire local real estate through the use of domestic limited liability companies, with financing from a local bank. The same client then asks the lawyer to create a multi-tier corporate structure, formed in another state to acquire property in a third jurisdiction, and requests to route the transaction's funding through the lawyer's trust account. Another example is when, during the course of a representation, a new party is named or a new entity becomes involved.

This additional language in Comment [1], that the obligation continues throughout the representation, helps lawyers understand that if changes in the facts and circumstances occur during a representation, lawyers must inquire and evaluate whether they can

continue the representation. A new cross-reference to Model Rule 1.1 (Competence) also is added.

Creating a new provision for mandatory withdrawal in paragraph (a)(4)

Current Model Rule 1.16(a)(1) requires a lawyer to decline or withdraw from a representation if "the representation will result in violation of the Rules of Professional Conduct or other law."

Current Comment [2] explains: "A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation." Model Rule 1.4(a)(5), regarding communications obligations, explains that lawyers must consult with the client about any relevant limitation on the lawyer's conduct. Rule 1.2(d) tells lawyers that one of those limitations on what a lawyer may do is counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent.

But these statements appear in three different Rules and their respective Comments. As a result, lawyers must hunt for this guidance – that when a client suggests a course of conduct that is criminal, fraudulent, or otherwise illegal or violates the Rules, a lawyer must consult with the client about the limits of the lawyer's representation and that the lawyer is prohibited from engaging or assisting a client in a crime or fraud. After the conversation, if the client is not deterred from the suggested conduct, the lawyer must decline the representation or withdraw if already in the matter.

The Committees believe that lawyers deserve clear direction regarding inquiry about and assessing the facts and circumstances, and have clear advice on what to do when concerns or questions arise about the scope, goals, and objectives of the representation. Therefore, the Committees recommend clarifying the Black Letter of Rule 1.16(a) to provide that the lawyer must decline or withdraw from the representation if:

> (4) the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud, despite the lawyer's discussion pursuant to Rules 1.2(d) and 1.4(a)(5) regarding the limitations on the lawyer assisting with the proposed conduct.

Expanding the guidance provided in Comment [2]

New language proposed for Comment [2] explains that the lawyer's obligation to inquire and assess is informed by the risk that the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud. The use of a risk-based inquiry and assessment of the facts and circumstances of each representation

set forth in Comment [2] ensures that the scope and depth of the inquiry and assessment a lawyer must perform will be based on the unique facts and circumstances presented by each client or prospective client. There is no "one-size-fits-all" obligation, and this risk-based approach is the least burdensome for lawyers. The proposed amendments take a balanced approach to the issue.

To assist lawyers, new language in Comment [2] provides examples for lawyers to consider in assessing the level of risk posed to determine whether they must decline the representation or withdraw from an ongoing representation. This risk-based approach differs from a rules-based approach that requires compliance with every element of detailed laws, rules, or regulations irrespective of the underlying quantum or degree of risk. As noted in ABA Formal Ethics Opinion 463, implementing risk-based control measures helps a lawyer avoid being caught up in a client's illegal activities, while decreasing the burden on lawyers whose practice does not expose them to the problems sought to be addressed.

In addition to these exemplary factors, new language in Comment [2] provides lawyers with a range of additional resources to guide their inquiry and assessment. For example, the new language references the 2010 ABA Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing, which provides excellent practice examples that help lawyers using the risk-based approach better identify situations that should be considered "red flags" and provides "practice pointers" to offer further insight.

The U.S. Department of Treasury's Specially Designated Nationals and Blocked Persons List is another sample resource to assist lawyers in conducting their inquiry and assessment, which is comprised of "individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific."[18]

Conclusion

The proposed changes to Model Rule 1.16 will benefit lawyers and the public by making explicit the nature and scope of lawyers' existing obligations to inquire about and assess the facts and circumstances regarding a matter in the enforceable Black Letter of the Rule. Doing so will help lawyers avoid unwittingly becoming involved in clients' criminal and fraudulent conduct and will help them better identify and respond to "red flags." In doing so, this Resolution also will demonstrate to the U.S. Government, entities like the FATF, and the public that the profession takes seriously its obligations to avoid becoming involved in a client's criminal and fraudulent conduct, including money laundering, terrorist financing, human trafficking and human rights violations, tax related crimes, sanctions evasion, and other illicit activity.

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[18] *See* OFFICE OF FOREIGN ASSETS CONTROL, SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS LIST (SDN) HUMAN READABLE LISTS (last updated Apr. 27, 2023), https://ofac.treasury.gov/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists.

The ABA Standing Committees on Ethics and Professional Responsibility and Professional Regulation respectfully request that the House of Delegates approve this Resolution to amend the Black Letter of Model Rule 1.16 and its Comments.

Respectfully submitted,

Lynda C. Shely, Chair
ABA Standing Committee on Ethics
and Professional Responsibility

Justice Daniel J. Crothers, Chair
ABA Standing Committee on
Professional Regulation

August 2023

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 491 **April 29, 2020**

Obligations Under Rule 1.2(d) to Avoid Counseling or Assisting in a Crime or Fraud in Non-Litigation Settings

Model Rule 1.2(d) prohibits a lawyer from advising or assisting a client in conduct the lawyer "knows" is criminal or fraudulent. That knowledge may be inferred from the circumstances, including a lawyer's willful blindness to or conscious avoidance of facts. Accordingly, where facts known to the lawyer establish a high probability that a client seeks to use the lawyer's services for criminal or fraudulent activity, the lawyer has a duty to inquire further to avoid advising or assisting such activity. Even if information learned in the course of a preliminary interview or during a representation is insufficient to establish "knowledge" under Rule 1.2(d), other rules may require the lawyer to inquire further in order to help the client avoid crime or fraud, to avoid professional misconduct, and to advance the client's legitimate interests. These include the duties of competence, diligence, communication, and honesty under Rules 1.1, 1.3, 1.4, 1.13, 1.16, and 8.4. If the client or prospective client refuses to provide information necessary to assess the legality of the proposed transaction, the lawyer must ordinarily decline the representation or withdraw under Rule 1.16. A lawyer's reasonable evaluation after inquiry and based on information reasonably available at the time does not violate the rules. This opinion does not address the application of these rules in the representation of a client or prospective client who requests legal services in connection with litigation.[1]

I. Introduction

In the wake of media reports,[2] disciplinary proceedings,[3] criminal prosecutions,[4] and reports on international counter-terrorism enforcement and efforts to combat money-laundering, the legal profession has become increasingly alert to the risk that a client or prospective client[5] might try to retain a lawyer for a transaction or other non-litigation matter that could be

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[1] This opinion is based on the ABA Model Rules of Professional Conduct as amended by the ABA House of Delegates through August 2019. The laws, court rules, regulations, rules of professional conduct, and opinions promulgated in individual jurisdictions are controlling.

[2] *See* Debra Cassens Weiss, *Group Goes Undercover at 13 Law Firms to Show How U.S. Laws Facilitate Anonymous Investment,* A.B.A. J. (Feb. 1, 2016), https://www.abajournal.com/news/article/group_goes_undercover_at_13_law_firms_to_show_how_us_laws_facilitate; *see also* Louise Story & Stephanie Saul, *Stream of Foreign Wealth Flows to Elite New York Real Estate*, N.Y. TIMES (Feb. 7, 2015), https://www.nytimes.com/2015/02/08/nyregion/stream-of-foreign-wealth-flows-to-time-warner-condos.html.

[3] *In re* Albrecht, 42 P.3d 887, 898–900 (Or. 2002) (disbarment for assisting client in money laundering).

[4] *See, e.g.*, United States v. Farrell, 921 F.3d 116 (4th Cir. 2019) (affirming conviction for money laundering); United States v. Blair, 661 F.3d 755 (4th Cir. 2011) (same); Laura Ende, *Escrow, Money Laundering Cases Draw Attention to the Perils of Handling Client Money*, STATE BAR OF CAL. (Feb. 2017), http://www.calbarjournal.com/February2017/TopHeadlines/TH1.aspx (lawyer sentenced "to five years in prison after being convicted of felonies related to a money laundering scheme").

[5] "Client" refers hereinafter to "client and prospective client" unless otherwise indicated.

legitimate but which further inquiry would reveal to be criminal or fraudulent.[6] For example, a client might seek legal assistance for a series of purchases and sales of properties that will be used to launder money. Or a client might propose an all-cash deal in large amounts and ask that the proceeds be deposited in a bank located in a jurisdiction where transactions of this kind are commonly used to conceal terrorist financing or other illegal activities.[7] On the other hand, further inquiry may dispel the lawyer's concerns.

This opinion addresses a lawyer's obligation to inquire when faced with a client who may be seeking to use the lawyer's services in a transaction to commit a crime or fraud. Ascertaining whether a client seeks to use the lawyer's services for prohibited ends can be delicate. Clients are generally entitled to be believed rather than doubted, and in some contexts investigations can be both costly and time-consuming. At the same time, clients benefit greatly from having informed assistance of counsel. A lawyer's obligation to inquire when faced with circumstances addressed in this opinion is well-grounded in authority interpreting Rule 1.2(d) and in the rules on competence, diligence, communication, honesty, and withdrawal.

As set forth in Section II of this opinion, a lawyer who has knowledge of facts that create a high probability that a client is seeking the lawyer's services in a transaction to further criminal or fraudulent activity has a duty to inquire further to avoid assisting that activity under Rule 1.2(d). Failure to make a reasonable inquiry is willful blindness punishable under the actual knowledge standard of the Rule. Whether the facts known to the lawyer require further inquiry will depend on the circumstances. As discussed in Section III, even where Rule 1.2(d) does not require further inquiry, other Rules may. These Rules include the duty of competence under Rule 1.1, the duty of diligence under Rule 1.3, the duty of communication under Rule 1.4, the duty to protect the best interests of an organizational client under Rule 1.13, the duties of honesty and integrity under Rules 8.4(b) and (c), and the duty to withdraw under Rule 1.16(a). Further inquiry under these Rules serves important ends. It ensures that the lawyer is in a position to provide the informed advice and assistance to which the client is entitled, that the representation will not result in professional misconduct, and that the representation will not involve counseling or assisting a crime or fraud. Section IV addresses a lawyer's obligations in responding to a client who either agrees or does not agree to provide information necessary to satisfy the duty to inquire. Finally, Section V examines hypothetical scenarios in which the duty to inquire would be triggered, as well as instances in which it would not.

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[6] Hereinafter, "transaction" refers both to transactions and other non-litigation matters unless otherwise indicated. This opinion does not address the application of rules triggering a duty to inquire where a client requests legal services in connection with litigation. ABA Comm. on Ethics & Prof'l Responsibility, Informal Op. 1470 (1981), discusses how a lawyer *not* involved in the past misconduct of a client should handle the circumstance of a proposed transaction arising from or relating to the past misconduct.

[7] *See* AM. BAR ASS'N TASK FORCE ON GATEKEEPER REGULATION AND THE PROFESSION, VOLUNTARY GOOD PRACTICES GUIDANCE FOR LAWYERS TO DETECT AND COMBAT MONEY LAUNDERING AND TERRORIST FINANCING 15–16 (2010) [hereinafter GOOD PRACTICES GUIDANCE] (describing institutions, such as the United Nations, the World Bank, the International Monetary Fund, and the U.S. Department of State, believed to be "credible sources" for information regarding risks in different jurisdictions); *id.* at 24 (noting the "higher risk situation" when a client offers to pay in cash).

II. The Duty to Inquire Under Rule 1.2(d)

Rule 1.2(d) states that a lawyer "shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent." A duty to inquire to avoid knowingly counseling or assisting a crime or fraud may arise under this Rule in two ways. First, Rule 1.0(f) states that to "know[]" means to have "actual knowledge of the fact in question." When facts already known to the lawyer are so strong as to constitute "actual knowledge" of criminal or fraudulent activity, the lawyer must "consult with the client regarding the limitations on the lawyer's conduct."[8] This consultation will ordinarily include inquiry into whether there is some misapprehension regarding the relevant facts. If there is no misunderstanding and the client persists, the lawyer must withdraw.[9]

In *In re Blatt*,[10] for example, the New Jersey Supreme Court disciplined a lawyer for participation in a real estate transaction where "*[o]n their face* the [transaction] documents suggest[ed] impropriety if not outright illegality."[11] Addressing the lawyer's duties, the court wrote:

> A lawyer may not follow the directions of a client without first satisfying himself that the latter is seeking a legitimate and proper goal and intends to employ legal means to attain it. . . . The propriety of any proposed course of action must be initially considered by the attorney, and it may be thereafter pursued only if the lawyer is completely satisfied that it involves no ethical compromise. . . . [The lawyer's] duty, upon being requested to draft the aforementioned agreements, was to learn all the details of the proposed transaction. Only then, upon being satisfied that he had indeed learned all the facts, and that his client's proposed course of conduct was proper, would he have been at liberty to pursue the matter further.[12]

Additionally, if facts before the lawyer indicate a high probability that a client seeks to use the lawyer's services for criminal or fraudulent activity, a lawyer's conscious, deliberate failure to inquire amounts to knowing assistance of criminal or fraudulent conduct. Rule 1.0(f) refers to "actual knowledge" and provides that "[a] person's knowledge may be inferred

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[8] MODEL RULES OF PROF'L CONDUCT R. 1.2 cmt. [13] [hereinafter MODEL RULES].

[9] *See* MODEL RULES R. 1.16(a)(1); Section IV, *infra*. Rule 1.2(d) nevertheless permits a lawyer to "discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law."

[10] 324 A.2d 15 (N.J. 1974).

[11] *Id.* at 18 (emphasis added).

[12] *Id.* at 18–19; *see also In re* Evans, 759 N.E.2d 1064 (Ind. 2001) (mem.) (three-year suspension for filing fraudulent federal tax returns knowingly misrepresenting sale proceeds from real estate transaction); *In re* Harlow, 2004 WL 5215045, at *2 (Mass. State Bar Disciplinary Bd. 2004) (suspending lawyer for violation of 1.2(d) for assisting client in knowing manipulation of state licensing agency's escrow account requirements); State *ex rel.* Counsel for Discipline of Nebraska Supreme Court v. Mills, 671 N.W.2d 765 (Neb. 2003) (two-year suspension for participating in illegal scheme to avoid estate taxes by knowingly backdating and preparing false documents); *accord* N.C. State Bar, Formal Op. 12, 2001 WL 1949450 (2001).

from circumstances." Substantial authority confirms that a lawyer may not ignore the obvious.[13]

The obligation to inquire is well established in ethics opinions. Nearly forty years ago, prior to the adoption of the Model Rules, ABA Informal Opinion 1470 (1981) declared that "a lawyer should not undertake representation in disregard of facts *suggesting* that the representation might aid the client in perpetrating a fraud or otherwise committing a crime . . . . A lawyer cannot escape responsibility by avoiding inquiry. A lawyer must be satisfied, on the facts before him and readily available to him, that he can perform the requested services without abetting fraudulent or criminal conduct . . . ."[14]

Relying on ABA Informal Opinion 1470, the Legal Ethics Committee of the Indiana State Bar Association concluded in 2001 that "[a] lawyer should not undertake representation without making further inquiry if the facts presented by a prospective client suggest that the representation might aid the client in perpetrating a fraud or otherwise committing a crime."[15] The opinion reasoned that an attorney asked to create a "new" sole power of attorney for a prospective client on behalf of her wealthy grandfather in matters concerning his estate has a duty to inquire further. The opinion emphasized the possibility that the granddaughter could fraudulently use the power of attorney to benefit herself rather than serve the interests of her grandfather, whom the attorney had not consulted, the possibility that the grandfather would not wish to grant sole power of attorney to his granddaughter, and the possibility that the grandfather might lack the capacity to consent to such an arrangement (made likely by the fact that the lawyer's paralegal observed the grandfather's deteriorated condition). Thus, although it is possible that the granddaughter's representation of the facts was accurate and therefore consistent with Rule 1.2(d), "the fact that a proposed client in drafting a power of attorney was the agent and not a frail principal should have suggested to [the lawyer] the possibility that the client's real objective might be fraud. [The lawyer] then *had an ethical responsibility to find out whether the proposal was above-board* before performing the services. By failing to make further inquiry, [the lawyer] violated Rule 1.2."[16]

Similarly, New York City Ethics Opinion 2018-4 concluded that lawyers must inquire when "retained to assist an individual client in a transaction that appears to the lawyer to be suspicious."[17] The opinion explains that "[i]n general, assisting in a suspicious transaction is not competent where a reasonable lawyer prompted by serious doubts would have refrained

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[13] In the words of Charles Wolfram, "as in the criminal law, a lawyer's studied ignorance of a readily ascertainable fact by consciously avoiding it is the functional equivalent of knowledge of the fact. . . . As a lawyer, one may not avoid the bright light of a clear fact by averting one's eyes or turning one's back." CHARLES W. WOLFRAM, MODERN LEGAL ETHICS 696 (1986); *see also* ELLEN J. BENNETT & HELEN W. GUNNARSSON, ANNOTATED MODEL RULES OF PROFESSIONAL CONDUCT 47 (9th ed. 2019) ("[a] lawyer's assistance in unlawful conduct is not excused by a failure to inquire into the client's objectives"); *id.* (gathering cases).

[14] ABA Comm. on Ethics & Prof'l Responsibility, Informal Op. 1470 (1981) (emphasis added) (interpreting the analogous ABA Model Code provision 7-102(A)(7), which provides that a lawyer must not "[c]ounsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent").

[15] Ind. State Bar Ass'n Comm. on Legal Ethics, Op. 2, at 4 (2001).

[16] *Id.* at 4 (emphasis added). The Opinion reaches the same conclusion if the grandfather is considered to be the true client. *Id.* at 6–7. *Accord* N.C. State Bar Ass'n, Formal Op. 7 (2003).

[17] N.Y.C. Bar Ass'n Comm. on Prof'l Ethics, Formal Op. 2018-4, at 2 (2018); *see also* Conn. Bar Ass'n Standing Comm. on Prof'l Ethics, Informal Op. 91-22 (1991).

from providing assistance or would have investigated to allay suspicions before rendering or continuing to render legal assistance. . . . What constitutes a suspicion sufficient to trigger inquiry will depend on the circumstances."[18] Failure to inquire may constitute "conscious avoidance" when, for example, "the lawyer is aware of serious questions about the legality of the transaction and renders assistance without considering readily available facts that would have confirmed the wrongfulness of the transaction."[19]

Courts imposing discipline are generally in accord. When a lawyer deliberately or consciously avoids knowledge that a client is or may be using the lawyer's services to further a crime or fraud, discipline is imposed.[20] Some courts have applied the even broader standard set out in Comment [13] to Rule 1.2, which requires a lawyer to consult with the client when the lawyer "comes to know or *reasonably should know* that [the] client expects assistance not permitted by the Rules of Professional Conduct . . . ." (Emphasis added.) For example, in *In re Dobson*,[21] the South Carolina Supreme Court identified facts showing that the lawyer "knew" or *"should have known"* that he was furthering a client's illegal scheme, and added, "[w]e also find that respondent *deliberately evaded* knowledge of facts which tended to implicate him in a fraudulent scheme. This Court will not countenance the conscious avoidance of one's ethical duties as an attorney."[22]

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[18] N.Y.C Bar Ass'n Comm. on Prof'l Ethics, Formal Op. 2018-4, at 3 (2018).

[19] *Id.* Hypotheticals in Section V of this opinion, *infra*, identify circumstances that should prompt further inquiry.

[20] *See In re* Bloom, 745 P.2d 61 (Cal. 1987) (affirming disbarment of lawyer who assisted client in sale and transport of explosives to Libya; categorically rejecting lawyer's defense that he believed in good faith that transaction was authorized by national security officials); *In re* Albrecht, 42 P.3d 887, 898–99 (Or. 2002) ("suspicious nature" of transactions, combined with other facts, support inference that lawyer must have known his participation in scheme constituted money laundering; upholding disbarment for knowingly assisting crime or fraud and rejecting defense that lawyer was "an unwitting dupe to a talented con man"); *see also* ELLEN BENNETT & HELEN GUNNARSSON, ANNOTATED MODEL RULES OF PROFESSIONAL CONDUCT 47 (9th ed.) ("[a] lawyer's assistance in unlawful conduct is not excused by a failure to inquire into the client's objectives"). *But see* Iowa Supreme Court Att'y Disciplinary Bd. v. Ouderkirk, 845 N.W. 2d 31, 45–48 (Iowa 2014) (declining to infer knowledge of client's fraud despite what disciplinary counsel argued were "highly suspicious" circumstances where sophisticated, longstanding client who typically relied on the lawyer exclusively to prepare final paperwork deceived the lawyer about a fraudulent transfer to avoid creditors).

[21] 427 S.E.2d 166 (S.C. 1993).

[22] *Id.* at 427 (emphasis added); *see also* Florida Bar v. Brown, 790 So.2d 1081, 1088 (Fla. 2001) (suspension for soliciting illegal campaign contributions from employees and others for political candidates viewed as favorable to business interests of major client of firm; lawyer "should have known" conduct was criminal or fraudulent under Florida version of Rule 1.2(d) which expressly incorporates this standard); *In re* Siegel, 471 N.Y.S. 2d 591, 592 (N.Y. App. Div. 1984) (attorney "knew *or should have known* that at the very least, his conduct was a breach of trust, if not illegal") (emphasis added). Other jurisdictions have rejected a negligence standard for Rule 1.2(d). *See In re* Tocco, 984 P.2d 539, 543 (Ariz. 1999) (en banc) (declining to read a should have known standard into Arizona Rule 1.2(d); "While actual knowledge can be proven by circumstantial evidence, a mere showing that the attorney reasonably *should have known* her conduct was in violation of the rules, without more, is insufficient."); *accord* Iowa Supreme Court Bd. of Prof'l Ethics and Conduct v. Jones, 606 N.W.2d 5, 7–8 (Iowa 2000).

The Committee acknowledges the tension between the "actual knowledge" standard of Model Rule 1.2(d), on the one hand, and those authorities applying a reasonably should know standard. This opinion concludes only that the standard of actual knowledge set out in the text of Model Rules 1.2(d) and 1.0(f) is met by appropriate evidence of willful blindness. When the Model Rules intend a lower threshold of scienter, such as "reasonably should know," the text generally makes this explicit. *See, e.g.*, MODEL RULES R. 2.3(b), 2.4(b), 4.3.

Criminal cases treat deliberate ignorance or willful blindness as equivalent to actual knowledge.[23] As the Supreme Court recently summarized:

> The doctrine of willful blindness is well established in criminal law. Many criminal statutes require proof that a defendant acted knowingly or willfully, and courts applying the doctrine of willful blindness hold that defendants cannot escape the reach of these statutes by deliberately shielding themselves from clear evidence of critical facts that are strongly suggested by the circumstances. . . . [The Model Penal Code defines] "knowledge of the existence of a particular fact" to include a situation in which "a person is aware of a *high probability* of [the fact's] existence, unless he actually believes that it does not exist." Our Court has used the Code's definition as a guide . . . [a]nd every Court of Appeals—with the possible exception of the District of Columbia Circuit—has fully embraced willful blindness, applying the doctrine to a wide range of criminal statutes.[24]

A lawyer may accordingly face criminal charges or civil liability, in addition to bar discipline, for deliberately or consciously avoiding knowledge that a client is or may be using the lawyer's services to further a crime or fraud.[25] To prevent these outcomes, a lawyer must inquire further when the facts before the lawyer create a high probability that a client seeks to use the lawyer's services for criminal or fraudulent activity.[26]

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[23] United States v. Ramsey, 785 F.2d 184, 189 (7th Cir. 1986) ("[A]ctual knowledge and deliberate avoidance of knowledge are the same thing.").

[24] Global-Tech Appliances, Inc. v. SEB USA, 563 U.S. 754, 767 (2011) (emphasis added) (citations omitted) (applying willful blindness standard to statute prohibiting knowing inducement of patent infringement).

[25] *See* United States v. Cavin, 39 F.3d 1299, 1310 (5th Cir. 1994) (upholding deliberate ignorance jury instruction in prosecution of a lawyer); United States v. Scott, 37 F.3d 1564, 1578 (10th Cir. 1994) (affirming use of deliberate ignorance instruction against an attorney convicted of conspiracy to defraud the IRS); Wyle v. R.J. Reynolds Indus., Inc., 709 F.2d 585, 590 (9th Cir. 1983) (upholding deliberate ignorance finding against law firm in antitrust suit because firm was aware of high probability that client made illegal payments and failed to investigate); United States v. Benjamin, 328 F.2d 854, 862 (2d Cir. 1964) (a lawyer may be held liable in a securities fraud suit if the lawyer has "deliberately closed his eyes to the facts he had a duty to see"); Harrell v. Crystal, 611 N.E. 2d 908, 914 (Ohio Ct. App. 1992) (affirming finding of liability in malpractice action for lawyer's failure to investigate sham tax shelters); Pa. Bar Ass'n Comm. on Legal Ethics & Prof'l Responsibility, Informal Op. 2003-104 (2003) (where facts suggested property transfer to client from relative was to conceal assets from creditors, lawyer handling sale of property to a third party "must evaluate whether the transfer of realty to your client was 'fraudulent'" under state law); *cf.* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 94, Reporter's Note, cmt. g. at 17 (AM. LAW INST. 2000) ("the preferable rule is that proof of a lawyer's conscious disregard of facts is relevant evidence which, together with other evidence bearing on the question, may warrant a finding of actual knowledge").

[26] As the authorities and analysis in this Section make clear, the duty to inquire under Model Rule 1.2(d) is tied to the circumstances and the lawyer's state of knowledge. It is *not* a freestanding, blanket obligation to scrutinize every client for illicit ends irrespective of the nature of the specific matter and the attorney-client relationship. *See* United States v. Sarantos, 455 F.2d 877, 881 (2d Cir. 1972) ("Construing 'knowingly' in a criminal statute to include willful blindness . . . is no radical concept in the law," but the standard does not mean that an attorney has a general duty to "investigate 'the truth of his client's assertions' or risk going to jail"; upholding criminal conviction of lawyer who actively aided in immigration related marriage fraud); Pa. Bar Ass'n Comm. on Legal Ethics & Prof'l Responsibility, Informal Op. 2001-26 ("*Generally*, a lawyer has no obligation to inquire or otherwise uncover facts that are not necessary to enable the lawyer to fulfill his or her obligations with respect to the representation"; warning nevertheless that Rule 1.2(d) applies to filing of worker's compensation claims and leaving attorney to determine relevance of client's fatal condition to client's specific claim) (emphasis added). However, the

III. The Duty To Inquire Under Other Rules

Rule 1.2(d) is not the only source of a lawyer's duty to inquire. A lawyer may be obliged to inquire further in order to meet duties of competence, diligence, communication, honesty, and withdrawal under Rules 1.1, 1.3, 1.4, 1.13, 1.16, and 8.4. The kinds of facts and circumstances that would trigger a duty to inquire under these rules include, for example, (i) the identity of the client, (ii) the lawyer's familiarity with the client, (iii) the nature of the matter (particularly whether such matters are frequently associated with criminal or fraudulent activity), (iv) the relevant jurisdictions (especially whether any jurisdiction is classified as high risk by credible sources), (v) the likelihood and gravity of harm associated with the proposed activity, (vi) the nature and depth of the lawyer's expertise in the relevant field of practice, (vii) other facts going to the reasonableness of reposing trust in the client,[27] and (viii) any other factors traditionally associated with providing competent representation in the field.

First, Rule 8.4(b) makes it professional misconduct for a lawyer to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." Rule 8.4(c) makes it professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Providing legal services could violate Rules 8.4(b) and (c) where the relevant law on criminal or fraudulent conduct defines the lawyer's state of mind as culpable even without proof of actual knowledge.[28] In such a situation, the lawyer must conduct further investigation to protect the client, advance the client's legitimate interests, and prevent the crime or fraud.

Second, and more broadly, the lawyer's duty of competence, diligence, and communication under Rules 1.1, 1.3, and 1.4 may require the lawyer, prior to advising or assisting in a course of action, to develop sufficient knowledge of the facts and the law to understand the client's objectives, identify means to meet the client's lawful interests, to probe further, and, if necessary, persuade the client not to pursue conduct that could lead to criminal liability or liability for fraud. Comment [5] of Rule 1.1 states that "[c]ompetent handling of a particular matter requires inquiry into and analysis of the factual and legal elements of the problem."[29]

Committee rejects the view that the actual knowledge standard of Rule 1.2(d) relieves the lawyer of a duty to inquire further where the lawyer is aware of facts creating a high probability that the representation would further a crime or fraud. *Cf.* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 94 cmt. g. at 11 ("Under the actual knowledge standard . . . a lawyer is not required to make a particular kind of investigation in order to ascertain more clearly what the facts are, although it will often be prudent for the lawyer to do so."); *id.* § 51 cmt. h., ill. 6 at 366; George M. Cohen, *The State of Lawyer Knowledge Under the Model Rules of Professional Conduct*, 3 AM. U. BUS. L. REV. 115, 116 (2014) (discussing association of willful blindness with recklessness, without citing to *Global-Tech Appliances*, and analyzing assumption that "the actual knowledge standard aims to exclude a duty to inquire").

[27] For facts that can undermine the reasonableness of reposing trust, see the discussion of "risk categories" provided by the GOOD PRACTICES GUIDANCE, *supra* note 7, at 15–36.

[28] *See In re* Berman, 769 P.2d 984, 989 (Cal. 1989) (en banc) (holding, in disciplinary proceeding for aiding a money laundering scheme, that attorney's "*belief* that the financial statements contained false information reflects sufficient indicia of fraudulent intent to constitute moral turpitude"). The same conduct would require the lawyer's withdrawal under Rule 1.16(a)(1).

[29] *See also* Iowa Supreme Court Att'y Disciplinary Bd. v. Wright, 840 N.W.2d 295, 301 (Iowa 2013) (failure to conduct even preliminary research on overseas internet scam violates Rule 1.1); *In re* Winkel, 577 N.W.2d 9 (Wis. 1998) (failure to obtain information on trust funds of clients' business prior to surrendering clients' assets to bank). *See also* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 52 cmt. c at 377 ("[A] lawyer must perform tasks reasonably appropriate to the representation, including, where appropriate, inquiry into the facts.").

The duty of diligence under Rule 1.3 requires that a lawyer ascertain the relevant facts and law in a timely and appropriately thorough manner.[30] Rule 1.4(a)(5), which requires consultation with the client regarding "any relevant limitation on the lawyer's conduct" arising from the client's expectation of assistance that is not permitted by the Rules of Professional Conduct or other law, may require investigation of the relevant facts and law. Rule 1.4(b) requires the lawyer to give the client explanations sufficient to enable the client to make informed decisions about the representation.

Rule 1.13 imposes a duty to inquire in entity representations. Rule 1.13(a) provides that a lawyer "employed or retained by the organization represents the organization acting through its duly authorized constituents." Determining the interests of the organization will often require further inquiry to clarify any ambiguity about who has authority and what the organization's priorities are. Under Rule 1.13(b), once the lawyer learns of action, omission, or planned activity on the part of an "officer, employee, or other person associated with the organization . . . that is a violation of a legal obligation to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interests of the organization." Even if the underlying facts regarding the violation or potential violation are already well established and require no additional inquiry, determining what is "reasonably necessary" and in the "best interest of the organization" will commonly involve additional communication and investigation.[31]

Recent ABA guidance and opinions support this approach. Concern that individuals might use the services of U.S. lawyers for money-laundering and terrorist financing prompted the ABA House of Delegates to adopt in 2010 the *ABA Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing* ("Good Practices Guidance"). The Good Practices Guidance advocates a "risk-based approach" to avoid assisting in money laundering or terrorist financing, according to guidelines developed by the Financial Action Task Force on Money Laundering ("FATF").[32] Recommended measures

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[30] *See In re* Konnor, 694 N.W. 2d 376 (Wis. 2005) (failure to investigate concern that rents owed to estate were being misappropriated).

[31] *See* MODEL RULES R. 1.13 cmts. [3] & [4]. Rule 1.13(b) was added after a series of high profile financial accounting scandals in the early 2000s. AM. BAR ASS'N TASK FORCE ON CORPORATE RESPONSIBILITY (2003), *reprinted in* 59 BUS. LAW. 145, 166–70 (2003). Other law may also create a duty to inquire. The Sarbanes-Oxley Act of 2002 creates a duty for the "chief legal officer" to conduct an "appropriate" investigation in response to another lawyer's report of "evidence of a material violation" by the company. 17 C.F.R. § 205.3(b)(2) (2012); *see also In re* Kern, 816 S.E. 2d 574 (S.C. 2018) (discussing obligations of securities lawyers); U.S. DEP'T OF JUSTICE, PRINCIPLES OF FEDERAL PROSECUTION OF BUSINESS ORGANIZATIONS § 9-28.720 (quality of internal investigation can affect eligibility for "cooperation credit"); Cohen, *supra* note 26, at 129–30 (discussing obligations of securities lawyers).

[32] *See* GOOD PRACTICES GUIDANCE, *supra* note 7, at 2. A "risk-based approach" is generally "intended to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified . . . [H]igher risk areas should be subject to enhanced procedures, such as enhanced client due diligence ("CDD") . . . ." *Id.* at 8. The report continues: "This paper [identifies] the risk categories and offer[s] voluntary good practices designed to assist lawyers in detecting money laundering while satisfying their professional obligations." *Id.*

include "examining the nature of the legal work involved, and where the [client's] business is taking place."[33]

ABA Formal Opinion 463 addresses efforts to require U.S. lawyers to perform "gatekeeping" duties to protect the international financing system from criminal activity arising out of worldwide money-laundering and terrorist financing activities. Observing that "the Rules do not mandate that a lawyer perform a 'gatekeeper' role," especially in regards to "mandatory reporting" to public authorities "of suspicion about a client," Opinion 463 nevertheless identifies the Good Practices Guidance as a resource "consistent with the Model Rules" and with Informal Opinion 1470.[34] It also reinforces the duty to investigate in appropriate circumstances. Specifically, Opinion 463 states that "[i]t would be prudent for lawyers to undertake Client Due Diligence ("CDD") in appropriate circumstances to avoid facilitating illegal activity or being drawn unwittingly into a criminal activity. . . . *[P]ursuant to a lawyer's ethical obligation to act competently, a duty to inquire further may also arise*. An appropriate assessment of the client and the client's objectives, and the means for obtaining those objectives, are *essential prerequisites* for accepting a new matter or continuing a representation as new facts unfold."[35]

A lawyer's reasonable judgment under the circumstances presented, especially the information known and reasonably available to the lawyer at the time, does not violate the rules. Nor should a lawyer be subject to discipline because a course of action, objectively reasonable at the time it was chosen, turned out to be wrong with hindsight.[36]

IV. Other Obligations Incident to the Duty to Inquire

If the client refuses to provide information or asks the lawyer not to evaluate the legality of a transaction the lawyer should explain to the client that the lawyer cannot undertake the representation unless an appropriate inquiry is made. If the client does not agree to provide

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[33] ABA Standing Comm. on Ethics & Prof'l Responsibility, Formal Op. 463, at 2 (2013) (summarizing GOOD PRACTICES GUIDANCE).

[34] *Id.*

[35] *Id.* at 2–3 (emphasis added); *see also id.* at 2 n.10 ("The Good Practices Guidance encourages all lawyers to perform basic CDD by (1) identifying and verifying the identity of each client; (2) identifying and verifying the identity of any 'beneficial owner' of the client, defined as the natural person(s) with ultimate control of a client, when such an analysis is warranted from a risk-based standpoint; and (3) obtaining enough information to understand a client's circumstances, business, and objectives.").

[36] In numerous contexts of evaluating attorney conduct, courts and regulators have warned against hindsight bias. *See* Woodruff v. Tomlin, 616 F.2d 924, 930 (6th Cir. 1980) ("[E]very losing litigant would be able to sue his attorney if he could find another attorney who was willing to second guess the decisions of the first attorney with the advantage of hindsight."); *In re* Claussen, 14 P.3d 586, 593–94 (Or. 2000) (en banc) (declining to discipline lawyer who aided client in converting insurance policy to cash while client's bankruptcy petition was pending; lawyer did not know client would abscond with money and cannot be judged by a standard of "clairvoyance" that reflects the knowledge of "hindsight"); N.Y.C. Bar Ass'n Comm. on Prof'l Ethics, Formal Op. 2018-4 (2018) ("Under the knowledge standard of Rule 1.2(d), a lawyer is not deemed to 'know' facts, or the significance of facts, that become evident only with the benefit of hindsight."); N.Y.C. Bar Ass'n Comm. on Prof'l Ethics, Formal Op. 2005-05 (2005) (in handling of "'thrust upon' concurrent client conflicts a lawyer who does balance the relevant considerations in good faith should not be subject to discipline for getting it wrong in hindsight"); Pa. Bar Ass'n Comm. on Legal Ethics & Prof'l Responsibility, Formal Op. 2001-100 (2001) (the propriety of accepting stock as payment of legal fees for a start-up "should be made based on the information available at the time of the transaction and not with the benefit of hindsight").

information, then the lawyer must decline the representation or withdraw.[37] If the client agrees, but then temporizes and fails to provide the requested information, or provides incomplete information, the lawyer must remonstrate with the client. If that fails to rectify the information deficit, the lawyer must withdraw. Indeed, proceeding in a transaction without the requested information may, depending on the circumstances, be evidence of the lawyer's willful blindness under Rule 1.2(d).[38] If the client agrees, provides additional information, and the lawyer concludes that the requested services would amount to assisting in a crime or fraud, the lawyer must either discuss the matter further with the client, decline the representation, or seek to withdraw under Rule 1.16(a).[39]

In general, a lawyer should not assume that a client will be unresponsive to remonstration. However, if the client insists on proceeding with the proposed course of action despite the lawyer's remonstration, the lawyer must decline the representation or withdraw.[40] The lawyer may have discretion to disclose information relating to the representation under Model Rule 1.6(b)(1)-(3).[41]

If the lawyer needs information from sources other than the prospective client and can obtain that information without disclosing information protected by Rules 1.6 and 1.18, the information should be sought. If the lawyer needs to disclose protected information in order to analyze the transaction, the lawyer must seek the client's informed consent in advance. [42] If the client will not consent or the lawyer believes that seeking consent will lead to criminal or fraudulent activity, the lawyer must decline the representation or withdraw.[43]

If an inquiry would result in expenses that the client refuses to pay, the lawyer may choose to conduct the inquiry without payment or to decline or discontinue the representation.

Overall, as long as the lawyer conducts a reasonable inquiry, it is ordinarily proper to credit an otherwise trustworthy client where information gathered from other sources fails to resolve the issue, even if some doubt remains.[44] This conclusion may be reasonable in a variety of

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[37] As discussed below, under Rule 1.2(c) a lawyer cannot assent to an unreasonable limitation on the representation even if the client seeks or insists upon such a limitation and offers consent.

[38] *See also* N.Y.C. Bar Ass'n Comm. on Prof'l Ethics, Formal Op. 2018-4 at 5 ("[A] client's refusal to authorize and assist in an inquiry into the lawfulness of the client's proposed conduct will ordinarily constitute an additional, and very significant, 'red flag.'").

[39] MODEL RULES R. 1.2 cmt. [13] ("If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law . . . the lawyer must consult with the client regarding the limitations on the lawyer's conduct.").

[40] *See also* N.Y.C. Bar Ass'n Comm. on Prof'l Ethics, Formal Op. 2018-4 at 6 ("If it becomes clear during a lawyer's representation that the client has failed to take necessary corrective action, and the lawyer's continued representation would assist client conduct that is illegal or fraudulent, Rule 1.16(b)(1) mandates that the lawyer withdraw from representation."). For a discussion of the obligation to withdraw upon learning that a lawyer's services have been used to further a fraud, see ABA Standing Comm. on Ethics and Prof'l Responsibility, Formal Op. 92-366 (1992).

[41] N.Y.C. Bar Ass'n Comm. on Prof'l Ethics, Formal Op. 2018-4 at 6.

[42] MODEL RULES R. 1.0(e) ("'Informed consent' denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.").

[43] MODEL RULES R. 1.16(c)(2).

[44] *See* N.Y.C. Bar Ass'n Comm. on Prof'l Ethics, Formal Op. 2018-4 at 5.

circumstances. For example, the lawyer may have represented the client in many other matters. The lawyer may know the client personally, professionally, or socially. The business arrangements and other individuals or parties involved in the transaction may be familiar to the lawyer.

Finally, Rule 1.2(c) permits a lawyer to "limit the scope of [a] representation if the limitation is reasonable under the circumstances and the client gives informed consent." Permitted scope limitations include, for example, that the client has limited but lawful objectives for the representation, or that certain available means to accomplish the client's objectives are too costly for the client or repugnant to the lawyer.[45] Any limitation, however, must "accord with the Rules of Professional Conduct and other law," including the lawyer's duty to provide competent representation.[46] In the circumstances addressed by this opinion, a lawyer may not agree to exclude inquiry into the legality of the transaction.

V. Hypotheticals

The following hypotheticals are intended to clarify when circumstances might require further inquiry because of risk factors known to the lawyer. Some are drawn from the Good Practices Guidance, an important resource for transactional lawyers detailing how to conduct proper due diligence as well as how to identify and address risk factors in the most common scenarios in which a lawyer's assistance might be sought in criminal or fraudulent transactions.[47]

Further inquiry would be required in the first two examples because the combination of risk factors known to the lawyer creates a high probability that the client is engaged in criminal or fraudulent activity.

#1: A prospective client has significant business connections and interests abroad. The client has received substantial payments from sources other than his employer. The client holds these funds outside the US and wants to bring them into the US through a transaction that minimizes US tax liability. The client says: (i) he is "employed" outside the US but will not say how; (ii) the money is in a "foreign bank" in the name of a foreign corporation but the client will not identify the bank or the corporation; (iii) he has not disclosed the payments to

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[45] *See* MODEL RULES R. 1.2 cmt. [6] ("A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.")

[46] *See id.* cmt. [7] ("an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation"); *id.* cmt. [8] ("All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law.").

[47] The analysis of the hypotheticals that follows draws on the GOOD PRACTICES GUIDANCE but should not be read to support the conclusion that any isolated risk factor identified in the GOOD PRACTICES GUIDANCE necessarily creates a duty to inquire in all matters in which it may be present. The question is whether a reasonable lawyer under the specific circumstances would be obliged to conduct further inquiry. The Committee further cautions that circumstances that render a specific jurisdiction or other factor "high risk" can change. On the one hand, if new circumstances presenting a greater risk arise the lawyer should take appropriate action, and may need to seek advice on what, if any, action is required. On the other hand, new circumstances may support acceptance or continuation of the representation by showing that, upon inquiry, the high-risk designation is inaccurate or inapplicable to the matter.

his employer or any governmental authority or to anyone else; and (iv) he has not included the amounts in his US income tax returns.[48]

#2: A prospective client tells a lawyer he is an agent for a minister or other government official from a "high risk" jurisdiction[49] who wishes to remain anonymous and would like to purchase an expensive property in the United States. The property would be owned through corporations that have undisclosed beneficial owners. The prospective client says that large amounts of money will be involved in the purchase but is vague about the source of the funds, or the funds appear to come from "questionable" sources.[50]

If, on the same facts as #2, the client assures the lawyer that information will be provided but does not follow through, the lawyer must either withdraw or again discuss with the client the need for the information to continue in the representation, seek an explanation for the delay, and withdraw if the explanation the client offers is unsatisfactory. If the information provided is incomplete — e.g., information that leaves the identity of the actual funding sources opaque — the lawyer must follow the same course: withdraw or again discuss with the client the need for the information to continue in the representation, seek an explanation for the delay, and withdraw if the explanation offered is unsatisfactory.[51]

In examples #3 through #5 below, the duty to inquire depends on contextual factors, most significantly, the lawyer's familiarity with the client and the jurisdiction.

#3: A general practitioner in rural North Dakota receives a call from a long-term client asking her to form a limited liability company for the purpose of buying a ranch.[52]

#4: The general practitioner in rural North Dakota receives a call from a new and unknown prospective client saying that the client just won several million dollars in Las Vegas and needs the lawyer to form a limited liability company to buy a ranch.[53]

#5: A prospective client in New York City asks a general practitioner in a mid-size town in rural Georgia to provide legal services for the acquisition of several farms in rural Georgia. The prospective client tells the lawyer that he has made a lot of money in hedge funds and now wants to diversify his investments by purchasing these farms but says he doesn't want his purchases to cause a wave of land speculation and artificially inflate local prices. He wants

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[48] This hypothetical is drawn from ABA Comm. on Ethics & Prof'l Responsibility, Informal Opinion 1470, which concludes that a lawyer must conduct further inquiry.

[49] For information about "high risk" jurisdictions, see GOOD PRACTICES GUIDANCE, *supra* note 7, at 15–16.

[50] This hypothetical is based on *In re* Jankoff, 81 N.Y.S.3d 733, 734 (N.Y. App. Div. 2018) (public censure imposed on stipulated facts), and *In re* Koplik, 90 N.Y.S.3d 187 (N.Y. App. Div. 2019) (same).

[51] *See supra*, Section IV.

[52] This hypothetical is drawn from GOOD PRACTICES GUIDANCE, *supra* note 7, at 8, and should not require further inquiry regarding the legitimacy of the transaction assuming prior matters have not involved abuse of the attorney-client relationship on the part of the client. It is likely, of course, that some inquiry into other details will be necessary to handle the transaction competently.

[53] This hypothetical is drawn from GOOD PRACTICES GUIDANCE, *supra* note 7, at 8, and requires further inquiry.

to wire money into the law firm's trust account over time for the purchases. He asks the lawyer to create a series of LLCs to make strategic (and apparently unrelated) acquisitions.[54]

VI. Conclusion

Model Rule 1.2(d) prohibits a lawyer from advising or assisting a client in a transaction or other non-litigation matter the lawyer "knows" is criminal or fraudulent. That knowledge may be inferred from the circumstances, including a lawyer's willful blindness or conscious disregard of available facts. Accordingly, where there is a high probability that a client seeks to use the lawyer's services for criminal or fraudulent activity, the lawyer must inquire further to avoid advising or assisting such activity. Even if information learned in the course of a preliminary interview or during a representation is insufficient to establish "knowledge" under Rule 1.2(d), other rules may require further inquiry to help the client avoid crime or fraud, to advance the client's legitimate interests, and to avoid professional misconduct. These include the duties of competence, diligence, communication, and honesty under Rules 1.1, 1.3, 1.4, 1.13, 1.16, and 8.4. If the client or prospective client refuses to provide information necessary to assess the legality of the proposed transaction, the lawyer must ordinarily decline the representation or withdraw under Rule 1.16. A lawyer's reasonable evaluation after that inquiry based on information reasonably available at the time does not violate the rules.

[54] This hypothetical is drawn from AMERICAN LAW INSTITUTE, ANTI-MONEY LAUNDERING RULES AND OTHER ETHICS ISSUES 450-51 (2017) and requires further inquiry.

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 513 **August 23, 2024**

Duty to Inquire Into and Assess the Facts and Circumstances of Each Representation

As recently revised, Model Rule 1.16(a) provides that: "A lawyer shall inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation." To reduce the risk of counseling or assisting a crime or fraud, some level of inquiry and assessment is required before undertaking each representation. Further inquiry and assessment is required when the lawyer becomes aware of a change in the facts and circumstances relating to the representation that raises questions about whether the client is using the lawyer's services to commit or further a crime or fraud.

The lawyer's inquiry and assessment will be informed by the nature and extent of the risk that the current or prospective client seeks to use, or persists in using, the lawyer's services to commit or further a crime or fraud. If after having conducted a reasonable, risk-based inquiry, the lawyer determines that the representation is unlikely to involve assisting in a crime or fraud, the lawyer may undertake or continue the representation. If the lawyer has "actual knowledge" that the lawyer's services will be used to commit or further criminal or fraudulent activity, the lawyer must decline or withdraw from the representation.

When the lawyer's initial inquiry leaves the lawyer with unresolved questions of fact about whether the current or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud, the lawyer must make additional efforts to resolve those questions through further reasonable inquiry before accepting or continuing the representation. The lawyer need not resolve all doubts. Rather, if some doubt remains even after the lawyer has conducted a reasonable inquiry, the lawyer may proceed with the representation as long as the lawyer concludes that doing so is unlikely to involve assisting or furthering a crime or fraud.

I. Introduction

A duty to inquire into and assess the facts and circumstances of a representation has long been implicit in the ABA Model Rules of Professional Conduct. Rule 1.2(d) requires a lawyer to inquire into and assess the facts of each representation to avoid advising or assisting a client in conduct the lawyer knows to be criminal or fraudulent; similarly, depending on the facts and circumstances, other Rules may also require inquiry and assessment to satisfy the lawyer's duty of competence under Rule 1.1, the duty of diligence under Rule 1.3, the duty to communicate under Rule 1.4, the duty to protect the best interests of an organizational client under Rule 1.13, the duties of honesty and integrity under Rules 8.4(b) and (c), and the duty to withdraw under Rule 1.16(a).[1] In August 2023, this previously implicit duty to inquire and assess the facts and circumstances of a representation was made explicit by amendments to Rule 1.16. This Opinion provides further guidance regarding that duty.

[1] ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 491 (2020).

The 2023 amendments to Rule 1.16 continue the ABA's longstanding efforts to help lawyers detect and avoid involvement in a client's criminal or fraudulent conduct. ABA Formal Opinion 463 (2013) examined a lawyer's ethical obligations under the Model Rules of Professional Conduct regarding efforts to deter and combat money laundering. ABA Formal Opinion 491 (2020) addressed a lawyer's obligation to inquire when faced with a client who may be seeking to use the lawyer's services in a transaction to commit a crime or fraud. Even after this guidance, governmental and inter-governmental agencies in the U.S. and abroad—including the U.S. Department of Treasury, the Financial Action Task Force ("FATF"), and the Organization for Economic Development—continued to urge that more was needed to help U.S. lawyers avoid unwittingly facilitating money laundering and terrorist financing. Those concerns provided the impetus for revisions to Rule 1.16 adopted by the ABA House of Delegates on August 8, 2023.[2]

Although these amendments arose from concerns about lawyer facilitation of criminal transactions such as money laundering and terrorist financing, lawyers' existing obligations apply more broadly and so, too, does the amended Rule.[3] As stated in the report submitted to the ABA House of Delegates regarding the amendments to the Rule, the revised Rule does not impose any new obligations; instead, it adds existing obligations—as detailed in past ethics opinions and other Rules and Comments—to the text of Rule 1.16 and its Comments.[4] To assist lawyers in complying with their obligations under Rule 1.16, we address key aspects of those obligations and provide illustrative examples.

II. Overview of Revisions to Rule 1.16

The amendments to Rule 1.16 changed both the text of the Rule and its Comments.[5] First, as noted above, paragraph (a) of the Rule, which addresses when a lawyer must decline or withdraw from a representation, was amended to incorporate existing guidance regarding its application. The text of the Rule now explicitly requires a lawyer to (1) inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation; and (2) reject or discontinue the representation if the client or

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[2] The "impetus for these proposed amendments was lawyers' unwitting involvement in or failure to pay appropriate attention to signs or warnings of danger . . . relating to a client's use of a lawyer's service to facilitate possible money laundering and terrorist financing activities." ABA STANDING COMM. ON ETHICS & PROF'L RESPONSIBILITY AND ABA STANDING COMM. ON PROF'L REGULATION, REVISED RESOLUTION 100 AND REVISED REPORT TO THE ABA HOUSE OF DELEGATES, REPORT at 2 (revised Aug. 2023) [hereinafter REVISED REPORT], https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/20230805-revised-resolution100report.pdf.

[3] *Id.*

[4] "[A] lawyer's duty to inquire into and assess the facts and circumstances of each representation is not new . . ." *Id.* at 6; *id.* at 10 (noting that revisions to Rule 1.16 make "explicit the nature and scope of lawyers' existing . . . obligations").

[5] The Revised Report accompanying ABA Resolution 100 for adoption of revised Model Rule 1.16 uses the term "Black Letter" to refer to the text of the Rule, see, e.g., REVISED REPORT at 1. The Committee believes use of "Black Letter" in the Report was meant to emphasize that while the obligations to inquire and assess under the then proposed revised Model Rule had not been part of the text of the Rule previously, these obligations were already present. This is why the Report states: "Implicit duties – like unwritten rules – do not serve lawyers or the public well. Therefore, the Committees present these amendments to the Black Letter of Model Rule 1.16 from which both lawyers and the public will benefit." *Id.* With the adoption of ABA Resolution 100 and the revision of ABA Model Rule 1.16, it appears unnecessary to continue to refer to the text of the Rule as "Black Letter." The text of the Rule is the Rule.

prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud, despite the lawyer's discussion with the client pursuant to Rules 1.2(d) and 1.4(a)(5) regarding the limitations on the lawyer assisting with the proposed conduct.[6] These obligations were detailed in ABA Formal Opinions 463 and 491.[7]

Second, the Comments to Rule 1.16 were amended to elaborate on a lawyer's obligation to inquire into and assess the facts and circumstances of the representation. Comment [1] makes clear that the duty is one that continues throughout the course of the representation, and Comment [2] provides guidance on conducting the required inquiry and assessment.

Third, as revised, Model Rule 1.16 does not alter either Model Rule 1.2(d) or Model Rule 1.16(b). Model Rule 1.2(d) continues to prohibit counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Rule 1.16(b)(2) continues to permit a lawyer to withdraw from a current representation if the lawyer reasonably believes that the lawyer would be assisting in a crime or fraud.[8] Finally, a lawyer has always been permitted to decline a prospective representation, other than a court appointment, at the lawyer's discretion.

As amended, Rule 1.16 states in pertinent part:

Rule 1.16: Declining or Terminating Representation

> (a) A lawyer shall inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation. Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: . . .
>
> > (4) the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud, despite the lawyer's discussion pursuant to Rules 1.2(d) and 1.4(a)(5) regarding the limitations on the lawyer assisting with the proposed conduct.
>
> (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if: . . .
>
> > (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent . . .

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[6] Comment [2] explains that a lawyer is not obligated to decline or withdraw just because a client suggests the lawyer do something illegal or unethical. But, when faced with such a suggestion from a client, a lawyer is obligated under Rule 1.4(a)(5) to talk with the client about limits to the lawyer's services, including the prohibition against committing a criminal or fraudulent act and the obligation to adhere to the rules of professional conduct.

[7] ABA Formal Opinions 463 and 491 are consistent with and remain applicable following the recent revisions to Rule 1.16, except that those revisions broaden the guidance in ABA Formal Opinion 491 beyond the non-litigation setting addressed there.

[8] The fact that Model Rule 1.16 retains language providing for permissive withdrawal under the circumstances addressed in (b)(2) is a significant factor in evaluating when withdrawal is mandatory under Rule 1.16(a)(4).

Comment

[1] Paragraph (a) imposes an obligation on a lawyer to inquire into and assess the facts and circumstances of the representation before accepting it. The obligation imposed by Paragraph (a) continues throughout the representation. A change in the facts and circumstances relating to the representation may trigger a lawyer's need to make further inquiry and assessment. For example, a client traditionally uses a lawyer to acquire local real estate through the use of domestic limited liability companies, with financing from a local bank. The same client then asks the lawyer to create a multi-tier corporate structure, formed in another state to acquire property in a third jurisdiction, and requests to route the transaction's funding through the lawyer's trust account. Another example is when, during the course of a representation, a new party is named or a new entity becomes involved. A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.1, 1.2(c) and 6.5. See also Rule 1.3, Comment [4].

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation. Under paragraph (a)(4), the lawyer's inquiry into and assessment of the facts and circumstances will be informed by the risk that the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud. This analysis means that the required level of a lawyer's inquiry and assessment will vary for each client or prospective client, depending on the nature of the risk posed by each situation. Factors to be considered in determining the level of risk may include: (i) the identity of the client, such as whether the client is a natural person or an entity and, if an entity, the beneficial owners of that entity, (ii) the lawyer's experience and familiarity with the client, (iii) the nature of the requested legal services, (iv) the relevant jurisdictions involved in the representation (for example, whether a jurisdiction is considered at high risk for money laundering or terrorist financing), and (v) the identities of those depositing into or receiving funds from the lawyer's client trust account, or any other accounts in which client funds are held. For further guidance assessing risk, see, e.g., as amended or updated, Financial Action Task Force Guidance for a Risk-Based Approach for Legal Professionals, the ABA Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing, A Lawyer's Guide to Detecting and Preventing Money Laundering (a collaborative publication of the International Bar Association, the American Bar Association and the Council of Bars and Law Societies of Europe), the Organization for Economic Cooperation and Development (OECD) Due Diligence Guidance for Responsible Business Conduct, and the U.S. Department of Treasury Specially Designated Nationals and Blocked Persons List.

III. Application of Rule 1.16

A. What does it mean to "inquire into and assess the facts and circumstances"?

ABA Formal Opinion 463 addressed the "lawyer as gatekeeper" theory, which is based on the idea that "the lawyer has the capacity to monitor and to control, or at least to influence, the conduct of his or her clients and prospective clients in order to deter wrongdoing."[9] The Opinion concluded that "the Model Rules neither require a lawyer to fulfill a gatekeeper role, nor do they permit a lawyer to engage in the reporting that such a role could entail."[10] The Opinion recognized, however, that "[i]t would be prudent for lawyers to undertake Client Due Diligence ("CDD") in appropriate circumstances to avoid facilitating illegal activity or being drawn unwittingly into a criminal activity," and that a lawyer's ethical obligations may give rise to a duty to inquire and to conduct an "appropriate assessment."[11]

Thereafter, ABA Formal Opinion 491 explained that Rule 1.2(d) requires lawyers to inquire into and assess the facts and circumstances of a matter to avoid counseling or assisting a crime or fraud. The Opinion also noted that "Rule 1.2(d) is not the only source of a lawyer's duty to inquire." Depending on the facts and circumstances of a matter, a "lawyer may be obliged to inquire into and assess the facts and circumstances of a matter in order to meet duties of competence, diligence, communication, honesty, and withdrawal under Rules 1.1, 1.3, 1.4, 1.13, 1.16, and 8.4." Opinion 491 then provided a list of facts—citing the ABA Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing ("Good Practices Guidance")—that could prompt the lawyer's duty to inquire.

Consistent with Formal Opinion 463 and Formal Opinion 491, revised Rule 1.16 expressly provides that lawyers must conduct an inquiry and assessment, appropriate to the circumstances, to avoid counseling or assisting in the client's fraudulent or criminal conduct. As the Rule now makes clear, some level of inquiry and assessment is required before undertaking each representation. The scope and extent of the required inquiry and assessment will vary. Comment [2] adopts a risk-based approach, which means that the lawyer's inquiry and assessment will be informed by the risk that the current or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud. Under this approach, the required scope and depth of inquiry and assessment will vary for each current or prospective client, depending on the nature and extent of the risk. A risk-based approach also incorporates the concepts of reasonableness and proportionality. In a risk-based approach, risks are classified by degree (high, medium-high, medium, medium-low, and low, for example), and proportionate measures are taken to prevent or mitigate them.[12]

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[9] ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 463 (2013), at 2.

[10] *Id.*

[11] *Id.* at 2-3. The opinion grounded those obligations in the duty to avoid knowingly counseling or assisting a client to commit a crime or fraud under Rule 1.2(d), its precursor under the Disciplinary Rules of the Model Code of Professional Responsibility, and the duty of competence.

[12] *See, e.g.*, ABA VOLUNTARY GOOD PRACTICES GUIDANCE FOR LAWYERS TO DETECT AND COMBAT MONEY LAUNDERING AND TERRORIST FINANCING at 7-8 (discussing proportionate nature of risk-based approach) [hereinafter GOOD PRACTICES GUIDANCE]; *see also* FATF, GUIDANCE FOR A RISK-BASED APPROACH FOR LEGAL PROFESSIONALS at 25 (2019), https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Risk-Based-Approach-

Comment [2] identifies five non-exclusive factors that a lawyer might consider when assessing the risk posed by accepting or continuing a particular representation: (i) the identity of the client, including the client's beneficial ownership if the client is an entity; (ii) the lawyer's experience and familiarity with the client; (iii) the nature of the requested legal services; (iv) the relevant jurisdictions involved in the representation (for example, whether a jurisdiction is considered at high risk for money laundering or terrorist financing); and (v) the identities of those depositing into or receiving funds from the lawyer's client trust account, or any other accounts in which client funds are held. Comment [2] also lists specific publications as resources for further guidance on assessing risk.[13]

Before undertaking most representations, the initial inquiry required by Rule 1.16 will not exceed what most lawyers would otherwise undertake before deciding to accept the representation.[14] That is because, by their very nature, many representations—for example, the prosecution or defense of a personal injury claim or the drafting of wills—appear at the outset to present a low risk that the representation will involve the lawyer in assisting a crime or fraud. Further, many transactional representations that by their nature have a greater risk of involving the lawyer in a crime or fraud may, upon initial inquiry, present a low risk depending on the nature of the prospective client, the lawyer's prior relationship with the prospective client, or other readily ascertainable circumstances. When Rule 1.16(a) was amended, it was anticipated that only certain representations would necessitate a significant inquiry, namely, those where there appeared to be a heightened risk of crime or fraud typically because of the nature of the representation or because of the appearance of "red flags."

If, having conducted a reasonable, risk-based inquiry, the lawyer determines that the representation is unlikely to involve assisting in a crime or fraud, the lawyer may undertake the representation. This will be the usual case. At the other end of the spectrum, if the lawyer has "actual knowledge" that the lawyer's services will be used to commit or further criminal or fraudulent activity, the lawyer must decline the representation; or, if the representation is ongoing, the lawyer must "consult with the client regarding the limitations on the lawyer's conduct" and if "there is no misunderstanding and the client persists, the lawyer must withdraw."[15] Likewise, if the lawyer's reasonable, risk-based inquiry leaves the lawyer with knowledge of facts that "indicate a high probability that a client seeks to use the lawyer's services for criminal or fraudulent activity," the lawyer's "conscious, deliberate failure to inquire [would] amount[ ] to knowing

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Legal-Professionals.pdf.coredownload.pdf [hereinafter FATF GUIDANCE] (noting that risks are often categorized as low, medium-low, medium, medium-high, or high); *id.* at 28 (in risk-based approach, legal professionals "determine and implement reasonable and proportionate measures and controls"). "In contrast, a rules-based approach requires compliance with every element of detailed laws, rules, or regulations irrespective of the underlying quantum or degree of risk." ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 463, *supra* note 8.

[13] Those resources are cited to aid lawyers in conducting the inquiry and assessment required by Rule 1.16, not to establish mandatory requirements that lawyers must follow nor to establish a standard of care governing their conduct.

[14] For a discussion of the inquiry that is reasonably necessary to determine whether to represent a prospective client, see ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 510 (2024).

[15] ABA Formal Opinion 491, *supra* note 1, at 3. Pursuant to Rule 1.0(f), knowledge "denotes actual knowledge of the fact in question" and "may be inferred from circumstances," including a lawyer's willful blindness to or conscious avoidance of facts. *See also* Rule 3.3 Comment [8] (in assessing whether a client intends to testify falsely or introduce false evidence, a lawyer should revolve doubts in the client's favor but "cannot ignore an obvious falsehood").

assistance of criminal or fraudulent activity." [16] In those circumstances, the lawyer must inquire further—indeed, the lawyer's inquiry would not otherwise be reasonable—or decline the representation.

The questions that remain regarding the nature and extent of a reasonable inquiry and assessment are: how long and how extensively must a lawyer continue to inquire into the facts and circumstances when a lawyer does not have knowledge[17] that a client or prospective client is seeking to use the lawyer's services to commit or further a crime or fraud, but the lawyer continues to have unresolved questions of fact concerning that possibility? Implicit in Rule 1.16(a) is an obligation to conduct a *reasonable* risk-based inquiry, not a perfunctory one and not one that involves a dragnet-style operation to uncover every fact about every client. When the lawyer has such unresolved questions, the lawyer must conduct additional inquiry that is reasonably likely to resolve those questions and is proportionate to the lawyer's concerns. Even after additional reasonable inquiry, however, unresolved questions may remain such that the lawyer cannot discount the possibility that the prospective client would be using the lawyer's services to commit a crime or fraud. But as long as the client has cooperated in a reasonable inquiry and the lawyer is able to conclude, even in the face of those unresolved questions, that the representation is unlikely to involve assisting or furthering a crime or fraud, then the lawyer's decision to proceed with the representation, rather than continuing the inquiry or declining the representation, satisfies Rule 1.16. If the lawyer undertakes the representation, the lawyer should remain vigilant regarding the client's use of the lawyer's services.

Where warranted by the facts and circumstances of the representation and proportionate to the risks it presents, this additional inquiry might include posing follow-up questions to or requesting documents from the client, prospective client, or third parties. It might also include checking public sources of information. If the client refuses to provide information, "the lawyer should explain to the client that the lawyer cannot undertake the representation unless an appropriate inquiry is made. If the client does not agree to provide information, then the lawyer must decline the representation or withdraw."[18] If the lawyer determines that it is necessary to seek verification from other sources, the lawyer must be mindful of the duty of confidentiality under Rules 1.6 and 1.18 and seek the client's or prospective client's consent to contact the source when those Rules require it.[19] "Overall, as long as the lawyer conducts a reasonable inquiry, it is ordinarily proper to credit an otherwise trustworthy client where information gathered from other sources fails to resolve the issue, even if *some* doubt remains."[20]

In sum, the amendment to Rule 1.16(a) announces what we believe has always been assumed by the Rules and reflected in our prior opinions: lawyers must conduct a reasonable inquiry and assessment, proportionate to the risks presented by the facts and circumstances. However, when the lawyer's initial inquiry leaves the lawyer with unresolved questions of fact about whether the current or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud, the lawyer must make additional efforts to resolve

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[16] ABA Formal Op. 491, *supra* note 1, at 3.
[17] *See* note 14, *supra*.
[18] ABA Formal Opinion 491, *supra* note 1, at 9.
[19] *Id.* (emphasis added).
[20] *Id.* at 10 (emphasis added).

those questions through further reasonable inquiry proportionate to the risks, so that the lawyer can reduce the risk of counseling or assisting a crime or fraud.

At bottom, a risk-based approach to determining whether a current or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud "is not a 'zero failure' approach."[21] There may be occasions where a lawyer's services are used to commit or further criminal or fraudulent activity even though the lawyer has conducted a reasonable inquiry and assessment under the circumstances.[22] That a client uses the lawyer's services to commit a crime or fraud does not establish that the lawyer's inquiry and assessment was unreasonable, because the lawyer's judgment should be evaluated as of the time it was made, not with the benefit of hindsight.[23]

As with many ethical circumstances when lawyers are tasked with weighing multiple factors relevant to evaluating potential risk, hypothetical scenarios regarding potential representation can provide a fruitful structure for discussion.

> **Hypothetical 1**: An investor based outside the United States contacts an established real estate lawyer seeking representation regarding the proposed purchase of an office building in the lawyer's city. The lawyer has not represented the investor previously but was referred to the lawyer by a well-known real estate lawyer in another part of the same state who, before retiring, had represented the investor in several similar purchases.

To repeat, before accepting the engagement, Model Rule 1.16(a) requires the lawyer to inquire into and assess the relevant facts and circumstances of the representation.[24] A lawyer may fulfill that obligation in various ways. The following discussion identifies some possible steps lawyers could take to satisfy their obligations under the Rule. But, again, the level of inquiry is determined by the facts and circumstance of each matter and the risks presented by the representation. By providing this example, we intend to provide guidance and do not mean to suggest that any particular method or specific action is required.

Here, for example, the inquiry likely would start with asking about the identity of the prospective client: Is the investor seeking representation for himself as an individual, for an entity the investor controls or represents, or both? If the prospective client is an existing entity, the lawyer might inquire about its beneficial ownership,[25] structure, and place of business. If forming an entity

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[21] FATF GUIDANCE, *supra* note 9, at 19.

[22] *Id.* (noting that failures may occur even where a legal professional has taken reasonable and proportionate measure to prevent them).

[23] *See* ABA Formal Opinion 491, *supra* note 1, at 9 ("A lawyer's reasonable judgment under the circumstances presented, especially the information known and reasonably available to the lawyer at the time, does not violate the rules. Nor should a lawyer be subject to discipline because a course of action, objectively reasonable at the time it was chosen, turned out to be wrong with hindsight.")

[24] This obligation applies in addition to other ethical obligations when deciding whether to commence a representation, such as obligations to avoid conflicts and to determine whether one can provide competent representation.

[25] This is not to say that a lawyer must determine a client's beneficial ownership for all representations. That issue was highly controversial in the drafting of the predecessor to the FATF Guidance. *See* GOOD PRACTICES GUIDANCE,

will be part of the representation, the lawyer might discuss those issues with the investor as well. The lawyer also might ask the prospective client about the scope of the requested legal services: will the engagement be limited to negotiating and documenting the purchase or will it include advising on related tax implications, zoning issues, environmental compliance, or other subjects?[26] If the prospective client and the lawyer agree to exclude these or other issues from the representation, will accountants or other lawyers be retained to handle those issues and, if so, what are the identities of these other professionals? The lawyer also might ask about the proposed financing of the purchase, including the source of the funds and whether the funds will be deposited into the lawyer's trust account.[27]

Assume that in response to the lawyer's questions, the investor states that he wishes the lawyer to form a limited liability company to purchase the property, intends to be the sole member of that entity, and plans to finance the transaction with a loan from a local bank. Assume, further, that the investor does not require the lawyer's services on other issues and will consult other appropriate professionals as necessary. In addition, assume that although the prospective client is not located in the United States, his country of residence is not associated with a heightened risk of crime or corruption, and he will not be using funds from outside the United States for the transaction.[28]

The lawyer then must assess the quantum and degree of risk that the prospective client seeks to use the lawyer's services to commit or further a crime or fraud, based on the information provided by the prospective client and other information known to the lawyer, including information gathered by the lawyer or the lawyer's firm for other purposes, such as checking for conflicts of interest, confirming billing arrangements, or evaluating the prospective client's ability to pay the lawyer's legal fees. The lawyer also must consider the nature and scope of the

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supra note 11, at 9. Ultimately, the FATF agreed that lawyers should apply a risk-based approach to that issue, in which the need to identify beneficial ownership depends on whether it is warranted from a risk-based standpoint. *Id.* As an example, the Good Practices Guidance notes that if a lawyer is dealing with a syndication of investors or financiers or an entity that has a large number of owners but is not publicly traded, the process of determining all the beneficial owners of the client would be disproportionate to the level of risk "unless other facts put the lawyer on notice that something unusual or suspicious were transpiring." *Id.* at 9-10.

[26] Rule 1.5(b) requires the lawyer to communicate the scope of the representation and the basis of the lawyer's fee to the client, preferably in writing, before or within a reasonable time of commencing the representation, unless the lawyer regularly represents the client, and the terms are not changing. The lawyer may limit the scope of the representation "if the limitation is reasonable under the circumstances and the client gives informed consent." MODEL RULES OF PROF'L CONDUCT R. 1.2(c).

[27] In listing questions to be considered when evaluating this and other hypotheticals in this opinion, we intend to illustrate a risk-based approach, rather than provide an exhaustive inventory of questions or mandate that lawyers ask any specific question.

[28] Geographic location is an established factor relevant to assessing risk of criminal activity. The publications cited in Comment [2] refer to readily available, credible sources that identify geographic locations associated with heightened risk of money laundering, terrorist financing, criminal activity, corruption, and other misconduct. Lawyers who are unfamiliar with a specific country or area involved in a particular representation should consult these or other reputable sources for guidance. Although not required by Rule 1.16, good practices would include checking the prospective client's name against the Specially Designated Nationals and Blocked Persons List (SDN List) and other sanctions lists maintained by the U.S. Treasury Department Office of Foreign Assets Control. SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS LIST, U.S. DEPT. OF THE TREASURY, https://ofac.treasury.gov/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists (last visited June 6, 2024). *See also* ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 463, *supra* note 8, at 3 & n.15 (discussing and citing earlier version of the SDN List).

representation. For example, as an experienced real estate lawyer, the lawyer in this hypothetical is aware that purchasing and selling real estate is more susceptible to money laundering than other transactions because it involves moving client assets.[29]

In this real estate hypothetical, the transaction is associated with heightened risk, but the client is not. Further, nothing about the facts and circumstances of this transaction suggests that it involves criminal or fraudulent activity. The lawyer's lack of familiarity with the prospective client is counterbalanced by a referral from a reputable source, whom the lawyer can contact to confirm the prospective client's description of the transactions handled by his prior counsel.[30] Although the lawyer is not aware of any facts contradicting the prospective client's stated identity or place of residence, the lawyer makes a practice of verifying prospective clients' identities and addressees using reliable, independent sources, such as a passport, a driver's license, or other government-issued identifying documents.[31] Assuming those checks and the referral source confirm the information provided by the prospective client, no further inquiry would be required.

The real estate hypothetical is not an exhaustive window into situations requiring inquiry and assessment. Inquiry and assessment for most litigation representations likely will be significantly more streamlined because those representations usually raise lower risk of criminal or fraudulent activity than raised by transactional representations. In addition, if the real estate hypothetical involved a more complicated financial structuring of the flow of funds or included related transactions lacking an obvious legitimate purpose, these additional facts would require additional inquiry and assessment by the lawyer.

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[29] *See, e.g.*, FATF GUIDANCE, *supra* note 9, at 27. Lawyers who are uncertain whether the nature of the representation involves heightened risk should consult readily available resources, such as the FATF Guidance and the Good Practices Guidance, which identify buying and selling real estate as one of five "specified activities" deserving of special attention. Although a set of international standards for combating money laundering and terrorist financing known as the "40+9 Recommendations" requires lawyers to conduct "client due diligence" when they perform or carry out those "specified activities," *id.* at 8, Rule 1.16 does not require lawyers to conduct client due diligence. *See* REVISED RESOLUTION & REPORT 100 (2023) (striking references to client due diligence and replacing them with language referring to an obligation to conduct "inquiry and assessment"). Similarly, ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 463, which found that the Good Practices Guidance is consistent with Model Rules 1.1, 1.2(d), and 1.16(b)(2), recommended but did not require client due diligence, concluding that "[i]t would be prudent" for lawyers to undertake client due diligence in appropriate circumstances. *Accord* NYC Bar Ass'n Formal Op. 2018-4 at n.2 (noting that "there is no uniform legal requirement that US lawyers undertake due diligence"). That said, when the nature of a proposed or ongoing representation has been identified by the Good Practices Guidance or other sources cited in Comment [2] to Rule 1.16 as posing heightened risk, that factor should be considered by a lawyer in conducting the inquiry and assessment required by the Rule.

[30] *See supra* note 21 (cautioning lawyers to comply with Rules 1.6 and 1.18 when seeking information from third parties). If the lawyer does not or cannot contact the referral source, the absence of confirmation becomes a factor for the lawyer to weigh as part of the lawyer's assessment of the risks.

[31] Note that identity checks are not always required under a risk-based approach. Although the Good Practices Guidance states that such verification should be required for all new clients unless the lawyer is otherwise familiar with them, we view that as a recommended practice rather than a requirement because the Good Practices Guidance sets forth a set of voluntary practices, rather than imposing strict requirements. *See* ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 463, *supra* note 8 (Good Practices Guidance "is intended to serve as a resource that lawyers can use in developing their own voluntary approaches").

B. What triggers the obligation to inquire into and assess whether a lawyer may continue an existing representation under Rule 1.16?

Comment [1] now makes explicit that a lawyer has an ongoing duty to assess the relevant facts and circumstances of a representation throughout its course and that "[a] change in the facts and circumstances relating to the representation may trigger a lawyer's need to make further inquiry and assessment." This does not mean that the lawyer must question clients continuously or otherwise monitor them and their activities outside of the lawyer's own continued dealings with them during the representation, as that would represent a significant departure from existing guidance and conflict with the amendments' purpose of codifying a lawyer's existing obligations. For the same reason, the mere existence of changed facts and circumstances does not trigger an obligation to make further inquiry and assessment. Instead, the obligation for further inquiry and assessment arises when the lawyer becomes aware of a change that raises questions concerning the lawyer's initial assessment of the risk that the client would use the lawyer's services to commit or further a crime or fraud.

The lawyer's awareness of changed facts and circumstances can arise in multiple ways. It can arise when the lawyer has actual knowledge of the change, such as when a client informs the lawyer of the change. In addition, a lawyer may become aware of changed facts and circumstances in the course of meeting obligations imposed by other Rules. For example, to satisfy the duty of competence under Rule 1.1, a lawyer must learn sufficient facts about a matter to provide competent representation.[32]

The following hypothetical and related discussion illustrate these principles:

> **Hypothetical 2**: Less than one month after the lawyer undertakes the representation described in Hypothetical 1, the client contacts the lawyer to say that another, similar building is for sale in the same city. That building is available at an attractive price, but only if the transaction closes quickly. To expedite the closing, the client would like to purchase the building using funds transferred from an account at a bank in the client's country of residence.

Not all changes will prompt the obligation to inquire and assess. Here, the new facts involve changes to (1) the target building; (2) the timing of the transaction; and (3) the form and source of funds. The first change—the shift in the client's interest from the initial building to another, similar building in the same city—does not involve a change relevant to the risk that continuing the representation will use the lawyer's services to commit or continue fraudulent or criminal activity. Therefore, that change alone does not prompt the obligation for further inquiry and assessment. The remaining two changes are of the type that should trigger further inquiry and assessment, however. Although accelerated deadlines often occur for legitimate reasons, experience has shown that clients who are intent on nefarious purposes also use time pressure to rush a lawyer's work, hoping to achieve their misconduct before the lawyer (or anyone else) has time to discover it. Even more importantly, the change in the source and method of funding is a change relevant to the risk

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[32] *See* MODEL RULES OF PROF'L CONDUCT R. 1.1. cmt. [5] (competence "includes inquiry into and analysis of the factual and legal elements").

analysis for at least two reasons. First, the funds are now in cash, and transferring large sums of cash raises the risk of money laundering. Second, the funds are now originating outside the United States. In response to these changes, the lawyer should inquire further.

Assume that in response to the lawyer's inquiries, the client explains that the target building is located in a sought-after area, a competing investor also has expressed interest in it, and the client hopes to obtain the building without a bidding war by making a cash offer that would close quickly. The client further explains that the funds for this purchase were generated by the client's other real estate investments and will be transferred from the client's account at a well-known bank in the client's home country to an escrow account that the seller will establish at a local financial institution. In assessing the responses, the lawyer also considers that, in the lawyer's experience, funding such purchases in cash is unusual but not unheard of when competing for a desirable property; the client has a track record of real estate investments in the lawyer's state, including transactions in which he was represented by the lawyer who referred him to this lawyer; the client's explanation of the source of funds aligns with what the lawyer knows about the client; and reputable financial institutions will be handling the funds on both ends.

In evaluating the client's answers, the lawyer should apply the same standard used in assessing the matter at intake. Thus, the lawyer may continue the engagement if, after a reasonable inquiry, the lawyer concludes that the lawyer's services are unlikely to be used to commit or further criminal or fraudulent activity. Here, a reasonable lawyer could so conclude from these facts and circumstances, and, therefore, the lawyer may continue the representation.

Different facts might warrant a different conclusion, however. For example, additional inquiry would be required if the client intended to transmit the funds to an account controlled by the lawyer, who would then transmit them to the seller. A higher risk of participating in money laundering or terrorist financing exists when the lawyer "touches the money," i.e., acts as a financial intermediary handling the receipt and transmission of funds through accounts controlled by the lawyer.[33] In such circumstances, the lawyer should seek additional information regarding the source of funds.[34] Likewise, if the client intended to use funds from a third-party payer or transfer funds from an account in a country without any apparent connection to the client,[35] the lawyer should seek additional information. As explained in ABA Opinion 491:

> If the client refuses to provide information . . . the lawyer should explain to the client that the lawyer cannot undertake the representation unless an appropriate inquiry is made. If the client does not agree to provide information, then the lawyer must decline the representation or withdraw. If the client agrees, but then temporizes and fails to provide the requested information, or provides incomplete information, the lawyer must remonstrate with the client. If that fails to rectify the information deficit, the lawyer must withdraw. Indeed, proceeding in a transaction without the requested information may, depending on the circumstances, be

[33] GOOD PRACTICES GUIDANCE, *supra* note 24, at 21-22.

[34] If the lawyer needs information from sources other than the prospective client, the information should be sought, consistent with the lawyer's obligations under Rules 1.6 and 1.18. *See* ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 491, *supra* note 1, at 10.

[35] These and other red flags are included in Annex 5 to the Good Practices Guidance.

> evidence of the lawyer's willful blindness under Rule 1.2(d). If the client agrees, provides additional information, and the lawyer concludes that the requested services would amount to assisting in a crime or fraud, the lawyer must either discuss the matter further with the client, decline the representation, or seek to withdraw under Rule 1.16(a).[36]

As noted in discussing the lawyer's initial inquiry and assessment, the lawyer need not resolve all doubts. If some doubt remains even after the lawyer has conducted a reasonable inquiry, the lawyer may proceed with the representation as long as the lawyer concludes that doing so is unlikely to involve assisting or furthering a crime or fraud.

IV. Conclusion

As recently revised, Model Rule 1.16(a) provides that: "A lawyer shall inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation." To reduce the risk of counseling or assisting a crime or fraud, some level of inquiry and assessment is required before undertaking each representation, and further inquiry and assessment is required when the lawyer becomes aware of a change that raises questions about the lawyer's initial assessment of the risk that the client is using the lawyer's services to commit or further a crime or fraud. The lawyer's inquiry and assessment will be informed by the nature and extent of the risk that the current or prospective client seeks to use or to persist in using the lawyer's services to commit or further a crime or fraud. If, having conducted a reasonable, risk-based inquiry, the lawyer determines that the representation is unlikely to involve assisting in a crime or fraud, the lawyer may undertake the representation. If the lawyer has "actual knowledge" that the lawyer's services will be used to commit or further criminal or fraudulent activity, the lawyer must decline or withdraw from the representation. When the lawyer's initial inquiry leaves the lawyer with unresolved questions of fact about whether the current or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud, the lawyer must make additional efforts to resolve those questions through further reasonable inquiry before accepting or continuing the representation. The lawyer need not resolve all doubts. Rather, if some doubt remains even after the lawyer has conducted a reasonable inquiry, the lawyer may proceed with the representation as long as the lawyer concludes that doing so is unlikely to involve assisting or furthering a crime or fraud.

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[36] ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 491, *supra* note 1, at 9-10 (footnotes omitted).

Proposed revision of Alaska Professional Conduct Rule 1.2(d) and its accompanying Comment

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

. . .

(d) Except as provided in paragraph (f), a lawyer shall not counsel or assist a client to engage in conduct ~~that~~ if the lawyer knows that the conduct is criminal or fraudulent or if the lawyer chooses to remain deliberately ignorant as to whether the conduct is criminal or fraudulent. For purposes of this Rule, a lawyer is "deliberately ignorant" if the lawyer (1) is aware of a high probability that the client is using or plans to use the lawyer's services to accomplish or facilitate a crime or fraud and, acting with this awareness, (2) the lawyer deliberately chooses not to pursue readily available means of investigating this matter (3) for the purpose of avoiding confirmation of the lawyer's suspicions. A lawyer is not "deliberately ignorant" if the lawyer's failure to investigate is the result of the lawyer's honest belief, despite reasons to suspect otherwise, that the client is not using or planning to use the lawyer's services to accomplish or facilitate a crime or fraud. ~~, but~~ This paragraph does not prohibit a lawyer ~~may discuss the legal~~ from discussing the legality or the potential legal consequences of any proposed course of conduct with a client, nor does it prohibit a lawyer ~~and may counsel or assist~~ from counseling or assisting a client to make a ~~good faith~~ good-faith effort to determine the validity, scope, meaning, or application of ~~the~~ any law.

COMMENT

. . .

Criminal, Fraudulent, and Prohibited Transactions

A lawyer is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses a lawyer's advice in a course of action that is criminal or fraudulent does not, of itself, make ~~a~~ the lawyer a party to the course of action. ~~However, a lawyer may not knowingly assist a client in criminal or fraudulent conduct.~~ There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity. But a lawyer must not assist a client in conduct that is criminal or fraudulent when the lawyer knows that the conduct is criminal or fraudulent or when the lawyer chooses to remain deliberately ignorant of this fact.

As defined in paragraph (d), a lawyer is "deliberately ignorant" of a client's criminal or fraudulent conduct if the lawyer (1) is aware of a high probability that the client is using (or plans to use) the lawyer's services to accomplish or facilitate a crime or fraud and, acting with this awareness, (2) the lawyer deliberately chooses not to pursue readily available means of investigating this matter (3) for the purpose of avoiding confirmation of the lawyer's suspicions.

To constitute "deliberate ignorance", the lawyer's decision not to investigate must be motivated by the lawyer's conscious goal of avoiding further knowledge that might confirm the lawyer's suspicions that the client is engaged in a crime or fraud. This means that a lawyer is not "deliberately ignorant" if the lawyer's failure to investigate is the result of the lawyer's honest belief, despite reasons to suspect otherwise, that the client is not using or planning to use the lawyer's services to

accomplish or facilitate a crime or fraud. Likewise, a lawyer does not act with "deliberate ignorance" if the lawyer *does* undertake a reasonable investigation and, based on this investigation, the lawyer concludes in good faith that the client is not using the lawyer's services to commit or to further a crime or fraud.

The concept of deliberate ignorance differs in important ways from the lesser standards of negligence and recklessness.

To constitute deliberate ignorance, the lawyer's duty of inquiry must be triggered by the lawyer's awareness of a "high probability" — a high likelihood — that the client is using the lawyer's services (or planning to use the lawyer's services) to accomplish or facilitate a crime or fraud. A lawyer is not "deliberately ignorant" if the lawyer simply acts negligently — *i.e.*, if the lawyer fails to perceive a substantial risk of illegal activity that a reasonable lawyer would have perceived.

Even when a lawyer reasonably believes that the client is using (or planning to use) the lawyer's services to accomplish or facilitate a crime or fraud, this reasonable belief, standing alone, does not mean that the lawyer acts with "deliberate ignorance" if the lawyer decides to continue representing the client. In such situations, Rule 1.16(b)(2) declares that a lawyer has the *right*, but not the *duty*, to terminate the representation. The lawyer's decision to continue representing the client does not constitute "deliberate ignorance" of the client's crime or fraud unless (1) the facts giving rise to the lawyer's reasonable belief are so compelling that the lawyer is aware of a "high probability" that the client is using the lawyer's services for illegal purposes, and (2) the lawyer's failure to investigate further is motivated by the lawyer's conscious goal of avoiding confirmation of the lawyer's suspicions. In short, "reasonably believes" is the standard that triggers a lawyer's right of permissive withdrawal under Rule 1.16(b)(2), while "knowledge" or "deliberate ignorance" is the standard that triggers a duty of mandatory withdrawal under Rule 1.16(a)(1).

If a duty of investigation is triggered under paragraph (d) of this Rule, the reasonableness of the lawyer's investigation will depend on the degree of risk that the client is using or seeking to use the lawyer's services to commit or further a crime or fraud. In evaluating this level of risk, a lawyer may reasonably consider

- the identity of the client (*i.e.*, whether the client is a natural person or an entity — and, if an entity, the identity of the directors and/or beneficial owners of that entity),
- the lawyer's experience and familiarity with the client,
- the nature of the legal services that the client is requesting,
- the identity and reputation of the jurisdictions involved in the representation
- (e.g., whether that jurisdiction is known to be linked to money laundering or terrorist financing), and
- the identities of the people or entities who are depositing funds into, or who are receiving funds from, the lawyer's trust account or other accounts in which client funds are held.

For further guidance in assessing the risk that a client is using a lawyer's services to commit or further acts of money laundering or a scheme to finance terrorism, a lawyer may consult **resources such as** the *Financial Action Task Force Guidance for a Risk-Based Approach for Legal Professionals*, the American Bar Association's *Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing*, *A Lawyer's Guide to Detecting and Preventing Money Laundering* (a collaborative publication of the International Bar Association, the American Bar Association, and the Council of Bars and Law Societies of Europe), the Organization for Economic Cooperation and Development's *Due Diligence Guidance for Responsible Business Conduct*, and the U.S. Treasury Department's list of "Specially

Designated Nationals and Blocked Persons," and similar legal resources, as they may be updated and amended.

When the client's criminal or fraudulent course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is not permitted to reveal the client's wrongdoing except ~~where~~ when permitted by Rule 1.6. However, the lawyer is required to avoid furthering the client's unlawful purpose~~,~~ for example, by suggesting how ~~it~~ the crime or fraud might be concealed. A lawyer ~~may~~ must not continue assisting a client in conduct that the lawyer originally ~~supposes is~~ supposed was legally proper [*grammatically, this phrase should be in the past tense — which is the way it is written in the ABA Comment*] but then discovers is criminal or fraudulent. Withdrawal from the representation, therefore, may be required by Rule 1.16(a)(1)(A), and remedial measures may be required by Rule 4.1.

Where the client is a fiduciary, the lawyer may have special duties to a beneficiary. See Rule 4.1.

Paragraph (d) of this Rule applies whether or not the defrauded party is a party to the transaction. [*The word "defrauded", which is part of the ABA Comment, appears to have been inadvertently omitted from the Alaska Comment — because, without this word, the sentence is almost impossible to understand.*] However, paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise.

The last clause of paragraph (d) recognizes that determining the validity or proper interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

Proposed revision of Alaska Professional Conduct Rule 1.2(d) and its accompanying Comment

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

. . .

(d) Except as provided in paragraph (f), a lawyer shall not counsel or assist a client to engage in conduct if the lawyer knows that the conduct is criminal or fraudulent or if the lawyer chooses to remain deliberately ignorant as to whether the conduct is criminal or fraudulent. For purposes of this Rule, a lawyer is "deliberately ignorant" if the lawyer (1) is aware of a high probability that the client is using or plans to use the lawyer's services to accomplish or facilitate a crime or fraud and, acting with this awareness, (2) the lawyer deliberately chooses not to pursue readily available means of investigating this matter (3) for the purpose of avoiding confirmation of the lawyer's suspicions. A lawyer is not "deliberately ignorant" if the lawyer's failure to investigate is the result of the lawyer's honest belief, despite reasons to suspect otherwise, that the client is not using or planning to use the lawyer's services to accomplish or facilitate a crime or fraud. This paragraph does not prohibit a lawyer from discussing the legality or the potential legal consequences of any proposed course of conduct with a client, nor does it prohibit a lawyer from counseling or assisting a client to make a good-faith effort to determine the validity, scope, meaning, or application of any law.

COMMENT

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Criminal, Fraudulent, and Prohibited Transactions

A lawyer is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses a lawyer's advice in a course of action that is criminal or fraudulent does not, of itself, make the lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity. But a lawyer must not assist a client in conduct that is criminal or fraudulent when the lawyer knows that the conduct is criminal or fraudulent or when the lawyer chooses to remain deliberately ignorant of this fact.

As defined in paragraph (d), a lawyer is "deliberately ignorant" of a client's criminal or fraudulent conduct if the lawyer (1) is aware of a high probability that the client is using (or plans to use) the lawyer's services to accomplish or facilitate a crime or fraud and, acting with this awareness, (2) the lawyer deliberately chooses not to pursue readily available means of investigating this matter (3) for the purpose of avoiding confirmation of the lawyer's suspicions.

To constitute "deliberate ignorance", the lawyer's decision not to investigate must be motivated by the lawyer's conscious goal of avoiding further knowledge that might confirm the lawyer's suspicions that the client is engaged in a crime or fraud. This means that a lawyer is not "deliberately ignorant" if the lawyer's failure to investigate is the result of the lawyer's honest belief, despite reasons to suspect otherwise, that the client is not using or planning to use the lawyer's services to accomplish or facilitate a crime or fraud. Likewise, a lawyer does not act with "deliberate ignorance" if the lawyer *does* undertake a reasonable investigation and, based on this investigation, the lawyer concludes in good faith that the client is not using the lawyer's services to commit or to further a crime or fraud.

The concept of deliberate ignorance differs in important ways from the lesser standards of negligence and recklessness.

To constitute deliberate ignorance, the lawyer's duty of inquiry must be triggered by the lawyer's awareness of a "high probability" — a high likelihood — that the client is using the lawyer's services (or planning to use the lawyer's services) to accomplish or facilitate a crime or fraud. A lawyer is not "deliberately ignorant" if the lawyer simply acts negligently — *i.e.*, if the lawyer fails to perceive a substantial risk of illegal activity that a reasonable lawyer would have perceived.

Even when a lawyer reasonably believes that the client is using (or planning to use) the lawyer's services to accomplish or facilitate a crime or fraud, this reasonable belief, standing alone, does not mean that the lawyer acts with "deliberate ignorance" if the lawyer decides to continue representing the client. In such situations, Rule 1.16(b)(2) declares that a lawyer has the *right*, but not the *duty*, to terminate the representation. The lawyer's decision to continue representing the client does not constitute "deliberate ignorance" of the client's crime or fraud unless (1) the facts giving rise to the lawyer's reasonable belief are so compelling that the lawyer is aware of a "high probability" that the client is using the lawyer's services for illegal purposes, and (2) the lawyer's failure to investigate further is motivated by the lawyer's conscious goal of avoiding confirmation of the lawyer's suspicions. In short, "reasonably believes" is the standard that triggers a lawyer's right of permissive withdrawal under Rule 1.16(b)(2), while "knowledge" or "deliberate ignorance" is the standard that triggers a duty of mandatory withdrawal under Rule 1.16(a)(1).

If a duty of investigation is triggered under paragraph (d) of this Rule, the reasonableness of the lawyer's investigation will depend on the degree of risk that the client is using or seeking to use the lawyer's services to commit or further a crime or fraud. In evaluating this level of risk, a lawyer may reasonably consider

- the identity of the client (*i.e.*, whether the client is a natural person or an entity — and, if an entity, the identity of the directors and/or beneficial owners of that entity),
- the lawyer's experience and familiarity with the client,
- the nature of the legal services that the client is requesting,
- the identity and reputation of the jurisdictions involved in the representation
- (e.*g.*, whether that jurisdiction is known to be linked to money laundering or terrorist financing), and
- the identities of the people or entities who are depositing funds into, or who are receiving funds from, the lawyer's trust account or other accounts in which client funds are held.

For further guidance in assessing the risk that a client is using a lawyer's services to commit or further acts of money laundering or a scheme to finance terrorism, a lawyer may consult resources such as the *Financial Action Task Force Guidance for a Risk-Based Approach for Legal Professionals*, the American Bar Association's *Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing, A Lawyer's Guide to Detecting and Preventing Money Laundering* (a collaborative publication of the International Bar Association, the American Bar Association, and the Council of Bars and Law Societies of Europe), the Organization for Economic Cooperation and Development's *Due Diligence Guidance for Responsible Business Conduct*, and the U.S. Treasury Department's list of "Specially Designated Nationals and Blocked Persons," and similar legal resources, as they may be updated and amended.

When the client's criminal or fraudulent course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is not permitted to reveal the client's wrongdoing except when permitted by Rule 1.6. However, the lawyer is required to avoid furthering the client's unlawful purpose — for example, by suggesting how the crime or fraud might be concealed. A lawyer must not

continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. Withdrawal from the representation, therefore, may be required by Rule 1.16(a)(1)(A), and remedial measures may be required by Rule 4.1.

Where the client is a fiduciary, the lawyer may have special duties to a beneficiary. See Rule 4.1.

Paragraph (d) of this Rule applies whether or not the defrauded party is a party to the transaction. However, paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise.

The last clause of paragraph (d) recognizes that determining the validity or proper interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

Rule 1.16 Declining or Terminating Representation.

(a) Mandatory grounds for declining or terminating a representation.

(1) Except as ~~stated in~~ required by paragraph (c) of this rule, a lawyer shall ~~not represent~~ decline to represent a client or, ~~where~~ if the representation has commenced, shall withdraw from the representation of a client if:

(A) ~~(1)~~ the representation will result in violation of the rules of professional conduct or other law; or

(B) ~~(2)~~ the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client. ~~; or (3) the lawyer is discharged.~~

(2) Except as required by paragraph (c) of this rule, a retained lawyer shall withdraw from the representation of a client if the lawyer is discharged.

(3) Before accepting a representation or upon appointment, a lawyer shall assess and, if required by the applicable underlying rule, inquire into the facts and circumstances of the proposed representation to determine whether, consistent with subparagraph (a)(1), the lawyer may accept the representation.

(4) If, during the course of a representation, a lawyer becomes aware of information raising a substantial likelihood that the representation violates the rules of professional conduct or other law, the lawyer shall inquire into and re-assess the facts and circumstances of the representation to determine whether, consistent with subparagraph (a)(1), the lawyer may continue to represent the client.

(b) Permissive grounds for terminating a representation. Except as ~~stated in~~ required by paragraph (c), a lawyer may withdraw from representing a client if:

(1) the lawyer's withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

COMMENT

Client-Lawyer Relationship

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest, and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.1. 1.2(c) through (f), and 6.5. See also the fourth paragraph of the Comment to Rule 1.3.

[2] Paragraph (a)(3) of this rule imposes an obligation on a lawyer to assess the facts and circumstances of a representation before accepting it. Paragraph (a)(4) of this rule requires a lawyer to inquire further and to re-assess an existing representation if the lawyer later becomes aware of information raising a substantial likelihood that the client is seeking to use the lawyer's services to commit or to further a crime or fraud.

Mandatory Withdrawal

[3] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or that violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[4] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge

[5] A client has a right to discharge a retained lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[6] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[7] If the client has severely impaired capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Optional Withdrawal

[8] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[9] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client upon Withdrawal

[10] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.15.

Rule 1.16 Declining or Terminating Representation.

(a) Mandatory grounds for declining or terminating a representation.

(1) Except as required by paragraph (c) of this rule, a lawyer shall decline to represent a client or, if the representation has commenced, shall withdraw from the representation of a client if:

(A) the representation will result in violation of the rules of professional conduct or other law; or

(B) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client.

(2) Except as required by paragraph (c) of this rule, a retained lawyer shall withdraw from the representation of a client if the lawyer is discharged.

(3) Before accepting a representation or upon appointment, a lawyer shall assess and, if required by the applicable underlying rule, inquire into the facts and circumstances of the proposed representation to determine whether, consistent with subparagraph (a)(1), the lawyer may accept the representation.

(4) If, during the course of a representation, a lawyer becomes aware of information raising a substantial likelihood that the representation violates the rules of professional conduct or other law, the lawyer shall inquire into and re-assess the facts and circumstances of the representation to determine whether, consistent with subparagraph (a)(1), the lawyer may continue to represent the client.

(b) Permissive grounds for terminating a representation. Except as required by paragraph (c), a lawyer may withdraw from representing a client if:

(1) the lawyer's withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

COMMENT

Client-Lawyer Relationship

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest, and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.1, 1.2(c) through (f), and 6.5. See also the fourth paragraph of the Comment to Rule 1.3.

[2] Paragraph (a)(3) of this rule imposes an obligation on a lawyer to assess the facts and circumstances of a representation before accepting it. Paragraph (a)(4) of this rule requires a lawyer to inquire further and to re-assess an existing representation if the lawyer later becomes aware of information raising a substantial likelihood that the client is seeking to use the lawyer's services to commit or to further a crime or fraud.

Mandatory Withdrawal

[3] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or that violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[4] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge

[5] A client has a right to discharge a retained lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[6] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[7] If the client has severely impaired capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Optional Withdrawal

[8] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[9] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client upon Withdrawal

[10] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.15.

Rule 1.16: Declining or Terminating Representation

(a) ~~(a)~~ A lawyer shall inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation.

(b) Except as stated in paragraph (~~c~~d), a lawyer shall not represent a client in a matter or, where representation has commenced, shall withdraw from the representation ~~of a client~~ if:

(1) the representation will result in violation of the rules of professional conduct or other law;

(2) the lawyer~~'~~'s physical or mental condition materially impairs the lawyer~~'~~'s ability to represent the client;

(3) the lawyer is discharged; or

(4) the lawyer knows that the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud, despite the lawyer's discussion pursuant to Rules 1.2(d) and 1.4(a)(5) regarding the limitations on the lawyer assisting with the proposed conduct.

(~~b~~c) Except as stated in paragraph (~~c~~d), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer~~'~~'s services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer~~'~~'s services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer~~'~~'s services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(~~c~~d) ~~A lawyer must comply with applicable law requiring notice to or~~ If permission ~~of a tribunal when terminating a~~for withdrawal from the representation~~. When ordered to do so~~ is required by the rules of a tribunal, a lawyer shall ~~continue representation notwithstanding good~~

~~cause for terminating~~not withdraw from the representation in a proceeding before that tribunal without its permission.

(~~d~~e) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client~~'~~'s interests, such as giving reasonable notice to the client, allowing time for ~~employment~~engagement of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. ~~The lawyer may retain papers relating to the client to the extent permitted by other law.~~

Comment

[1] ~~Paragraph (a)~~ This Rule imposes an obligation on a lawyer to inquire into and assess the facts and circumstances of the representation before accepting it. The obligation ~~imposed by Paragraph (a)~~ continues throughout the representation. The required level of a lawyer's inquiry and assessment will vary for each client or prospective client, depending on the nature of the risk posed by each situation. A change in the facts and circumstances relating to the representation may trigger a lawyer's need to make further inquiry and assessment. For example, if a client traditionally uses a lawyer to acquire local real estate through the use of domestic limited liability companies, with financing from a local bank~~. The~~, a duty of inquiry may arise if the same client ~~then~~ asks the lawyer to create a multi-tier corporate structure~~,~~ formed in another state to acquire property in a third jurisdiction, and requests to route the transaction's funding through the lawyer's trust account. Such a request could indicate a money-laundering scheme, or a scheme to conceal assets or other illegal conduct. Another example where a lawyer may have a duty of inquiry is when, during the course of a representation, a new party is named or a new entity becomes involved, indicating among other things that an additional conflicts check may be required. A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.1, 1.2(c) and 6.5. See also Rule 1.3, Comment ~~[4]~~.

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation. Under paragraph (~~a~~b)(4), the lawyer's inquiry into and assessment of the facts and circumstances will be informed by the risk that the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud. ~~This analysis means that the required level of a lawyer's inquiry and assessment will vary for each client or prospective client, depending on the nature of the risk posed by each situation.~~ Factors to be considered in determining the level of risk may include: (i) ~~the identity of the client, such as~~ whether the client is a natural person or an entity, and, if an entity, the beneficial owners of that entity~~,~~; (ii) the lawyer's experience and familiarity with the client~~,~~; (iii) the nature of the requested legal services~~,~~; (iv) the relevant jurisdictions involved in the representation (for example~~,~~ whether a jurisdiction is considered at high risk for money

laundering or terrorist financing)~~,~~; and (v) the identities of those depositing into or receiving funds from the lawyer's client trust account, or any other accounts in which client funds are held. ~~For further guidance assessing risk, see, e.g., as amended or updated, Financial Action Task Force Guidance for a Risk-Based Approach for Legal Professionals, the ABA Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing, A Lawyer's Guide to Detecting and Preventing Money Laundering (a collaborative publication of the International Bar Association, the American Bar Association and the Council of Bars and Law Societies of Europe), the Organization for Economic Cooperation and Development (OECD) Due Diligence Guidance for Responsible Business Conduct, and the U.S. Department of Treasury Specially Designated Nationals and Blocked Persons List.~~

[No change to Massachusetts Comments 3-10]

IN THE SUPREME COURT OF THE STATE OF OREGON

In the Matter of AMENDMENT OF OREGON RULE OF PROFESSIONAL CONDUCT 1.16	)	SUPREME COURT ORDER No. 24-035 ORDER AMENDING OREGON RULE OF PROFESSIONAL CONDUCT 1.16

At its public meeting on November 13, 2024, the Oregon Supreme Court considered and approved a request from the Oregon State Bar to amend Oregon Rule of Professional Conduct (RPC) 1.16. The amendment is part of efforts to safeguard the legal profession from inadvertently being implicated in activities involving money laundering, fraud, or other forms of criminal conduct.

IT IS HEREBY ORDERED, pursuant to authority set out in ORS 9.006 and ORS 9.490, that RPC 1.16 is amended as set out in Exhibit A of this order, with all new text underscored and all deleted text in ~~strikethrough~~ format.

The amendment set out in Exhibit A is effective January 1, 2025.

Dated this 15th day of November, 2024.

Meagan A. Flynn
Chief Justice

Exhibit A

Rule 1.16: Declining or Terminating Representation

(a) A lawyer shall reasonably inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation. Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; ~~or~~

(3) the lawyer is discharged~~.~~; or

(4) the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud, despite the lawyer's discussion pursuant to Rule 1.2(c) regarding the limitations on the lawyer assisting with the proposed conduct.

* * *

West's Wyoming Statutes Annotated
Rules of Professional Conduct for Attorneys at Law
Client-Lawyer Relationship

Wyoming Rules of Prof. Conduct, Rule 1.16

Rule 1.16. Declining or Terminating Representation

Effective: April 15, 2024

Currentness

(a) A lawyer shall inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation. Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of professional conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;

(3) the lawyer is discharged; or

(4) the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud, despite the lawyer's discussion pursuant to Rules 1.2(d) and 1.4(a)(5) regarding the limitations on the lawyer assisting with the proposed conduct.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by Rule 1.15A or other law.

Credits

[Adopted April 11, 2006, effective July 1, 2006. Amended June 25, 2019, effective September 1, 2019; February 6, 2024, effective April 15, 2024.]

Editors' Notes

COMMENT

[1] Paragraph (a) imposes an obligation on a lawyer to inquire into and assess the facts and circumstances of the representation before accepting it. The obligation imposed by Paragraph (a) continues throughout the representation. A change in the facts and circumstances relating to the representation may trigger a lawyer's need to make further inquiry and assessment. For example, a client traditionally uses a lawyer to acquire local real estate through the use of domestic limited liability companies, with financing from a local bank. The same client then asks the lawyer to create a multi-tier corporate structure, formed in another state to acquire property in a third jurisdiction, and requests to route the transaction's funding through the lawyer's trust account. Another example is when, during the course of a representation, a new party is named or a new entity becomes involved. A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. *See* Rules 1.2(c) and 6.5. *See also*, Rule 1.3, Comment [4].

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation. Under paragraph (a)(4), the lawyer's inquiry into and assessment of the facts and circumstances will be informed by the risk that the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud. This analysis means that the required level of a lawyer's inquiry and assessment will vary for each client or prospective client, depending on the nature of the risk posed by each situation. Factors to be considered in determining the level of risk may include: (i) the identity of the client, such as whether the client is a natural person or an entity and, if an entity, the beneficial owners of that entity, (ii) the lawyer's experience and familiarity with the client, (iii) the nature of the requested legal services, (iv) the relevant jurisdictions involved in the representation (for example, whether a jurisdiction is considered at high risk for money laundering or terrorist financing), and (v) the identities of those depositing into or receiving funds from the lawyer's client trust account, or any other accounts in which client funds are held. For further guidance assessing risk, see, e.g., as amended or updated, Financial Action Task Force Guidance for a Risk-Based Approach for Legal Professionals, the ABA Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing, A Lawyer's Guide to Detecting and Preventing Money Laundering (a collaborative publication of the International Bar Association, the American Bar Association and the Council of Bars and Law Societies of Europe), the Organization for Economic Cooperation and Development (OECD) Due Diligence Guidance for Responsible Business Conduct, and the U.S. Department of Treasury Specially Designated Nationals and Blocked Persons List.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. *See also*, Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. *See* Rule 102, Uniform Rules for District Courts of the State of Wyoming. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[6] If the client has diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

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Assisting the Client upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by Rule 1.15A or other law.

Definitional Cross-References

"Fraud" and "Fraudulent" *See* Rule 1.0(e)

"Reasonable" *See* Rule 1.0(i)

"Reasonably believes" *See* Rule 1.0(j)

"Tribunal" *See* Rule 1.0(n)

Notes of Decisions (1)

Rules of Prof. Conduct, Rule 1.16, WY R RPC Rule 1.16
Current with amendments received through September 15, 2024. Some rules may be more current, see credits for details.

End of Document

Phil Shanahan

From: Kenneth Lougee <lougeekenneth@gmail.com>
Sent: Thursday, February 27, 2025 10:19 AM
To: Phil Shanahan
Subject: Propose Revisions to Rules 1.2 and 1.16

I'm a retired member. I spent 17 years on the Utah Ethics Advisory Opinion Committee.

My comment would be that you should make certain that the definitions in the proposed rules are consistent with the definitions found in Rule 1.0.

Particularly, look at the Rule 1.0 definition of "Knowing," "Actual Knowledge" "Reasonable"

Maybe a reference in 1.0 to the expanded definitions in the proposed rules.

I fear that the expanded definitions would create confusion unless there are references in 1.0.

Kenneth Lougee (8111111)
lougeekenneth@gmail.com

9

Status Change Bylaw Proposal

ALASKA BAR ASSOCIATION

To: Board of Governors

From: Danielle Bailey, Executive Director

Re: Status Change Deadline Bylaw Proposal Post-Publication

Date: April 11, 2025

At its January 2025 meeting, the Board considered a proposed Bylaw amendment to move the status change deadline to January 1. The Board voted to publish the proposal for member comment in the *Alaska Bar Rag*. Following publication, no comments were received.

After publication, it was noted that January 1 is an Alaska Bar Association holiday. To avoid potential confusion or requests for deadline extensions based solely on the holiday, staff recommends revising the proposed deadline to December 31. This change ensures the deadline falls on a business day and provides clarity for members and staff alike.

As a result, the following amendment is proposed:

> **Section 2. Transfer from Active Membership to Inactive or Retired Status.** Requests from members to transfer from active to inactive or retired status may be granted if submitted to the Executive Director no later than ~~February 1~~ December 31 of the year preceding the applicable dues year. The Executive Director may, for good cause, accept status changes until February 1.

Staff Recommendation:
The Board should vote on whether to adopt the revised proposal.

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ALASKA BAR ASSOCIATION

To: Board of Governors

From: Danielle Bailey, Executive Director

Re: Status Change Deadline Bylaw Proposal

Date: January 18, 2024

There are four classes of membership in the Alaska Bar Association: active, inactive, retired, and honorary. If you practice law in Alaska at any time during a particular year, you are not eligible to be an inactive member for that year and must pay active dues for the entire year. Active members must pay bar dues of $660, while inactive members pay a reduced rate of $215. Membership dues must be paid by February 1, or late fees will be incurred.

The Alaska Bar Association website consistently states that status transfer requests must be received by January 1. However, Article II, Section 2(b) of the bylaws states: "Requests from members to transfer from active to inactive or retired status may be granted if submitted to the Executive Director no later than February 1 of the applicable year." The discrepancy regarding the status change deadline has existed since before I became Executive Director. I could not find any record explaining why this discrepancy exists or whether the Board previously approved a bylaw change that was not updated. In the absence of a basis for rejecting status changes after January 1, all status change requests that otherwise meet the requirements have been allowed until February 1.

Officially moving the status change deadline to January 1 would be helpful for Bar staff. Finalizing member statuses by January 1 would streamline administrative operations and reduce the accounting verifications needed if statuses are not set before dues are paid. As a result, the following amendment is proposed:

> **Section 2. Transfer from Active Membership to Inactive or Retired Status.** Requests from members to transfer from active to inactive or retired status may be granted if submitted to the Executive Director no later than ~~February~~ January 1 of the applicable year. The Executive Director may, for good cause, accept status changes until February 1.

This proposal would resolve the discrepancy in the Bar's communications, streamline administrative operations, and retain discretion to approve late transfers for good cause.

Staff Recommendation:
Publish the proposed bylaw amendments for member comment in the *Alaska Bar Rag*. If published, the proposal will return to the Board at its next meeting (at least 30 days after publication) for final consideration and a vote on whether to adopt the amendments, per Bar Rule 62.

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Continued from page 7

special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.-

Optional Withdrawal

[8] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[9] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.-

Assisting the Client upon Withdrawal

[10] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.15.

Alaska Supreme Court Disbars Joseph E. Wrona

Joseph E. Wrona was a member of both the Alaska Bar Association and the Utah State Bar. He practiced in Utah; he was on inactive status in Alaska, still subject to Alaska's disciplinary rules. In November 2023, he was convicted in Utah of forcible sexual abuse and incest—serious felonies in both Utah and Alaska. The Utah Supreme Court accepted his "resignation with discipline pending." Wrona acknowledged that his name would be "stricken from the rolls" of Utah Bar members, and the Utah Supreme Court enjoined him from practicing law, from accepting any sort of fees for legal services, and even from describing himself as a lawyer.

Wrona's conduct violated Alaska Rule of Professional Conduct 8.4(b), which forbids criminal conduct that reflects adversely on a lawyer's honesty, trustworthiness, or fitness to practice law. In formal disciplinary hearings in Alaska, the only issue would have been the level of discipline to impose. But when a lawyer has already been disciplined in another state, Alaska Bar Rule 27(c) provides that the Supreme Court can impose "identical" reciprocal discipline. "[R]esignation with discipline pending" is not available in Alaska—a lawyer here is not allowed to resign with discipline pending—so there is no "identical" counterpart under Alaska's reciprocity rule. The Alaska Bar Association's Supreme Court petition to impose reciprocal discipline discussed the levels of discipline available in both states, compared Alaska's sanction of disbarment with Utah's sanction of "de-licensure" (the discipline Wrona would have received if he had not resigned), and urged the Court to treat Utah's "resignation with discipline pending" as functionally identical to disbarment. The Court granted the Bar's petition and issued an order on February 20. 2025 disbarring Wrona.

Lawyer joke...

Q: Why don't lawyers enjoy fishing?

A: Because the fish don't fall for their lines!

Request for Comment

Board Proposes Bylaw Amendment to Deadline to Transfer from Active Membership to Inactive or Retired Status

At their January meeting, the Board voted to move the deadline for transferring from active membership to inactive or retired status. Additional accounting verifications are needed if statuses are not set before the licensing fee deadline. Finalizing member statuses by January 1 would streamline administrative operations and prevent confusion regarding dues payments. The amendment would also include a provision allowing the Executive Director discretion to accept later status changes for good cause. Please send comments to Executive Director Danielle Bailey at bailey@alaskabar.org by April 10, 2025.

ARTICLE II. BOARD OF GOVERNORS

Section 2. Transfer from Active Membership to Inactive or Retired Status.

(b) **Member Transfer Requests.** Requests from members to transfer from active to inactive or retired status may be granted if submitted to the Executive Director no later than ~~February~~ **January** 1 of the applicable year. The Executive Director may, for good cause, accept status changes until February 1.

MCLE Reminders

ALASKA BAR ASSOCIATION

What is the new annual CLE credit requirement?

Starting 2025, all ACTIVE Alaska Bar members are required to report that the member has completed 12 CLE credits of which 3 must be Ethics credits.

What are ways to earn CLE credits?

There are many ways to earn CLE credits outside of the traditional CLE courses. Visit https://alaskabar.org/cle-mcle/mcle-faqs/ for the complete list.

Can unused CLE credits be carried forward?

A member may carry forward from the previous reporting period a maximum of 12 credits. To be carried forward, the credit hours must have been earned but not claimed for credit during the calendar year immediately preceding the current reporting period.

Can Credits from other jurisdictions be used in Alaska?

Any course or continuing legal education activity approved for credit by a jurisdiction, other than Alaska, that requires continuing legal education CLE is approved for credit in Alaska. All credits are calculated on the 60 minute hour.

FOR MORE INFORMATION, VISIT
HTTPS://ALASKABAR.ORG/CLE-MCLE/MCLE-FAQS/

10A

Ethics Opinions

Duty to Safeguard Client Funds from Client Activity

M E M O R A N D U M

DATE: April 11, 2025

TO: Board of Governors

FROM: Phil Shanahan, Bar Counsel PES

RE: Proposed Ethics Opinions

The Ethics Committee has recently drafted and approved two ethics opinions that it will present to the Board for potential adoption. At least two members of the Committee will be presenting the opinions that they authored (or co-authored).

The first opinion relates to an attorney's duty to safeguard client funds in the face of potentially fraudulent activity by other purported clients or people. Thomas Wang is expected to present this opinion.

The second opinion delves into the ethical issues that arise when a lawyer chooses to utilize generative artificial intelligence (GAI) in the practice of law. Ben Muse and/or Sarah Schirack are expected to present this opinion.

Staff Recommendation: If the Board believes the opinions should be adopted as formal opinions of the Board of Governors, a motion should be made to adopt the opinion(s) as approved by the Ethics Committee.

ALASKA BAR ASSOCIATION
ETHICS OPINION No. 2025-XX

A Lawyer's Duty to Safeguard Client Trust Funds from Third Party Fraudulent and Criminal Activity

Issue Presented

Fraudulent and criminal schemes directed at law firm trust accounts are widespread in Alaska and nationwide. When successful, these schemes can result in client trust funds being misappropriated, causing financial harm to clients. This Opinion examines what a lawyer should do under the Alaska Rules of Professional Conduct ("ARPC") to be aware of and mitigate the potential for harm from such schemes, in the context of a hypothetical situation.

Short Answer

ARPC 1.1 (competence) and 1.3 (diligence) provide that a lawyer shall provide competent and diligent representation, backed with the legal knowledge, skill, thoroughness and preparation reasonably necessary. ARPC 1.15 (safekeeping property) applies these rules with particular force in trust account transactions, where a lawyer is responsible for client and third party funds.[1] While a lawyer is required to "promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive," ARPC 1.15(d), the lawyer should not disburse trust account funds without taking all reasonable steps to assure that the funds are actually in the trust account and are correctly disbursed.

Analysis

Our hypothetical situation is regrettably typical. Lawyer Robin receives an email inquiry from a prospective client in another jurisdiction who claims to need assistance in a commercial dispute. The prospective client claims to be owed substantial funds. On behalf of the prospective client, Robin writes a demand letter to the alleged debtor. The alleged debtor responds immediately by acknowledging the debt and offering to pay the balance. Robin draws up settlement paperwork, and the alleged debtor promptly sends a check for the full amount, which Robin deposits in her trust account.

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[1] "Misappropriation of client funds usually is an obvious violation of the rule and is dealt with by disbarment or other severe disciplinary sanction." Annotated Model Rules of Professional Conduct, 10th Edition, p. 297 (Bennett, Gunnarsson, and Kisicki, eds.); "[S]uspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client." In the Disciplinary Matter Involving Triem, 929 P.2d 634, 647 (Alaska 1996).

The client aggressively pressures Robin to release the settlement funds, claiming the funds are urgently needed. Robin transfers the settlement amount to the client, less her fees. One week later Robin checks her trust account and discovers that the alleged debtor's settlement check bounced. In a panic, Robin tries to reach her client, without success, and searches the public record for information about her client and the alleged debtor, but finds nothing. Neither the client nor the alleged debtor can be located. The result is that trust account funds belonging to other clients have been disbursed to an unknown, untraceable third party.

Robin ignored a series of "red flags": (1) a new or unfamiliar client from a foreign jurisdiction, who communicated primarily by email or text; (2) performance of a relatively simple task (in this case a demand letter[2]) that generated a speedy "payment"; and (3) immediate pressure from the client for the lawyer to make prompt payment from the lawyer's trust account, before the "payment" clears. Robin's failure to verify the prospective client's identity and bona fide existence and her haste in transferring funds out of the trust account violated her professional obligations under ARPC 1.1 (competence), 1.3 (diligence), and ARPC 1.15 (safekeeping property).[3]

Criminal and fraudulent activities directed at lawyers, law firms, and legal transactions have become commonplace, as acknowledged by the FBI,[4] professional trade associations[5], insurers[6], court systems[7] and bar associations

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[2] While the hyphothetical addresses a putative client purporting to have a legal claim against another person, these scams can also involve requests that an attorney provide assistance in a real estate or business transaction that may result in the client receiving funds as a "deposit" or holding funds as a trustee. Other variations will no doubt surface in the future. The common thread is that the lawyer's work generates a prompt deposit into the trust account, followed by a prompt demand for payment from the putative client.

[3] *See* ARPC 1.15 Comment ("A lawyer should hold property of others with the care of a professional fiduciary."). The Comment further clarifies that the rule includes an obligation to "maintain on a current basis books and records in accordance with generally accepted accounting practice...").

[4] https://www.fbi.gov/file-repository/fy-2022-fbi-congressional-report-business-email-compromise-and-real-estate-wire-fraud-111422.pdf/view

[5] https://www.nar.realtor/law-and-ethics/protecting-your-business-and-your-clients-from-cyberfraud

[6] https://www.hanover.com/resources/tips-individuals-and-businesses/prepare-now-learn-how/email-wire-fraud-scam-affecting

[7] https://www.wicourts.gov/courts/offices/docs/olrscams.pdf

around the country, both in informal guidance,[8] ethics opinions,[9] and discipline.[10] As the North Carolina State Bar opined in 2020 Formal Ethics Opinion 5, "given the constant threat to client funds and the significant harm that can result from such fraudulent activity, a lawyer's duty in representing clients .... necessarily requires the lawyer to be vigilant in reasonably educating him or herself on the current state of such fraudulent attempts and in communicating with clients and staff about such risks."

The risks of financial fraud in today's world are of such magnitude – and the speed of electronic transactions are so fast – that affirmative, competent, and diligent efforts of a lawyer are required to (1) understand the nature of the risks in such an undertaking, and (2) take reasonable steps to prevent such risks. This is particularly true when a lawyer encounters common and repeated patterns that are or should be well known to competent practitioners; are suspicious on their face; and are avoidable through the exercise of basic care, not requiring extraordinary efforts.[11] This is not to say that lawyers are the guarantors of all aspects of a transaction, nor that every fraudulent scheme can be prevented. Nonetheless, lawyers are required by the ARPCs to take all reasonable precautions to protect their clients' interests in the face of the rapid proliferation of fraudulent schemes.[12] To meet the ARPC duties of competence, diligence and safekeeping of others' property requires lawyers to be aware of the risks of fraud and to take all reasonable steps to protect against it.

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[8] https://blog.texasbar.com/2024/07/articles/law-firms-and-legal-departments/scams-continue-to-target-texas-attorneys/

[9] North Carolina State Bar 2020 Formal Ethics Opinion 5; New York City Bar Formal Opinion 2015-3.

[10] Private Reprimand 2024-OLR-08, Wisconsin Office of Lawyer Regulation.

[11] Private Reprimand 2024-OLR-08, Wisconsin Office of Lawyer Regulation ("After years of educational efforts, disciplinary agencies are now expecting lawyers and law firms to be cognizant of and alert for red flags signaling such scams and appropriately train their staff. Failure to do so may be prosecuted . . . as a failure to take reasonable steps to safeguard client property.").

[12] While many of the Rules of Professional Conduct are directed at intentional misconduct, no intent element is included in ARPC 1.15. "Some few offenses , such as those requiring a maintenance of office books and records... are so absolute in form, thus warranting a finding of a violation... no matter what the lawyer's state of mind." Restatement (Third) of Law Governing Lawyers Sec. 5 cmt. d (2000).

10B

Ethical Use of Generative AI

ALASKA BAR ASSOCIATION
ETHICS OPINION 2025-XX

Generative Artificial Intelligence & The Practice of Law Issue

What rules of professional conduct govern or should inform the use of generative artificial intelligence ("GAI") in the practice of law?

Questions Presented & Short Answers

1. **Is it ethically permissible for a lawyer to use GAI to assist a client?**

   Yes, but before doing so, the lawyer should understand, to a reasonable degree, how the technology works, its limitations, and its ability (or not) to safeguard client confidences and secrets.

2. **Does a lawyer using GAI have an ethical duty to review the GAI output to ensure it is free from errors and, if applicable, sufficiently advocates for a client's interests?**

   Yes.

3. **Is it ethically permissible for a lawyer to input client confidences or secrets into an GAI tool?**

   It depends. Before doing so, the lawyer must review the program's policies on data retention, data sharing, and self-learning from user inputs to ensure that the GAI tool will protect client confidences and secrets. If client confidences and secrets are not protected by the GAI tool, then the lawyer must anonymize their inputs to protect client details.

4. **Can a lawyer bill a client for the cost of using GAI?**

   Yes, but to do so, within a reasonable time after beginning the representation, the lawyer must explicitly disclose to the client (a) the client's liability for the charges; and (b) the basis on which the charges will be computed.

5. **If using GAI reduces the time it takes a lawyer to perform legal work, does that need to be reflected in the fees the lawyer charges to their client?**

   Yes, lawyers must ensure that their fees remain reasonable and proportionate to the actual work performed. The lawyer may not duplicate fees for work done by GAI or bill clients for time that the lawyer did not work.

6. Does a lawyer who serves as a partner or manager of a firm that uses GAI, or a lawyer who supervises other lawyers or nonlawyers who use GAI, have an ethical responsibility to ensure that the use of GAI is compatible with the lawyer's professional obligations?

Yes.

Introduction

Artificial intelligence is the ability of computer systems to perform tasks that usually require human intelligence, like interpreting and drafting language, answering questions, making decisions, and learning from data inputs. This opinion focuses on a particular form of artificial intelligence—generative AI—which can create content and is relatively new and different from basic AI that lawyers have already been using for years. Among many other abilities, GAI-powered software can quickly perform legal research, draft pleadings, analyze contracts, and review and summarize documents, and it has the potential to greatly increase a lawyer's efficiency.

This opinion discusses some of the ethical issues that lawyers should consider when deciding when and how to use GAI in the practice of law. Like any technology, a lawyer's use of GAI must align with their professional responsibility obligations. How these obligations apply to the use of GAI may depend on many factors, including the client, matter, practice area, firm size, and the tools themselves, ranging from free and readily available to custom-built, proprietary tools. GAI is rapidly evolving, and this opinion does not address every ethical issue that may arise when using GAI in legal practice, now or in the future. Instead, it provides a starting point that discusses foundational rules and applicable ethical principles that should guide each lawyer's use of GAI in a professional capacity.[1]

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[1] Other jurisdictions that have evaluated the issues posed by GAI under their corresponding ethical rules, have reached similar conclusions. *See, e.g.*, Tex. Ethics Op. 705 (2025); N.C. Ethics Op. 2024-1 (2024); Mo. Informal Op. 2024-11 (2024); D.C. Ethics Op. 388 (2024); Ky. Ethics Op. E-457 (2024); ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 512 (2024) (hereinafter "ABA AI Opinion"); Fla. Ethics Op. 24-1 (2024); N.J. State Bar Ass'n, Task Force on Artificial Intelligence (AI) and the Law, Report, Requests, Recommendations, and Findings (2024); N.Y. State Bar Ass'n, Report & Recommendations of the Task Force on Artificial Intelligence (2024); Pa. State Bar & Philadelphia Bar Joint Formal Op. 2024-200 (2024); N.Y. City Bar Formal Op. 2024-5 (2024); W. Va. Ethics Op. 24-01 (2024); State Bar of Cal., Standing Comm. on Prof'l Resp. & Conduct, Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law (Nov. 16. 2023); State Bar of Mich., JI-155 (Oct. 27, 2023).

Applicable Rules & Analysis

Numerous provisions of the Alaska Rules of Professional Conduct ("ARPC") govern or should inform the use of GAI in the practice of law. This includes, but is not limited to, Rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 3.1, 3.3, 4.1, 5.1, 5.3, and 8.4.

ARPC 1.1—Competence; ARPC 1.3—Diligence.

To "maintain[] competence" in the practice of law, "a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology." APRC 1.1 cmt. Throughout its history, the legal profession has incorporated countless new technologies.[2] Some of these are now so critical to the profession—*e.g.*, email and word processing—that a lawyer likely cannot be competent *unless* they use those technologies. Lawyers should continually educate themselves on the evolving nature of GAI so they can exercise sound professional judgment as to whether adopting or regularly using GAI is or becomes "reasonably necessary" to represent their clients' interests. ARPC 1.1. The duty of "competence [is] ongoing and not delegable."[3] Before incorporating any GAI tool into the practice of law and throughout its use, lawyers must educate themselves about its capabilities and limitations, and its terms of use and other policies, to ensure that their use of it complies with the other ARPCs discussed below.

This dovetails with the requirement that lawyers "act with reasonable diligence" in representing clients. ARPC 1.3. To do so with respect to GAI use, lawyers must exercise sound, independent judgment and critically examine and improve GAI outputs to best support their client's interests and priorities. The scope of such review depends on the tool used and the task performed, and may include review to ensure the accuracy of legal citations, as discussed below. A lawyer's uncritical reliance on GAI tools can result in inaccurate legal advice to a client or misleading representations to a court or a third party that do not comport with the lawyer's ethical duties. *See* ARPCs 3.3 and 4.1.

Lawyers should also confirm whether and when any court rules or orders require them to disclose the use of GAI, as a lawyer's representation cannot be competent or diligent if it does not comply with such authorities.

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[2] *See, e.g.*, Alaska Ethics Op. 2014-3, Cloud Computing and the Practice of Law; Alaska Ethics Op. 98-2, Communication by Electronic Mail.

[3] Alaska Ethics Op. 2014-3, Cloud Computing and the Practice of Law at 1.

ARPC 1.2—Scope of Representation; ARPC 1.4—Communication.

"[A] lawyer shall abide by a client's decisions concerning the objectives of representation and shall consult with the client as to *the means by which* they are to be pursued," which may include the use of GAI. APRC 1.2 (emphasis added). Likewise, lawyers must "reasonably consult with th[eir] client[s] about the means to be used to accomplish the client's objectives," which also may include the use of GAI. ARPC 1.4 cmt. "In some situations—depending on both the importance of the action under consideration and the feasibility of consulting with the client—this duty will require consultation prior to taking action"—that is, before using GAI to assist with the representation. *Id.*

The facts of each case shape the duty to communicate with a client about the use of GAI. Of course, if a client asks, a lawyer should candidly disclose the extent to which they used GAI to conduct their work, as the rules requires lawyers to "promptly comply with reasonable requests for information." ARPC 1.4(a). The more difficult question is when unprompted disclosure is required. Many lawyers already routinely use GAI to provide legal services—for example, through legal databases like Lexis or Westlaw—and the use of these tools may be foreseeable and expected by clients. But in other instances, where GAI is used in a novel fashion, especially to perform substantive work, there may be a greater need for communication. To determine whether a lawyer should communicate their use of GAI to a client, the Committee recommends that the lawyer consider "the client's needs and expectations regarding the representation, the scope of representation, and the sensitivity of the case information that would be shared with the GAI tool."[4]

Several common scenarios illustrate when a lawyer should proactively disclose the use of GAI. For example, where a client is liable for the cost of using GAI—especially if it is a "significant expense"—the lawyer should disclose that cost as it may require a client's input. ARPC 1.4 cmt. As another example, "there may be situations where a client retains a lawyer based on the lawyer's particular skill and judgment, when the use of [GAI], without the client's knowledge, would violate the terms of the engagement agreement or the client's reasonable expectations regarding how the lawyer intends to accomplish the objectives of the representation."[5]

In sum, the duty to communicate with a client about the use of GAI depends mainly on the assistance provided. In instances where disclosing the nature and scope of GAI use is advisable, the engagement letter is the logical place to make such disclosures and to tee up a discussion with the client about how they want their lawyer to use GAI in the representation.

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[4] ABA AI Opinion at 9.

[5] *Id.*

ARPC 1.5—Fees.

GAI may provide lawyers with faster and more efficient ways to provide legal services to their clients, which should be reflected in the fees that lawyers charge. When incorporating GAI into a lawyer's practice, the lawyer must ensure that their fees remain reasonable and proportionate to the actual work performed and time expended. *See* ARPC 1.5(a).[6] A lawyer cannot duplicate charges for work done by GAI or falsely inflate billable hours for time saved by GAI. A lawyer must also proactively communicate with their client about the basis for fees. *See* ARPC 1.5(b).

Questions may arise as to when a lawyer may bill a client for costs associated with the use of an GAI tool. Lawyers use GAI tools in many ways—*e.g.*, within a legal search engine such as Westlaw—and the expense of some uses may be considered simply overhead for operating a legal practice. "In the absence of disclosure to a client in advance of the engagement to the contrary," such overhead should be "subsumed within the lawyer's charges for professional services."[7] In other circumstances, a lawyer may opt to pass on GAI costs to a client. Before doing so and within a reasonable time after commencing the representation, the lawyer must make explicit disclosures to the client about "(a) the client's liability for the charges; and (b) the basis on which the charges will be computed."[8]

To note, while the duty of competence requires every lawyer to stay abreast of technological advances, lawyers "may not charge clients for time necessitated by their own inexperience. Therefore, a lawyer may not charge a client to learn about how to use [GAI] that the lawyer will regularly use for clients, unless a client

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[6] ARPC 1.5(a) provides the following non-exhaustive list of factors to consider in assessing reasonableness: "(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent."

[7] ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 93-379 (1993).

[8] Alaska Ethics Op. 95-4, Standards Governing Charges to Clients for Disbursements and Other Expenses.

requests or expressly approves such training.[9] In such instances, the lawyer should clearly communicate with the client about the cost of training and memorialize this agreement.

ARPC 1.6—Confidential or Secret Client Information.

Lawyers must "safeguard a client's confidences and secrets against unauthorized access, or against inadvertent or unauthorized disclosure," including by "others involved in transferring or storing client confidences or secrets." ARPC 1.6(c). This includes GAI if a lawyer inputs such confidences or secrets into a GAI program, whether by submitting prompts or queries, uploading data or documents, or otherwise. As with cloud computing, before using any GAI tool, "a lawyer should determine whether the provider of the services is a reputable organization" and "should specifically consider whether the provider offers robust security measures," including by reviewing the provider's terms of use and policies.[10] Such security measures in the context of GAI include strict prohibitions against retaining data, sharing data with third parties, and learning from user inputs—which is called "self-learning."

Most GAI programs "learn" by analyzing user inputs and adding those inputs to their existing response parameters. A "self-learning" GAI tool may store user inputs and reveal them in response to future inquiries, including inquiries by third parties, unless the GAI tool operates on a "closed" system. Some GAI tools keep inputted information entirely within a firm's own protected databases, called closed systems, which reduces the risk of sharing client confidences and secrets through self-learning. But it does not fully eliminate this risk if a firm has lawyers who are screened from certain matters and also use the same GAI tool, without further safeguards. To safely use GAI that self-learns outside of a closed system, lawyers must fully anonymize their inputs to protect client confidences and secrets, unless a client gives informed consent otherwise.

"A client may give informed consent to forgo security measures that would otherwise be required by this Rule." ARPC 1.6(c). Where there is a risk that a GAI tool may disclose inputted client confidences or secrets to a third party, a lawyer should (i) discuss with their client the proposed use of the GAI tool, (ii) advise their client of this risk, and (iii) obtain their client's informed consent to use the GAI tool, before inputting the client's confidences or secrets.

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[9] ABA AI Opinion, at 14.

[10] Alaska Ethics Op. 2014-3, Cloud Computing and the Practice of Law at 3 ("While a lawyer need not become an expert in [GAI], a lawyer must remain aware of how and where data are stored and what the service agreement says.").

ARPC 5.1—Responsibilities of Partners, Managers, and Supervisory Lawyers.

Law firm partners and other lawyers who have "comparable managerial authority" must "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct." ARPC 5.1(a). Such reasonable efforts may include having policies and procedures related to the use of GAI. For example, law firms may choose to prohibit the use of GAI that learns from user inputs to reduce potential disclosure of client confidences and secrets.

The Committee does not intend to specify what GAI policies a law firm should adopt because it is the responsibility of each law firm leader to determine how GAI might be used in their firm and then establish a GAI policy that addresses the benefits and risks associated with that use—and to continually reassess these issues as technology evolves. As a part of this process, it is appropriate to review the law firm's existing cybersecurity policies and ensure that they take GAI into consideration.

Relatedly, lawyers who have "direct supervisory authority" over any other lawyer must "make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct." ARPC 5.1(b). This requires that any lawyer who supervises a junior lawyer who in turn uses GAI must understand enough about GAI to provide appropriate oversight and supervision.

ARPC 5.3—Responsibilities Regarding Nonlawyer Assistance.

A lawyer with direct supervisory authority over a nonlawyer must make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the lawyer's professional obligations. ARPC 5.3. Though ARPC 5.3(a)(1)-(3) speak in terms of a "person" nonlawyer, many of the standards applicable to nonlawyer assistance should also guide a lawyer's use of GAI.

For example, a lawyer should review GAI work product in situations requiring work product review for nonlawyer assistants like paralegals. Lawyers are ultimately responsible for their own work product, regardless of whether it was originally drafted or researched by a human nonlawyer or GAI. Functionally, this means a lawyer must verify the accuracy and sufficiency of all GAI research—including for the reasons described below with respect to GAI "hallucinations." Failure to do so can lead to violations of the lawyer's duties of competence and candor to the tribunal, among others. Likewise, lawyers should not fully delegate to GAI anything that could constitute the practice of law and that requires a lawyer's judgment and participation, like negotiation on a client's behalf or offering legal advice.

The rule applies to nonlawyers both within and outside a firm. ARPC 5.3 cmt. The fact that a GAI tool might be operated by a third-party thus does not eliminate a lawyer's imperative to ensure that its work product is consistent with a lawyer's professional obligations.

ARPC 8.4—Misconduct.

It is professional misconduct for a lawyer to "engage in conduct involving dishonest, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness to practice law." ARPC 8.4(c). A lawyer's use of GAI may run afoul of this rule to the extent a lawyer relies on and presents untrue information provided by GAI. Among the reasons that GAI is controversial is its ability to respond to queries with "hallucinations"—outputs that are nonsensical or inaccurate—based in part on perceived patterns or objects that do not actually exist or are imperceptible to humans.[11] GAI has even hallucinated entire court decisions that lawyers have then cited in court briefs. These outputs can be quite deceptive as they appear on their face to be accurate.

Lawyers must confirm that the information GAI generates is true when relying on it in the practice of law. This includes ensuring the accuracy and relevance of citations used in legal documents or arguments. When citing legal authorities such as statutes, regulations, case law, or scholarly articles, lawyers must verify that the citations accurately reflect the content they are referencing. Lawyers must also ensure that GAI-generated content, like legal documents or advice, reflects sound legal reasoning.

Such efforts will also help ensure compliance with **ARPC 3.3—Candor Toward the Tribunal**—which prohibits lawyers from knowingly making and failing to correct false statements of fact or law to a tribunal. At least two courts in other jurisdictions have sanctioned or suspended lawyers for submitting filings with fake quotes and citations generated by GAI and failing to "come clean" to the court about their use.[12]

It also helps ensure compliance with **ARPC 3.1—Meritorious Claims and Contentions**—which prohibits lawyers from bringing claims that do not have a

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[11] In early 2024, researchers at Stanford University announced the preliminary results of a study finding that "[l]arge language models hallucinate at least 75% of the time when answering questions about a court's core ruling." Isabel Gottlieb & Isaiah Poritz, *Legal Errors by Top AI Models "Alarmingly Prevalent," Study Says*, Bloomberg Law (Jan. 12, 2024).

[12] *See Mata vs. Avianca, Inc.*, 2023 WL 4114965 (S.D.N.Y. June 22, 2023); *People v. Crabill*, No. 23PDJ067, 2023 WL 8111898 (Colo. O.P.D.J. Nov. 22, 2023).

basis in law. ARPC 3.1 also prohibits lawyers from bringing or defending claims without a basis in fact. If a lawyer suspects that a client may be providing GAI-generated or modified evidence, the lawyer should verify the veracity of the evidence to ensure that no fabricated facts are presented to a court.

Finally, ARPC 8.4(f) says it is professional misconduct to "engage in conduct that the lawyer knows is harassment or invidious discrimination" with individuals involved in the legal system. Some GAI is trained using historical and biased information—including information from eras when discrimination *was* the law—so lawyers should be cautious to avoid potential biases when using GAI, for example to screen potential clients.

Conclusion

In sum, a lawyer must reasonably ensure compliance with the lawyer's ethical obligations when using GAI tools. Those obligations include duties to (i) communicate with a client about the use of GAI where it may not be foreseeable or expected, (ii) avoid duplicative and excessive fees and costs for the use of GAI, (iii) confirm before using any GAI tool whether it will safeguard client confidences and secrets, (iv) set policies and procedures about the use of GAI and ensure appropriate supervision of others who use GAI within a firm, and (v) ensure the accuracy of GAI-provided information before communicating it to others. Lawyers should be cognizant that GAI is still in its infancy and not treat these ethical concerns as an exhaustive list. Rather, lawyers should continue to develop GAI technological competency and learn its benefits and risks when used in the practice of law.

11A

Subcommittee Reports

Attorney Pipeline

11B

Building

Building Committee Minutes

February 20, 2025

12:00 -1:00p.m.

Present: Jed Cox, Bill Granger, Ben Hofmeister, Rebecca Patterson, Danielle Bailey, Karen Schmidlkofer, Erik Frampton

Bailey gave the Board a tenant update. She let them know that there was a potential tenant that was interested in the vacant space. The lease has not been finalized, but it is looking positive. Over the life of the lease, the Bar is projecting to earn income even accounting for tenant improvements. The building subcommittee agreed to allow staff to proceed with the potential lease. This is partially due to the fact that the potential tenant is a non-profit and so the Bar would continue not paying property tax for the space.

Bailey also updated the subcommittee that one of the tenants, Yarmon Investments was going to be ending their lease in the spring. She let them know that the Bar hopes that this space will be easier to rent because it is a more attractive portion of the building. In addition, as Yarmon is not a non-profit, the Bar will switch to not paying property taxes on this space if it remains vacant.

Granger asked why Yarmon was leaving. Bailey stated it was because they are retiring. She also updated the subcommittee that Yarmon helped pitch the vacant space to our potential new tenants.

Schmidlkofer gave a finance update and ran through the budget reconciliation.

Bailey and Schmidlkofer ran through the long-term upgrade timelines that were gathered by Frampton and Opinsky. Hofmeister asked if the subcommittee was being asked to do anything on these items now. Bailey said no. This was brought forward at the request of the subcommittee at a previous meeting. Schmidlkofer may start recommending that money be allocated in the budget to these long term repairs so that they do not surprise us with big expenses down the line. Bailey and Schmidlkofer have discussed adding to the building improvement budget (this could still be investable).

Bailey updated the subcommittee on the uptick in vagrancy and vandalism experienced at the building. She mentioned steps the Bar is already taking: they are looking into getting a glass shatter alarm that could better detect break ins. They are also looking at a redesign of the entry way to the garage that would discourage vagrancy and could have a potential energy savings as well.

Granger asked for the materials to be distributed earlier.

Granger mentioned that Frampton and Opinsky should look into lining the existing pipes instead of replacing the entire pipeline. Frampton said he would look into it.

Granger asked if smoke detectors could be installed in the garage entryway as that would be cheaper. Bailey stated that the Bar had previously ran into road blocks in doing fire upgrades to the building as it may trigger a full fire code upgrade. The area is also pretty well drafted so it might not even trigger an alarm.

Granger and Hofmeister suggested that motion sensor alarms or other cheaper options to address security issues could be done. Bailey let the subcommittee know that the security videos are already equipped with motion sensors and that used to trigger the video recording (they now record 24 hours a day). However, there is so much movement in and around the building (both from foot traffic and even traffic lights) that a motion sensor doesn't usually trigger a security issue. Baiiley also added that the Bar and Frampton and Opinsky briefly considered adding an alarm to the entire building (like the Bar has for their offices). However, given the large number of tenants and the fact that the building is accessed after hours and on the weekends, this was not a feasible option. This is why the Bar and Frampton and Opinsky are considering the glass shatter alarm as that could better signal a break in.

Patterson asked about our current security at the building. Frampton stated that security pretty much only does lock and unlock patrol in addition to two other exterior patrols. Patterson asked if they have been the ones spotting people on the property. Frampton said no, it is usually building tenants or his staff.

Hofmeister asked if there were other potential security guards we could go with. Frampton said yes, and he would look into the other two.

Hofmeister asked if other short-term fixes

Meeting adjourned.

Action Items:

- Bailey to work with Frampton Opinsky to:
    - Move forward with the potential tenant.
    - Begin advertising the upcoming vacancy.
    - See if glass shatter alarm can be installed.
    - Continue to look into other responses to the vandalism issue.
    - Get bids for other security guards.
- Schmidlkofer to begin planning the long-term fixes into her budget process.

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TO: Building Subcommittee

FROM: Danielle Bailey
Karen Schmidlkofer
Shelley Block

DATE: February 19, 2025

SUBJECT: 4th Quarter 2024 Building Review

Presented in the memo is the 4th Quarter management's review of 840 K Street building. Management addresses quality controls, budget review, building improvements, expenses and tenant matters.

Building Loan Balance: $0.00

Management Review

- Staff meets monthly with the property manager to address building maintenance, improvements, tenant issues and possible new tenants.
- Financial, income and expense reports/detail are prepared by Frampton & Opinsky and received about 15th of the month. Alaska Bar staff enters the data submitted into the accounting software. Each expense is reviewed from the detail received. If there are questions or variances in the amounts staff contacts Frampton & Opinsky for additional information. Bank statements are printed, cancelled check copies reviewed and statements reconciled.
- Executive Director and Controller are points of contact for any security breaches. Camera footage is reviewed and authorities are called if needed.
- Entire staff is proactive to inform management if there are any building maintenance needs or concerns.

Reserve & Operating Accounts

The reserve and operating accounts are reviewed monthly. Alaska Bar staff enters the data submitted by Frampton & Opinsky into our accounting software. Bank statements are reviewed, printed and reconciled. The operating and reserve account balances as of December 31, 2024:

Operating Account	$ 7,166
Security Deposit Account	$15,110
Building Reserve Account	$50,010
Tenant Improvement Reserve Account	$50,000

Building Budget Reconciliation

The enclosed 4th quarter 2024 report is in line with the budget. These reports prepared by Frampton and Opinsky are yearly costs. They do not report depreciation and amortization as presented on the Alaska Bar Association's financials. Variances are as follows:

Maintenance fees variance $5,870: Increase due to plumbing costs for a frozen pipe, cracked drain line, and installation of door light kits for a tenant improvement. The tenant improvement for Northwest Resources cost $3,819 and will be recorded in the Alaska Bar Association's financials as a tenant improvement and amortized over the remaining life of the lease. Both of these items were discussed in the 1st quarter report.

Electricity variance $6,448: Increase in fees due to higher demand and increase usage that can be attributed to an additional tenant in May 2023 and the increase of employees back in the office. In November 2023 a rate increase for demand and usage fees increased from 44.555 to 47.0257.

Gas variance ($1,519): Decrease due to five efficient RTUs. There is higher consumption due to a new tenant in May 2023.

Tenant Improvement variance: New tenant did not acquire space so no expenses for 2024.

Building Improvement variance: The window reseal was not completed in 2024 which saved $26,600.

Expenses

2024 Budgeted Expenses:

- Tenant improvements empty space – budgeted $24,500 over 5 year lease. Tenant improvements may be higher.
- RTU installation – $26,600 - completed in July
- Window Reseal – $24,000 – Only $4,700 spent to reseal (6 more identified as having light fogging or streaking, but not yet needed for repair)
- Bathroom Ventilation – $8,000 - completed April
- Lobby doors - $5,700 – completed April

2025 Budgeted Expenses:

- Hallway Refresh - $74,000
- LED Retrofit Common Areas – $32,000
- RTU installation - $39,900
- Tenant improvements empty space – $25,000
- Sewer line and pipe fixes – More investigation needs to be done to determine if this is necessary. $3,000 included in maintenance budget.
- Entryway Roof – This was also included as a maintenance budget item and is currently expected to cost $8,000.

Long-term repair expenses:

- **Parking Garage Drain Line Replacement - $46,500**

The garage drain lines appear to be original and are showings signs of deterioration. We have made small repairs nearly every year, some due to heat trace/insulation issues, others due to age and corrosion. It is difficult to gage the thickness and integrity of the lines without dismantling the system. Expected replacement timeline: 0-5 years.

- **Window Replacement - $5,000 - $7,000 per window**
  Over time windows at the building will fog and seals will fail and need to be replaced. Expected replacement timeline: 1-2 windows per year.
- **Building Roof Replacement - $300,000**
  The roof is Duralast material and was installed 18-years ago in 2007. Overall the roof is in excellent condition and there are no leaks. The manufacturer lists the useful life expectancy at 30 years. Right now we are seeing around $28 psf for a new roof. Expected replacement timeline: 10 years.
- **Restroom Upgrade - $20,000 per restroom**
  In good condition but facelift projected to be needed. Expected replacement timeline: 10 years.
- **Garage Concrete Sealing/Repairs – TBD**
  As part of the general upkeep of the parking garage it would be a good idea to look at re-sealing and performing some minor concrete repairs in the parking garage. A structural engineer should be consulted for this project. Expected replacement timeline: TBD
- **Remote Access Key FOB System – TBD**
  It appears as though the building at one point was fitted for a remote access key FOB system. This could be a beneficial upgrade to the building. Expected replacement timeline: TBD
- **Arctic Entryway Garage Design – TBD**
  Seeking a quote to get a redesign for the area in between the garage and the entrance of the building to create an arctic entryway. Would cut down on vagrancy and could offer energy cost savings.

Tenant Updates

- Building is 89% occupied. 2,131 of 19,508 rsf remains vacant. Also have a rooftop lease (equivalent to lease of approx. 800 rsf, equivalent of 93% occupied)
- Future leases set to expire on the following schedule:
  - Yarmon Investment: 3/31/2025
    - Has extended lease to 5/31/2025 and has indicated will not continue lease. Additional vacant space of approximately 1,023 sq ft expected
  - Northwest Resource Associates: 8/31/2026
  - New Cingular Wireless: 9/1/2026
    - Has indicated they would like to extend.
  - St. Mary's Native Corporation: 2/28/2027
  - St. Mary's Properties LLC: 2/28/2027
  - Alaska Business Development Center: 7/31/2028
- Tenant concerns:

- Vagrancy and property damage: a brick was thrown through the back door. Fires have been started in the garage entryway. Guardian has been instructed to do more regular patrols. Cameras now record 24/7 not just motion sensing.

- Tenant inquiries:
  - Turnagain Law
  - Chugachmiut Native Corporation/Headstart

Cost Saving Initiatives

Steps Taken to Increase Revenue:

- Renewed or signed 4 leases
- Proposal to lease space to Office of Victim Rights and Anchorage Park Foundation
- Listed vacant property through the following channels:
  - Alaska Bar Website
  - Alaska Bar Rag
  - Staff Networking
  - Frampton & Opinsky's postings, mailers, and site visits for prospective tenants.
  - Conducted yearly market analyses to determine suitability of our listing price. Most recent market analysis is attached.

Steps Taken to Reduce Expenses:

- Property Tax Exemption – Sought two property tax exemptions. Savings of $46,000/year. Currently 80% of building is property tax exempt.
- Security – eliminated 2nd internet line for security cameras effective May 2023 – Savings of $3,120/yr.
- Janitorial – bid janitorial services for building. Current janitorial is $12,000 to $24,000/yr less expensive than other companies.
- Gas – installed 6 new RTU units to maximize efficiency and reduce costs. Installed front entry way doors to maximize security and reduce heating costs.
- Used vacant bar space to host non-standard testing accommodations.
- Installed new landscaping to eliminate summer fees. Savings of $2,385/yr. Completed July 2024.

Potential Future Savings:

- Potential new tenant of 2,131 rsf.
- Continued RTU installation
- Arctic Entryway redesign

840 K Street Income & Expense
4th Quarter 2024 Review

Account Name	2024 Year End	2024 Budget	2023 Year End	Notes
DEPT REVENUE				
Rental Income	273,096	297,338	262,675	*Budget for new tenant in sutie 203 but still vacant
SUBTOTAL REVENUE	273,096	297,338	262,675	
DIRECT EXPENSE				
Janitorial	23,975	20,124	14,970	*2023 paid in 2024 - late invoices vendor
Janitorial Supplies	3,541	4,549	3,079	
Window Cleaning	0	1,250	0	
HVAC Contract	6,311	6,300	7,875	
HVAC R&M	4,660	5,500	17,667	*2023 repair blower wheel, bearings, shaft & pulley, 22 duct cleaning pd 23
General Building Maint	38,692	32,822	41,881	*1st Qtr 24 pipe repair, tenant improv, 2023 heat trace elec, waste line, baseboard, garage floor
Elevator Contract	5,096	4,030	993	*1st Qtr 24 Know box $1,600 muni requirement, elevator maint
Fire Alarm Inspect & Maint	560	368	368	
Security	3,866	3,756	7,680	*1st Qtr 23 - 2nd internet line, 2nd Qtr 23 - security camera upgrade
Landscaping	737	2,033	2,385	*2nd Qtr 24 - New landscaping low maintenance
Snow Removal/Sweeping	1,935	2,980	1,410	
Electricity	52,964	46,516	44,938	*2023 rate increase
Gas	22,002	23,521	23,503	*5 efficient RTUs reduce costs
Water/Sewer	2,251	2,063	1,940	*2024 - rate increase 4%
Refuse	5,244	4,956	5,067	*2024 - rate increase 6%
SUBTOTAL DIRECT EXPENSE	171,833	160,768	173,757	
GAIN/LOSS AFTER DIRECT	101,263	136,570	88,918	
ADMIN EXPENSE				
Management Fee	18,578	18,600	18,080	
Leasing Commission	0	8,746	18,052	
Constr Mngmt Fees	2,600	4,543	2,976	*2024 fees for RTU and Window reseal Jul/Aug
Real Estate Taxes	11,163	9,452	9,003	*2024 - rate increase 26%
Downtown Improvement Distr	1,037	833	793	*2024 - rate increase 26%
Professional/Legal	0	0	0	
Tenant Improv	0	19,179	52,948	*2024 vacant space not rented
Insurance	10,707	9,256	8,815	*2024 - rate increase 21%
Building Improv	45,075	71,680	37,595	*2024 RTU, entry doors, bathroom ventilation - no window reseal in 2024
Owner Contribution	0	-5,000	0	
Miscellaneous Admin	111	0	474	
SUBTOTAL ADMIN EXPENSE	89,271	137,289	148,736	
GAIN/LOSS FOR DEPT	11,992	-719	-59,818	
DEPARTMENT SUMMARY				
REVENUE	273,096	297,338	262,675	
EXPENSE	261,104	298,057	322,493	
NET GAIN/LOSS FOR DEPT	11,992	-719	-59,818	

11C

Executive Director and Bar Counsel Evaluations

ALASKA BAR
ASSOCIATION

To: Board of Governors

From: Danielle Bailey, Executive Director

Re: Subcommittee Appointments

Date: April 11, 2025

Executive Director and Bar Counsel Evaluation Subcommittee:
According to Article V Section E of the Standing Policies of the Board of Governors[1] an evaluation subcommittee needs to be appointed by the President of the Board during the May Board of Governors meeting. "The subcommittee will consist of the President, the President-elect, a public member and the most immediate past-president on the Board (or if none, another Board member appointed by the President.)"

Staff Recommendation: The President should appoint the following people to the keynote subcommittee:

- President, Jeffrey Robinson
- President-Elect, Rebecca Patterson
- A public member of the Board of Governors
- Most immediate past-president on the Board, NA

[1] **Procedure and Timeline for Evaluation of Executive Director and Bar Counsel.** A subcommittee of the Board will conduct the annual evaluation of the Executive Director and the Bar Counsel. The subcommittee will consist of the President, the President-elect, a public member and the most immediate past-president on the Board (or if none, another Board member appointed by the President.) The subcommittee shall be formed and appointed at the May Board meeting. The subcommittee is responsible for finalizing and circulating an evaluation form to all Board members, and such Bar members or staff as deemed appropriate, to be completed and returned to the subcommittee. All forms must be attributed to the evaluator. The subcommittee should collect and tabulate the evaluation information and prepare a summary of the results and comments. The summary shall be provided to the Executive Director and Bar Counsel at least one week prior to any evaluation meeting. The President shall meet with the Executive Director and with Bar Counsel separately to review and discuss the evaluation results for each. The subcommittee should report the results of the evaluation, including any feedback from the Executive Director and/or Bar Counsel, by or at the September Board of Governors meeting. The Executive Director is responsible for retaining records of the evaluation process, including the evaluation form utilized, completed evaluation forms, any self-evaluation materials, and the final summary, in a secured location in the Bar office for a five-year period.

840 K Street, Suite 100 • Anchorage, Alaska 99501-3353
907-272-7469 • Fax 907-272-2932 • http://www.alaskabar.org

Keynote Speaker Subcommittee:
According to Article II Section D of the Standing Policies of the Board of Governors[2], a keynote speaker subcommittee needs to be appointed by the President of the Board during the May Board of Governors meeting. "The subcommittee shall be comprised of the President-elect, one public member of the Board, and the Chair of the Bar Association's CLE Committee."

Staff Recommendation: The President should appoint the following people to the keynote subcommittee:

- President-Elect, Rebecca Patterson
- A public member of the Board of Governors
- CLE Chair, Zach Manzella

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[2] **Selection of Speakers.** The President of the Board shall appoint a keynote speaker subcommittee at the May meeting of the Board of Governors in the year preceding the convention year for which a keynote speaker is to be selected (that is, a subcommittee will be appointed in May 2021 for the 2022 convention). The subcommittee shall identify and evaluate potential speaker candidates. The subcommittee shall be comprised of the President-elect, one public member of the Board, and the Chair of the Bar Association's CLE Committee. The subcommittee shall develop a list of preferred speaker candidates, along with projected compensation and other expenses, for consideration by the Board of Governors at the September meeting. The subcommittee shall also brief the Board regarding any potential matters of concern that members may raise associated with the potential speakers.

The President-elect shall make the final selection, considering input from the Board. If the selected candidate is unavailable, the President-elect shall confer again with the two other members of the subcommittee, and then inform the Board of potential other candidates. If time permits, the President-elect may either call a special meeting prior to making a final selection or communicate about the matter with Board members as appropriate. The President-elect shall retain final decision making authority, taking into account the opinions of the Board and the mission and the best interests of the association and its membership.

11D

Membership Lists

XVI. COMMUNICATION POLICIES AND PROCEDURES

A. Email Communication Policies. The Alaska Bar Association recognizes that broadcast messages are a quick and efficient way to provide information to members. The Bar is also aware of the nuisance or "spam" factor for our members in receiving unwanted e-mail. We want our members to associate e-mail from the Bar with Bar services such as CLEs, Section information, etc. Messages can be sent to the entire membership or selected groups (i.e. a specific section or area of the state.) Messages must contain the name and e-mail address of an individual to whom message recipients can reply.

1. **E-mail on Behalf of Outside Organizations.** The Bar will send messages to its members for the Alaska Bar Association, and the following entities only:
   - Alaska Court System
   - Alaska Judicial Council
   - Judicial Conduct Commission
   - Local and Affinity Bar Associations
   - Alaska Bar Foundation
   - Qualified Legal Service Providers

2. **E-Mail Message Guidelines.** Messages must be on issues, events or activities directly related to the Bar or entity. The Alaska Bar staff reserves the right to review all proposed messages for accuracy, length, and suitability. As an integrated Bar, the Alaska Bar is limited in its ability to be involved in political or legislative activity. Messages must also comply with the below restrictions/limitations:
   - Messages should be included in the Alaska Bar Association's weekly E-news and standalone emails should only be used on rare occasions at the discretion of the Executive Director.
   - There is a two e-mail message limit for any given message/event, unless otherwise approved by the Executive Director.
   - Subject line should convey the main message if possible.
   - Messages should be brief. It is preferable for messages to be no longer than 75 words, but messages may include links to further information.

B. Regular Mail Communication Policy. Copying for member mailings takes a significant amount of staff time, as well as cost. Therefore, the Alaska Bar Association will not send physical mail on behalf of outside organizations.

C. Member Information and Publication.

1. **Public Member Information.** The following information is considered public information: Name, Gender Prefix, Bar Number, Membership Status, Date Admitted, Public Address (for active bar members only), Public Phone

Number (for active bar members only), and Law School Graduated. Bar members are required to keep a public mailing address and phone number with the Alaska Bar and to ensure the Bar is notified of any changes within 30 days, in accordance with Bar Rule 9(e). If the active member only has a personal address and phone number, that information will be made public. All the above referenced data is considered public information and will be advertised on the Alaska Bar Association's online directory.

2. **Member Email Information.** Alaska Bar members are required to keep an email address with the Bar up to date. The full member email list will only be given to the Alaska Court System, Alaska Judicial Council, Alaska Commission on Judicial Conduct, and Alaska Bar Foundation Bar Committee or Bar Section email rosters may be shared with the chair upon request. Use of email addresses by these entities is limited to official Bar related matters and business.

3. **Distribution and Sale of Roster (Public Member Information).** The Alaska Bar Association may distribute a copy of the member roster's public information. The public roster includes all Public Member Information and any other information a member makes public. The roster will be distributed under the following circumstances:
   (a) At no charge to the following entities: Alaska Court System, Alaska Judicial Council, Alaska Commission on Judicial Conduct, and Alaska Bar Foundation.
   (b) At no charge twice a year to the following entities: Local and Affinity Bar Associations and Qualified Legal Service Providers.
   For one-time use at the price of $200 for the full list or $.25 per member for a partial list. Partial lists may only be refined based on public member information.

XVI. ~~BROADCAST E-MAIL AND REGULAR MAIL~~COMMUNICATION POLICIES AND PROCEDURES

A. Email Communication Policies. The Alaska Bar Association recognizes that broadcast ~~e-mail~~ messages are a quick and efficient way to provide information to members. The Bar is also aware of the nuisance or "spam" factor for our members in receiving unwanted e-mail. We want our members to associate e-mail from the Bar with Bar services such as CLEs, Section information, etc. Messages can be sent to the entire membership or selected groups (i.e. a specific section or area of the state.) Messages must contain the name and e-mail address of an individual to whom message recipients can reply.

1. **E-mail on Behalf of Outside Organizations.** T~~In accordance with the following policies and procedures, t~~he Bar will send messages to its members for the Alaska Bar Association, and the following entities only:

   - Alaska Court System
   - Alaska Judicial Council
   - Judicial Conduct Commission
   - Local and Affinity Bar Associations
   - Alaska Bar Foundation
   - Qualified Legal Service Providers

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C. Member Information and Publication.

1. **Public Member Information.** The following information is considered public information: Name, Gender Prefix, Bar Number, Membership Status, Date Admitted, Public Address (for active bar members only), Public Phone Number (for active bar members only), and Law School Graduated. Bar members are required to keep a public mailing address and phone number with the Alaska Bar and to ensure the Bar is notified of any changes within 30 days, in accordance with Bar Rule 9(e). If the active member only has a personal address and phone number, that information will be made public. All the above referenced data is considered public information and will be advertised on the Alaska Bar Association's online directory.

~~Messages can be sent to the entire membership or selected groups (i.e. a specific section or area of the state.) Messages must contain the name and e-mail address of an individual to whom message recipients can reply. Attachments can be included on broadcast messages. Please contact the Bar to find out how best to attach a message and make sure recipients can open the attachments.~~

~~The Bar will include in its weekly E-News notice of free CLE events held in Alaska and sponsored by ABA-accredited law schools with a presence in Alaska.~~

~~1.~~ **Member Email ~~List~~Information.:** Alaska Bar members are required to keep an email address with the Bar up to date. The full member email list will only be given to the Alaska Court System, Alaska Judicial Council, Alaska Commission on Judicial Conduct, and Alaska Bar Foundation ~~and local bar associations~~ Bar Committee or Bar Section email rosters may be shared with the chair upon request. Use of email addresses by these entities is limited to official Bar related matters and business.. ~~Member emails are not for sale; however, mailing labels can be purchased (see regular mail policy below).~~

2.

3. **Distribution and Sale of Roster (Public Member Information).** The Alaska Bar Association may distribute a copy of the member roster's public information. The public roster includes all Public Member Information and any other information a member makes public. The roster will be distributed under the following circumstances:
   (a) At no charge to the following entities: Alaska Court System, Alaska Judicial Council, Alaska Commission on Judicial Conduct, and Alaska Bar Foundation.
   (b) At no charge twice a year to the following entities: Local and Affinity Bar Associations and Qualified Legal Service Providers.
   For one-time use at the price of $200 for the full list or $.25 per member for a partial list. Partial lists may only be refined based on public member information.~~Tips for broadcast e-mail messages~~

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- Subject line should convey the main message if possible.
- Messages should be brief.
- Critical information; i.e. date, time, etc. should be in the first two lines of the message.
- It is preferable for messages to be no longer than ½ a page.

Regular Mail Policy for Other Organizations

Copying for member mailings takes a significant amount of staff time, as well as costs. Therefore all other organizations will be asked to provide the copies to be included in a Bar mailing. Other actual costs of mailings include the stuffing charge, and additional postage.

Any copies provided should be limited to one page (i.e., one piece of paper.)

The Bar will not mail fund-raising announcements.

1. Alaska Court System, Local Bars, and pro bono organizations

- These organizations will provide the copies to be sent in the mailing, and the Bar will incur the other mailing costs, e.g., stuffing, postage.
- The court may also request the Bar roster on disk or electronically (for mailing labels) at no charge.
- Pro bono organizations may receive the Bar roster on disk or electronically (for mailing labels), quarterly at no charge.

2. Alaska Law-related Non-profit organizations and government agencies in Alaska

- They will provide the copies to be sent in the mailing and they will pay the pro-rata share of stuffing additional pieces and postage.
- They may purchase the roster on disk or electronically for $25.

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3. Other Non-profit organizations, private companies and for-profit organizations

- The Bar will not include items in Bar mailings for other Non-profit organizations, private companies and for-profit organizations.

- Other organizations may purchase the roster on disk or electronically for $75, or the mailing labels at .15/label.

Chart of E-mail and Regular Mail Policies

	E-mail	Regular Mail
Court, Local Bars, Bar Foundation, Judicial Council, Judicial Conduct Commission	-no limit -no charge -we will send for them	-they provide copies -we mail at no charge -AND- They may get roster on disk at no charge
Pro Bono organizations	No	-they provide copies -we mail at no charge -AND- -they may get roster on disk **quarterly** at no charge

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AK legal non-profits and govt. agencies	No	they provide copies they pay pro-rata share of mailing
Other non-profits or private companies	No	Bar will not include items in mailing they may purchase roster on disk for $75 or labels at .15/label

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Examples of Alaska Law Related Non-profit organizations:

- Youth Court
- AkCLU
- Disability Law Center
- Legal Assistants, Legal Administrators & Legal Secretaries

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Pro bono organizations

- ALSC
- APBP
- Alaska Immigration Justice Project (AIJP)
- ANDVSA
- Office of Public Advocacy (if for pro bono purposes)

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ALASKA BAR ASSOCIATION
Address Change Form

Member ID: _____ Member Name: _____
(Please contact the Bar office for name changes)

Preferred Mailing Address (select one for public address)

☐ **Business** ☐ **Personal** ☐ **P.O. Box**

Business

Firm/Employer: _____ Phone No: (____) _____-_____Ext:_____

Address 1: _____ Int'l Phone No: _____

Address 2: _____ Fax No: (____) _____-_____

Zip: _____ - _____ Int'l Fax No: _____

City: _____ State: _____ Cell No: (____) _____-_____

Country: _____ URL: _____

E-mail _____ ☐Private?

A member's business address/phone/e-mail is listed on our online public directory.
Please check the private box if you would not like your e-mail listed on our online public directory.

Personal

Firm/Employer: _____ Phone: (____) _____-_____Ext: ____☐Private?

Address 1: _____ Int'l Phone No: _____

Address 2: _____ Fax No: (____) _____-_____

Zip: _____ - _____ Int'l Fax No: _____

City: _____ State: _____ Cell No: (____) _____-_____

Country: _____ URL: _____

E-mail _____ ☐Private?

Personal and PO Box information is only available by calling our office.

P.O. Box

Firm/Employer: _____ Phone: (____) _____-_____Ext: ____☐Private?

Address 1: _____ Int'l Phone No: _____

Address 2: _____ Fax No: (____) _____-_____

Zip: _____ - _____ Int'l Fax No: _____

City: _____ State: _____ Cell No: (____) _____-_____

Country: _____ URL: _____

E-mail _____ ☐Private?

CourtView: The address listed on *CourtView* is the "business" address you maintain with the Bar. If your business address changes, notify the Bar and the Bar will then notify the court.

Return completed form to:
Alaska Bar Association • PO Box 100279 • Anchorage, AK 99510-0279
Phone: (907) 272-7469 • Fax: (907) 272-2932 • E-mail: info@alaskabar.org

ALASKA BAR ASSOCIATION

Firm: Alaska Bar Association

Street 1: 840 K St Ste 100

Street 2:

City: Anchorage

State: Alaska

Zip: 99501

Country: United States

Phone No: (907) 272-7469

Fax No: (907) 272-2932

Email: Bailey@alaskabar.org

URL: http://

Use this address as:
- ○ Preferred Mailing
- ◉ Preferred Email

Make the following information private:
- ☐ Work Address
- ☐ Work Phone
- ☐ Work Email

Personal

Street 1: [redacted]

Street 2:

City: [redacted]

State: [redacted]

Zip: [redacted]

Use this address as:
- ◉ Preferred Mailing
- ○ Preferred Email

Make the following information private:
- ☑ Personal Address
- ☑ Personal Phone
- ☑ Personal Email

ALASKA BAR ASSOCIATION

Email [redacted]

URL http://

P.O. Box

Use this address as:
- ○ Preferred Mailing
- ○ Preferred Email

Firm

Street 1

Street 2

City

840 K Street, Suite 100

Anchorage, AK 99501-3353

Phone: 907-272-7469

Fax: 907-272-2932

Email: info@alaskabar.org

Lawyer Referral Service Phone: 907-272-0352

Lawyer Referral Service Email: LRS@alaskabar.org

11E

Convention Keynote

Please Refer to 11C