

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 176

Amending the Alaska Bar Rules

IT IS ORDERED:

- 1) that existing Part II: Grievances and Reinstatement of the Alaska Bar Rules is hereby repealed;
- 2) that in its place, the following Part II: Rules of Disciplinary Enforcement be incorporated therein;
- 3) that Part III: Attorney Fee Review Committee Rules be added to the Alaska Bar Rules; and
- 4) that Part II: Rules of Disciplinary Enforcement and Part III: Attorney Fee Review Committee Rules shall read as set forth in the attached rules:

PART II: RULES OF DISCIPLINARY ENFORCEMENT

A. MISCONDUCT

- Rule 9 Jurisdiction
- Rule 10 Disciplinary Areas
- Rule 11 Grounds for Discipline
- Rule 12 Types of Discipline
- Rule 13 The Disciplinary Board of the Alaska Bar Association
- Rule 14 Hearing Committees
- Rule 15 Bar Counsel
- Rule 16 Procedure
 - (a) Investigation
 - (b) Formal Hearing
 - (c) Review by Board and Court
 - (d) Proceedings Against Members of the Board
 - (e) Proceedings Against Members of Hearing Committees and Bar Counsel
- Rule 17 Interlocutory Relief
- Rule 18 Immunity
- Rule 19 Refusal of Complainant to Proceed, Compromise, Etc.
- Rule 20 Matters Involving or Related to Pending Civil or Criminal Litigation
- Rule 21 Personal Service
- Rule 22 Subpoena Power, Depositions and Related Matters
- Rule 23 Attorneys Convicted of Serious Crimes
- Rule 24 Resignations by Attorneys Under Disciplinary Investigation

Rule 25 Reciprocal Discipline
Rule 26 Disbarred or Suspended Attorneys
Rule 27 Reinstatement

B. DISABILITY

Rule 28 Proceedings Where an Attorney is Declared to be
Incompetent or is Alleged to be Incapacitated
Rule 29 Appointment of Counsel to Protect Clients'
Interests When Attorney Disappears, Dies or is
Transferred to Inactive Status Because of
Disability

C. MISCELLANEOUS PROVISIONS

Rule 30 Expenses
Rule 31 Confidentiality
Rule 32 Disciplinary Matters Take Precedence
Rule 33 Effective Dates

PART III: ATTORNEY FEE REVIEW COMMITTEE RULES

Rule 34 Establishment of Fee Dispute Committee
Rule 35 Proceedings to Stay Civil Actions
Rule 36 Fee Dispute Defined
Rule 37 Composition and Appointment of Committee
Rule 38 Initiation of Proceedings
Rule 39 Hearings
Rule 40 Decision
Rule 41 Appeal
Rule 42 Informing the Public

DATED: at Anchorage, Alaska, this 26th day of
February, 1974.

/s/ Jay A. Rabinowitz
Chief Justice

/s/ Roger G. Connor
Justice

Distribution:

S/C Justices
Sup/Ct Judges
Dist/Ct Judges
Magistrates
Magistrate Supervisor
Clks/Ct
Law Librarian
Probate Masters
Adm Dir
All Members ABA
Gov
Lt./Gov
Dept/Law
Legis/Affairs
Dept/Pub Safety
Alaska Legal Serv
Public Def Agency

/s/ Robert C. Erwin
Justice

/s/ Robert Boochever
Justice

/s/ James M. Fitzgerald
Justice

TABLE OF CONTENTS

PART II: RULES OF DISCIPLINARY ENFORCEMENT

A. MISCONDUCT

- Rule 9 Jurisdiction
- Rule 10 Disciplinary Areas
- Rule 11 Grounds for Discipline
- Rule 12 Types of Discipline
- Rule 13 The Disciplinary Board of the Alaska Bar Association
- Rule 14 Hearing Committees
- Rule 15 Bar Counsel
- Rule 16 Procedure
 - (a) Investigation
 - (b) Formal Hearing
 - (c) Review by Board and Court
 - (d) Proceedings Against Members of the Board
 - (e) Proceedings Against Members of Hearing Committees and Bar Counsel
- Rule 17 Interlocutory Relief
- Rule 18 Immunity
- Rule 19 Refusal of Complainant to Proceed, Compromise, Etc.
- Rule 20 Matters Involving or Related to Pending Civil or Criminal Litigation
- Rule 21 Personal Service
- Rule 22 Subpoena Power, Depositions and Related Matters
- Rule 23 Attorneys Convicted of Serious Crimes
- Rule 24 Resignations by Attorneys Under Disciplinary Investigation
- Rule 25 Reciprocal Discipline
- Rule 26 Disbarred or Suspended Attorneys
- Rule 27 Reinstatement

B. DISABILITY

- Rule 28 Proceedings Where an Attorney is Declared to be Incompetent or is Alleged to be Incapacitated
- Rule 29 Appointment of Counsel to Protect Clients' Interests When Attorney Disappears, Dies or is Transferred to Inactive Status Because of Disability

C. MISCELLANEOUS PROVISIONS

- Rule 30 Expenses
- Rule 31 Confidentiality
- Rule 32 Disciplinary Matters Take Precedence
- Rule 33 Effective Dates

PART III: ATTORNEY FEE REVIEW COMMITTEE RULES

Rule 34	Establishment of Fee Dispute Committee
Rule 35	Proceedings to Stay Civil Actions
Rule 36	Fee Dispute Defined
Rule 37	Composition and Appointment of Committee
Rule 38	Initiation of Proceedings
Rule 39	Hearings
Rule 40	Decision
Rule 41	Appeal
Rule 42	Informing the Public

PART II
RULES OF DISCIPLINARY
ENFORCEMENT

A. MISCONDUCT

RULE 9

Jurisdiction.

Any attorney admitted to practice law in this State or any attorney allowed to appear and participate by a court of this State for a particular proceeding is subject to the supervision of the Supreme Court of Alaska (hereinafter called "the Court") and the Disciplinary Board hereinafter established.

These Rules shall not be construed to deny to any other court such powers as are necessary for that court to maintain control and supervision over proceedings conducted before it, such as the power of contempt.

RULE 10

Disciplinary Areas.

Disciplinary jurisdiction in this State shall be divided into the following areas:

- (a) Area I - The First Judicial District.
- (b) Area II - The Second and Fourth Judicial Districts.
- (c) Area III - The Third Judicial District.

The Disciplinary Area in which venue shall lie shall be that area in which an attorney maintains an office and any area in which the conduct under investigation occurred.

RULE 11

Grounds for Discipline.

Acts or omissions by an attorney, individually or in concert with any other person or persons, which violate the Code of Professional Responsibility of the American Bar Association shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

RULE 12

Types of Discipline.

Misconduct shall be grounds for:

- (a) Disbarment by the Court; or
- (b) Suspension by the Court for a period not exceeding five (5) years; or
- (c) Public censure by the Court; or
- (d) Private reprimand by the Disciplinary Board; or
- (e) Private informal admonition by Bar Counsel.

RULE 13

The Disciplinary Board of the Alaska Bar Association.

(a) The Board of Governors of the Alaska Bar Association shall have the powers and duties described herein. The Board of Governors shall meet at least once every three months for the consideration of grievance matters. When so meeting, and when otherwise exercising the powers of fulfilling the duties described in these Rules, the Board of Governors shall be known as "the Disciplinary Board of the Alaska Bar Association" (hereinafter called "the Board"). The President, or the Vice President by direction of the President, may direct the submission of any matter to the Board for action, decision, approval, or authorization, by mail, telegraph, or telephone. The votes on any such matters may be taken in person at a meeting of the Board, or by conference telephone call in which no less than a quorum of the Board participate.

(b) The Board shall act only with concurrence of not less than a majority of its members sitting for the transaction of matters before it. Three members shall constitute a quorum.

(c) The Board shall have the power and duty:

(1) To appoint one or more hearing committees within each Disciplinary Area. Each committee shall consist of six (6) members of the Bar of this State, each of whom maintain an office for the practice of law within the Disciplinary Area for which he is appointed.

(2) To assign, through its President, formal charges

Rule 13 (Cont'd.)

to a hearing committee. Such charges shall be assigned for hearing in the order in which they are received by the Board, and, in the event of the establishment of two or more hearing committees in the Area, assignments shall be rotated among them. The reviewing member of a hearing committee who has passed upon Bar Counsel's recommended disposition of the matter (see Rule 15, below), shall be ineligible to sit with the hearing committee on that matter and shall be ineligible to act on the merits of that matter as presented to the hearing committee.

(3) To review on the record the findings and recommendations of hearing committees with respect to formal charges and, in cases in which it recommends discipline as provided in Rule 12(a), (b), or (c), to prepare and forward its own conclusions and recommendations, together with the record of the proceeding before the hearing committee, to the Court which shall review such conclusions and recommendations on the basis of the record and shall enter an appropriate order disposing of the proceeding.

(4) To review the findings and recommendations of hearing committees with respect to formal charges, and in cases in which it recommends dismissal or discipline as provided in Rule 12(d) or (e), to enter an order: (i) dismissing the petition; (ii) directing private informal admonition by Bar Counsel; or (iii) directing private reprimand by the Board. The President and the Vice President shall have the power and the duty to administer private reprimand.

(5) To assign periodically, for such terms as it may determine, a member or members of hearing committees within each

Rule 13 (Cont'd.)

Disciplinary Area to review and approve or modify recommendations by Bar Counsel for dismissals, informal admonitions and institution of formal charges.

(6) To review, upon application by Bar Counsel, a determination by a reviewing hearing committee member that a matter should be concluded by dismissal or by private informal admonition without the institution of formal charges before a hearing committee.

(7) To adopt rules of procedure not inconsistent with these Rules.

(8) To maintain complete records of all matters in which it or any of its members are involved, and to furnish such complete records to Bar Counsel for permanent safe-keeping upon final disposition of any such matter. Such records shall then be subject to the provisions of Rule 31 with respect to confidentiality.

RULE 14

Hearing Committees.

(a) When a hearing committee is first appointed, two (2) of its members shall be appointed for terms of one (1) year, two (2) of its members for terms of two (2) years and two (2) of its members for terms of three (3) years. The Board shall designate the chairman for the committee. Thereafter all regular terms shall be three (3) years and no member shall serve for more than two (2) consecutive three-year terms. A member whose term has expired shall continue to serve until the conclusion of any formal hearing commenced before him prior to the expiration of his term, but such continued service shall not prevent immediate appointment of his successor. A member who has served two (2) consecutive three-year terms may be reappointed after the expiration of one (1) year. The committee shall act only with the concurrence of a majority of its members sitting for the transaction of matters before it. Three (3) members shall constitute a quorum. The terms of members of the committees first appointed shall commence on April 1, 1974.

(b) A hearing committee member may not act as such in an action in which: (1) he is a party or is directly interested; (2) he was not present and sitting as a member at the hearing of a matter submitted for the committee's decision; (3) he is a material witness; (4) he is related to the respondent-attorney by consanguinity or affinity within the third degree; (5) the respondent-attorney has retained him as his attorney or has been professionally counseled

Rule 14 (Cont'd.)

by him in any matter within two (2) years preceding the filing of the petition in the formal proceeding before him; or (6) he believes that, for any reason he cannot give a fair and impartial decision. Provided, that in the instances specified in (4) and (5), the disqualification may be waived by both the respondent-attorney and Bar Counsel, and shall be deemed waived by the respondent-attorney unless raised by challenge to the said member not later than ten (10) days following notice of the composition of the hearing committee to the respondent-attorney and shall be deemed waived by Bar Counsel unless raised by challenge to the said member not later than ten (10) days following notice to Bar Counsel of the relationship between the member and the respondent-attorney. The Board shall pass upon such challenges, and shall, if it finds a challenge well taken, relieve the challenged member of his obligation to participate in the matter, and assign another member of the hearing committee to the matter, or, in its discretion, and if a quorum exists even in the absence of the challenged member, not appoint a replacement for him.

(c) If a respondent-attorney, his attorney, or Bar Counsel, files an affidavit alleging under oath that he believes that he cannot obtain a fair and impartial hearing before a named member of a hearing committee, the Board shall at once, and without requiring proof, relieve the challenged member of his obligation to participate in the matter, and assign another member of the hearing committee to the matter, or, in its discretion, and if a quorum exists even in the absence of the challenged member, not appoint a replacement for

Rule 14 (Cont'd.)

him. The affidavit shall contain a statement that it is made in good faith and not for the purpose of delay. The affidavit shall be filed not later than ten (10) days following notice of the composition of the hearing committee to the respondent-attorney and Bar Counsel. Neither a party nor his attorney (who shall, between them, have one challenge), nor Bar Counsel, may file more than one affidavit under this paragraph.

(d) Hearing committees shall have the power and duty:

(1) To swear witnesses (witnesses before hearing committees shall be examined under oath or affirmation), and to conduct hearings on formal charges of misconduct upon assignment by the President of the Board (see Rule 13(c)(2)).

(2) To submit their findings and recommendations, together with the record of the hearing, to the Board.

(3) To review, by the member assigned, and approve or modify recommendations by Bar Counsel for dismissals, informal admonitions and institution of formal charges.

(4) To maintain complete records of all matters in which it or any of its members are involved, and to furnish such complete records to Bar Counsel for permanent safe-keeping upon the completion of any such matter.

(e) Any member of any hearing committee shall have the authority to issue subpoenas and to hear attacks on the validity of such subpoenas.

RULE 15

Bar Counsel.

(a) The Executive Director of the Alaska Bar Association and such assistant attorneys as may from time to time be employed by the Alaska Bar Association are referred to herein as "Bar Counsel."

(b) Bar Counsel shall have the power and duty:

(1) To investigate all matters involving alleged misconduct which come to his attention whether by complaint or otherwise, written or verbal.

(2) To dispose of all matters (subject to review by a member of a hearing committee) involving alleged misconduct by dismissal, informal admonition or the prosecution of formal charges before a hearing committee. Except in matters requiring dismissal because the complaint is frivolous on its face or falls outside the Board's jurisdiction, no disposition shall be recommended or undertaken by Bar Counsel until the accused attorney shall have been afforded the opportunity to state his position with respect to the allegations against him.

(3) To prosecute all disciplinary proceedings before hearing committees, the Board and the Court.

(4) To appear at hearings conducted with respect to motions for reinstatement by suspended or disbarred attorneys, to cross-examine witnesses testifying in support of the motion and to marshal available evidence, if any, in opposition thereto.

(5) To maintain permanent records of all matters

Rule 15 (Cont'd.)

processed at all levels of all disciplinary proceedings, both informal and formal, and to maintain statistical data reflecting

(i) the types of complaints received and acted upon, (ii) the types of investigations conducted and the results thereof, (iii) the procedural steps taken with respect to each type of complaint processed, and the ultimate disposition of each such action, and (iv) the number of times each attorney subject to these rules is the subject of a complaint or investigation, the type of complaint or investigation in which each such attorney is the subject, the dates on which each procedural step was taken with respect to each such complaint or investigation, and the ultimate disposition of each such action with respect to each such attorney.

RULE 16

Procedure.

(a) Investigation.

All investigations, whether upon complaint or otherwise, shall be conducted by Bar Counsel. Upon the conclusion of an investigation, Bar Counsel may recommend dismissal of the matter, informal admonishment of the attorney concerned, or prosecution of formal charges before a hearing committee. The recommended disposition for each complaint shall be presented by Bar Counsel to one of the members of a hearing committee (who is designated by the Board as provided in Rule 13(c)(5)), in an appropriate Disciplinary Area who may approve or modify the recommendation, or direct dismissal, informal admonition or formal proceedings. Bar Counsel may appeal to the Board a dismissal or informal admonition, directed by said hearing committee member, within ten (10) days after receipt of that hearing committee member's decision and all further proceedings shall be stayed pending a decision by the Board. If Bar Counsel does not choose to appeal a hearing committee member's recommendation of dismissal or informal admonishment, then dismissal or informal admonishment shall be given by Bar Counsel. On an appeal to it by Bar Counsel, the Board may, in its discretion, affirm the hearing committee member's direction of dismissal or informal admonishment, order a dismissal or informal admonition, or direct that a formal proceeding be instituted by Bar Counsel as provided in (b), below. Dismissal

Rule 16 (Cont'd.)

or informal admonishment ordered by the Board shall be given by Bar Counsel. A respondent-attorney shall not be entitled to appeal an informal admonition by Bar Counsel (whether directed by a hearing committee member or ordered by the Board) but he may in any case demand as of right that a formal proceeding be instituted against him before a hearing committee in the appropriate Disciplinary Area. Such demand shall be made within thirty (30) days of receipt of an informal admonition. In the event of such demand, the admonition shall be vacated and Bar Counsel shall proceed as provided in (b), below.

(b) Formal Hearing.

Formal disciplinary proceedings before a hearing committee shall be instituted by Bar Counsel by filing with the Board a petition setting forth with specificity the charges of misconduct. A copy of the petition shall be personally served upon the respondent-attorney. The respondent-attorney shall be required to serve his answer upon Bar Counsel and to file the original thereof with the Board within twenty (20) days after the service of the petition. In the event the respondent-attorney fails to file an answer, the charges shall be deemed admitted. Charges before a hearing committee shall be prosecuted by Bar Counsel.

Following the service of the answer or the expiration of the time for service of an answer, if there are any issues of fact raised by the pleadings or if the respondent-attorney requests, within the time allowed to answer, the opportunity to be heard in mitigation, the matter shall be assigned to a hearing committee. After said

Rule 16 (Cont'd.)

assignment Bar Counsel shall serve a notice of hearing upon the respondent-attorney, or his counsel, indicating the date and place of the hearing, and the names and addresses of the members of the hearing committee before whom the matter will be heard. The notice of hearing shall advise the respondent-attorney that he is entitled to be represented by counsel, to examine and cross-examine witnesses, to present evidence in his own behalf, to have subpoenas issued in his behalf, to challenge peremptorily and for cause members of the hearing committee as provided in Rule 14(b) and (c), above, and to have an attorney appointed to represent him as provided in Rule 22, below. Bar Counsel shall have the burden at such hearings of demonstrating by the preponderance of the evidence that the respondent-attorney has, by act or omission, violated the Code of Professional Responsibility of the American Bar Association. The rules of evidence applicable in civil actions shall apply in all hearings before hearing committees.

If the respondent-attorney fails to file an answer, and if there are no issues of fact raised by the pleadings and if the respondent-attorney does not request the opportunity to be heard in mitigation, the Board shall retain jurisdiction, and shall proceed as provided in (c), below.

At the conclusion of the hearing, the hearing committee may direct the submission of briefs. The hearing committee shall in every case submit a written report to the Board. The hearing committee's written report shall contain its findings and recommendations, together with a record, including any briefs submitted and a

Rule 15 (Cont'd.)

transcript of the proceedings before it.

(c) Review by Board and Court.

Upon receipt of a report and recommendation from a hearing committee, the Board shall set the dates for the submission of briefs. Unless the respondent-attorney or Bar Counsel makes a written request to the Board for oral argument within the date set for the submission of the briefs, oral argument shall be deemed waived. If neither the respondent-attorney nor Bar Counsel objects to the findings and recommendations of the hearing committee, the submission of briefs may be waived by stipulation, subject to approval by the Board. The Board shall either affirm or modify the recommendation. In the event that the Board determines that a proceeding should be dismissed, it shall order it dismissed. In the event that the Board determines that the proceeding should be concluded by informal admonition or by private reprimand, it shall arrange through Bar Counsel for the informal admonition or it shall direct the respondent-attorney to appear before it for delivery by the President or Vice President of the reprimand. In the event that the Board shall determine that the matter should be concluded by public censure, suspension, or disbarment, it shall submit its conclusions and recommendations in writing, together with the entire record, including a transcript of any proceedings before the hearing committee and the Board, to the Court. Upon receipt of the Board's conclusion and recommendations, the Court shall set the dates for the submission of briefs. Unless the respondent-attorney or Bar Counsel makes a written request to the Court for oral argument within the date

Rule 16 (Cont'd.)

established for the submission of the briefs, oral argument shall be waived. If neither the respondent-attorney nor Bar Counsel objects to the conclusions and recommendations of the Board, the submission of briefs may be waived by stipulation, subject to approval by the Court. The Court shall review the record and briefs submitted and enter an appropriate order. Proceedings, if any, before the Court shall be conducted by Bar Counsel.

(d) Informal and formal proceedings against members of the Board shall be conducted in the same manner as such proceedings against other attorneys subject to these rules, except that the Court shall in such cases perform the duties and have the powers of the Disciplinary Board, as provided in these rules.

(e) Informal and formal proceedings against members of hearing committees and against Bar Counsel shall be conducted in the same manner as such proceedings against other attorneys subject to these rules, except that the Board shall in such cases perform the duties and have the powers of the hearing committees, as provided in these rules, and the Court shall in such cases perform the duties and have the powers of the Board as provided in these rules. In the case of informal or formal proceedings against Bar Counsel, the Board shall appoint counsel which shall in such cases perform the duties and have the powers of Bar Counsel, as provided in these rules.

RULE 17

Interlocutory Relief.

An aggrieved party may petition the Court for review of any order or decision of any member of any hearing committee, of any hearing committee, or of the Disciplinary Board, only upon such conditions, and subject to the same rules of procedure, as set forth in Rule 24 of the Rules of Appellate Procedure of the State of Alaska. For the purposes of Rule 17 the language and the philosophy of the said Rules of Appellate Procedure of the State of Alaska shall be read to be consistent with the language and philosophy of these Disciplinary Rules.

RULE 18

Immunity.

Members of the Board, members of hearing committees, Bar Counsel and staff shall be immune from suit for any conduct in the course of their official duties hereunder.

RULE 19

Refusal of Complainant to Proceed, Compromise, Etc.

Neither unwillingness nor neglect of a complainant to sign a complaint or to prosecute a charge, nor settlement, compromise or restitution, shall, in itself, justify abatement of an investigation into the conduct of an attorney.

RULE 20

Matters Involving or Related to Pending Civil or Criminal Litigation.

Processing of complaints involving material allegations which are substantially similar to the material allegations of pending criminal or civil litigation shall not be deferred unless the Board in its discretion, for good cause shown, authorizes such deferment. In the event a deferment of disciplinary investigation or proceeding is authorized by the Board as the result of pending related litigation, the respondent-attorney shall make all reasonable efforts to obtain the prompt trial and disposition of such pending litigation. In the event the respondent-attorney fails to take reasonable steps to assure prompt disposition of the litigation, the investigation and subsequent disciplinary proceedings indicated shall be conducted promptly.

The acquittal of the respondent-attorney on criminal charges or a verdict or judgment in his favor in a civil litigation involving substantially similar material allegations shall not in and of itself justify abatement of a disciplinary investigation predicated upon the same material allegations.

RULE 21

Personal Service.

All notices which these rules require be personally served upon the respondent-attorney may be served by any competent adult by: (1) delivering a copy thereof to the respondent-attorney personally; (2) by leaving a copy thereof at the office of the respondent-attorney with his clerk or other person in charge thereof; (3) by leaving a copy thereof at the place of residence of the respondent-attorney with some person of suitable age and discretion then residing there; or (4) by sending a copy thereof by certified or registered mail to the address last furnished by the respondent-attorney to the Alaska Bar Association.

RULE 22

Subpoena Power, Depositions and Related Matters.

At any stage of an investigation, Bar Counsel only shall have the right to summon witnesses and require the production of records by issuance of subpoenas. Said subpoenas shall be issued at the request of Bar Counsel by any member of any hearing committee. Subpoenas so issued shall be served in the regular way. Any attack on the validity of a subpoena so issued shall be heard and determined by any member of any hearing committee in a closed hearing (see Rule 14(e)).

Both Bar Counsel and a respondent-attorney shall have the right to summon witnesses before a hearing committee and require production of records before the same by issuance of subpoenas. Said subpoenas shall be issued at the request of either Bar Counsel or a respondent-attorney by any member of any hearing committee. Subpoenas so issued shall be served in the regular way. Any attack on the validity of a subpoena so issued shall be heard and determined by any member of any hearing committee in a closed hearing (see Rule 14(e)).

All subpoenas issued pursuant to this rule shall clearly indicate on their face that the subpoenas are issued in connection with a confidential investigation under these rules, and that it is regarded as contempt to the Court for any member of the court system or a person subpoenaed to in any way breach the confidentiality of the investigation. It shall not be regarded as a breach of confidentiality for a person subpoenaed to consult with an attorney.

Rule 22 (Cont'd.)

Subpoenas issued pursuant to this rule shall be enforceable in the superior court in the judicial district in which the subpoena was returnable.

With the approval of the hearing committee, testimony may be taken by deposition or by commission if the witness is outside the State of Alaska or is otherwise not subject to service of a subpoena issued by a member of any hearing committee or is unable to attend or testify at the hearing because of age, illness or other infirmity. A complete stenographic or electronic record of all proceedings before hearing committees and before the Board shall be made and preserved. The Court shall furnish at its expense the necessary equipment, operator, and stenographic services for the preservation of the record of all such proceedings, and for the preparation of transcripts of all such proceedings.

If the respondent-attorney is unable to employ an attorney to represent him by reason of poverty, he may make request by affidavit to the Board for appointment of an attorney to represent him. Such request shall be made not later than ten (10) days following receipt by him of a copy of the petition by which formal disciplinary proceedings against him have been commenced. The Board shall, if it determines that the respondent-attorney is in fact unable to employ an attorney to represent him by reason of poverty, appoint at the expense of the Alaska Bar Association, an attorney to represent the respondent-attorney.

Any rule or rules of the Court or any statute or statutes providing for discovery are not applicable in this type of proceeding,

Rule 22 (Cont'd.)

except as provided in these rules.

RULE 23

Attorneys Convicted of Serious Crimes.

(a) Upon the filing with the Court of a certificate demonstrating that an attorney has been convicted of a serious crime as hereinafter defined, the Court shall enter an order immediately suspending the attorney, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of an appeal, pending final disposition of a disciplinary proceeding to be commenced upon such conviction.

(b) The term "serious crime" shall include any crime which is or would be a felony in the State of Alaska, except violations of Alaska Statutes Title 28 and violations of motor vehicle laws of other states or local governments, and shall also include any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, wilful failure to file income tax returns, deceit, bribery, corruption, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

(c) A certificate of a conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against him based upon the conviction.

Rule 23 (Cont'd.)

(d) Upon the receipt of a certificate of conviction of an attorney for a serious crime, the Court shall, in addition to suspending him in accordance with the provisions of (a) above, also refer the matter to the Board for the institution of a formal proceeding before a hearing committee in the appropriate disciplinary area in which the sole issue to be determined shall be the extent of the final discipline to be imposed, provided that a disciplinary proceeding so instituted will not be brought to hearing until all appeals from the conviction are concluded.

(e) Upon receipt of a certificate of a conviction of an attorney for a crime not constituting a serious crime, the Court shall refer the matter to the Board for whatever action it may deem warranted, including the institution of a formal proceeding before a hearing committee in the appropriate Disciplinary Area; provided, however, that the Court may in its discretion make no reference with respect to convictions for minor offenses.

(f) An attorney suspended under the provisions of (a) above will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction for a serious crime has been reversed but the reinstatement will not terminate any formal proceeding then pending against the attorney, the disposition of which shall be determined by the hearing committee and the Board on the basis of the available evidence.

(g) The clerk of any court within the state in which the attorney is convicted shall within ten (10) days of said conviction transmit a certificate thereof to the Court.

Rule 23 (Cont'd.)

(h) Upon being advised that an attorney has been convicted of a crime within this state, the Board shall determine whether the clerk of the court where the conviction occurred has forwarded a certificate to the Court in accordance with the provisions of (g) above. If the certificate has not been forwarded by the clerk or if the conviction occurred in another jurisdiction, it shall be the responsibility of the Board to obtain a certificate of the conviction and to transmit it to the Court.

RULE 24

Resignations by Attorneys Under Disciplinary Investigation.

(a) An attorney who is the subject of an investigation into allegations of misconduct on his part, or who is the subject of formal proceedings, may submit his resignation from the Alaska Bar Association, but only by delivering to the Board an affidavit stating that he desires to resign and that:

- (1) his resignation is freely and voluntarily rendered; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting his resignation;
- (2) he is aware that there is a presently pending investigation or formal proceeding concerning allegations that he has been guilty of misconduct, the nature of which he shall specifically set forth;

(3) he acknowledges that the material facts upon which the investigation or formal proceeding is predicated are true; and

(4) he submits his resignation because he knows that if further proceedings were predicated upon the said misconduct he could not successfully defend himself.

(b) Upon receipt of the required affidavit, the Board shall file it with the Court and the Court shall enter an order disbarring the attorney on consent.

(c) The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under

Rule 24 (Cont'd.)

the provisions of (a) above shall not be publicly disclosed or made available for use in any other proceeding except upon order of the Court.

RULE 25

Reciprocal Discipline.

(a) Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in this State has been disciplined in another jurisdiction, the Court shall forthwith issue a notice directed to the respondent-attorney containing:

(1) a copy of said order from the other jurisdiction; and (2) an order directing that the respondent-attorney inform the Court within thirty (30) days from service of the notice of any claim by the respondent-attorney that the imposition of the identical discipline in this State would be unwarranted, and the reasons therefor. Bar Counsel shall cause this notice to be personally served upon the respondent-attorney.

(b) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this State shall be deferred until such stay expires.

(c) Upon the expiration of thirty (30) days from service of the notice issued pursuant to the provisions of (a) above, the Court shall impose the identical discipline unless Bar Counsel or the respondent-attorney demonstrates: (1) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or (2) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not consistently with its duty accept as final the conclusion on that subject; or (3) that the imposition

T

Rule 25 (Cont'd.)

of the same discipline would result in grave injustice; or (4) that the misconduct established has been held to warrant substantially different discipline in this State. Where the Court determines that any of said elements exist, the Court shall enter such other order as it deems appropriate.

(d) In all other respects, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this State.

RULE 26

Disbarred or Suspended Attorneys.

(a) A disbarred or suspended attorney shall promptly notify by certified or registered mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of his disbarment or suspension and his consequent inability to act as an attorney after the effective date of his disbarment or suspension and shall advise said clients to seek legal advice elsewhere.

(b) A disbarred or suspended attorney shall promptly notify, or cause to be notified, by certified or registered mail, return receipt requested, each of his clients who is involved in pending litigation or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of his disbarment or suspension and consequent inability to act as an attorney after the effective date of his disbarment or suspension. The notice to be given to the client shall advise him of the necessity of the prompt substitution of another attorney or attorneys in his place.

In the event the client does not obtain substitute counsel before the effective date of the disbarment or suspension, it shall be the responsibility of the disbarred or suspended attorney to move in the court or agency in which the proceeding is pending for leave to withdraw.

The notice to be given to the attorney or attorneys for

Rule 26 (Cont'd.)

an adverse party shall state the place of residence of the client of the disbarred or suspended attorney.

(c) Orders imposing suspension or disbarment shall be effective thirty (30) days after entry, unless otherwise ordered by the Court in the order imposing discipline. The disbarred or suspended attorney, after entry of the disbarment or suspension order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. However, during the period from the entry date of the order to its effective date he may, unless otherwise ordered by the Court in the order imposing discipline, wind up and complete, on behalf of any client, all matters which were pending on the entry date.

(d) Within ten (10) days after the effective date of the disbarment or suspension order, the disbarred or suspended attorney shall file with the Court an affidavit showing: (1) that he has fully complied with the provision of the order and with these Rules; (2) all other state, federal and administrative jurisdictions to which he is admitted to practice; and (3) that he has served a copy of such affidavit upon Bar Counsel. Such affidavit shall also set forth the residence or other address of the disbarred or suspended attorney where communications may thereafter be directed to him.

(e) The Board shall cause a notice of the suspension or disbarment to be published in all legal journals and legal newsletters published in this State, and in a newspaper of general circulation in the judicial district in which the disciplined attorney maintained his practice.

Rule 26 (Cont'd.)

(f) The Board shall promptly transmit a certified copy of the order of suspension or disbarment to the presiding judges of the superior court and district court in each judicial district in the State. The presiding judges shall make such further orders as they deem necessary to fully protect the rights of the clients of the suspended or disbarred attorney.

(g) A disbarred or suspended attorney shall keep and maintain records of the various steps taken by him under these rules so that, upon any subsequent proceeding instituted by or against him, proof of compliance with these rules and with the disbarment or suspension order will be available. Proof of compliance with these rules shall be a condition precedent to any petition for reinstatement.

RULE 27

Reinstatement.

(a) No attorney suspended or disbarred may resume practice until reinstated by order of the Court.

(b) A person who has been disbarred after a hearing or by consent may not apply for reinstatement until the expiration of at least five (5) years from the effective date of the disbarment.

(c) Petitions for reinstatement by disbarred or suspended attorneys shall be filed with the Court and served upon the Board. Upon receipt of the petition, the Board shall refer the petition to a hearing committee in the Disciplinary Area in which the respondent-attorney maintained an office at the time of his disbarment or suspension. The hearing committee shall promptly schedule a hearing at which the respondent-attorney shall have the burden of demonstrating by the preponderance of the evidence that he has the moral qualifications, competency and learning in law required for admission to practice law in this State and that his resumption of the practice of law within the State will be neither detrimental to the integrity and standing of the Bar or the administration of justice nor subversive of the public interest. At the conclusion of the hearing, the hearing committee shall promptly file a report containing its findings and recommendations and transmit same, together with the record, to the Board. The Board shall review the report of the hearing committee and the record and shall file its own conclusions and recommendations with the Court, together with the record. The petition shall be placed

Rule 27 (Cont'd.)

upon the calendar of the Court for oral argument either at the next session of the Court sitting in the judicial district in which the hearing committee sat, or within sixty (60) days, without regard for where the Court may then be sitting, whichever occurs first.

(d) In all proceedings upon a petition for reinstatement, cross-examination of the respondent-attorney's witnesses and the submission of evidence, if any, in opposition to the petition shall be conducted by Bar Counsel.

(e) The Court in its discretion may direct that the necessary expenses incurred in the investigation and processing of a petition for reinstatement be paid by the respondent-attorney.

B. DISABILITY

RULE 28

Proceedings Where an Attorney is Declared to be Incompetent or is Alleged to be Incapacitated.

(a) Where an attorney has been judicially declared incompetent or involuntarily committed on the grounds of incompetency or disability, the Court, upon receipt of a certified copy of the order reflecting that fact, shall enter an order transferring such attorney to inactive status effective immediately and for an indefinite period until further order of the Court. A copy of such order shall be personally served upon such attorney, his guardian, and/or the director of the institution to which he has been committed in such manner as the Court may direct.

(b) Whenever the Board shall petition the Court to determine whether an attorney is incapacitated from continuing the practice of law by reason of mental or physical infirmity or illness or because of addiction to drugs or intoxicants, the Court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the Court shall designate. If, upon due consideration of the matter, the Court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order transferring him to inactive status on the grounds of such disability for an indefinite period and until further

Rule 28 (Cont'd.)

order of the Court. Any pending disciplinary proceeding against the attorney shall be held in abeyance.

The Court shall provide for such notice to the respondent-attorney of proceedings in the matter as it deems proper and advisable and may appoint an attorney to represent the respondent if he is without adequate representation.

(c) If, during the course of a disciplinary proceeding, the respondent-attorney contends that he is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which makes it impossible for him to adequately defend himself, the Court thereupon shall enter an order immediately transferring the respondent-attorney to inactive status until a determination is made of his capacity to continue to practice law in a proceeding instituted in accordance with the provisions of (b) above.

If the Court shall determine that the respondent-attorney is not incapacitated from practicing law, it shall take such action as it deems proper and advisable including a direction for the resumption of the disciplinary proceeding against the respondent-attorney.

(d) The Board shall cause a notice of transfer to inactive status to be published in all legal journals and all legal newsletters published in this State, and in a newspaper of general circulation in the judicial district in which the disabled attorney maintained his practice.

(e) The Board shall promptly transmit a certified copy

Rule 28 (Cont'd.)

of the order of transfer to inactive status to the presiding judge of the superior court in each judicial district in the State, and shall request such action under the provision of Rule 29 as may be indicated in order to protect the interests of the disabled attorney and his clients.

(f) No attorney transferred to inactive status under the provisions of this Rule may resume active status until reinstated by order of the Court. Any attorney transferred to inactive status under the provisions of this Rule shall be entitled to apply for reinstatement to active status once a year or at such shorter intervals as the Court may direct in the order transferring the respondent to inactive status or any modification thereof. Such application shall be granted by the Court upon a showing by a preponderance of the evidence that the attorney's disability has been removed and he is fit to resume the practice of law. Upon such application, the Court may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been removed including a direction for an examination of the attorney by such qualified medical experts as the Court shall designate. In its discretion, the Court may direct that the expense of such an examination shall be paid by the attorney.

Where an attorney has been transferred to inactive status by an order in accordance with the provisions of (a) above and, thereafter, in proceedings duly taken, he has been judicially declared to be competent, the Court may dispense with further evidence that his disability has been removed and may direct his

Rule 28 (Cont'd.)

reinstatement to active status upon such terms as are deemed proper and advisable.

(g) In a proceeding seeking a transfer to inactive status under this Rule, the burden of proof shall rest with the petitioner. In a proceeding seeking an order of reinstatement to active status under this Rule, the burden of proof shall rest with the respondent-attorney.

(h) The filing of an application for reinstatement to active status by an attorney transferred to inactive status because of disability shall be deemed to constitute a waiver of any doctor-patient privilege with respect to any treatment of the attorney during the period of his disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital or other institution by whom or in which the attorney has been examined or treated since his transfer to inactive status and he shall furnish to the Court written consent to each to divulge such information and records as requested by court appointed medical experts.

RULE 29

Appointment of Counsel to Protect Clients' Interests When Attorney Disappears, Dies or is Transferred to Inactive Status Because of Disability.

(a) Whenever an attorney has been transferred to inactive status because of incapacity or disability, or disappears or dies (such an attorney is hereinafter referred to as an "unavailable attorney"), and no partner of the attorney or shareholder in the professional corporation of which the attorney was an employee is known to exist, Bar Counsel shall petition the superior court in a judicial district in which the unavailable attorney maintained an office for the appointment of an attorney to represent the interests of the unavailable attorney and his clients. Such a petition shall be made ex parte, shall state the fact that the unavailable attorney has been transferred to inactive status or has disappeared or died, and that the appointment of counsel is necessary for the protection of the unavailable attorney and his clients. The petition shall be heard ex parte at the earliest practical time, and shall be granted upon a showing of the facts alleged in the petition.

(b) The order granting the petition shall, with respect to the law practice of the unavailable attorney, grant the appointed attorney all powers of a personal representative of a deceased under the laws of the State of Alaska insofar as the unavailable attorney's practice is concerned. It shall further direct the appointed attorney

SCO 176
1974

Rule 29 (Cont'd.)

(i) to notify promptly, by certified or registered mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of the transfer to inactive status, disappearance, or death of the unavailable attorney, and that they should seek legal advice elsewhere, (ii) to notify promptly, by certified or registered mail, return receipt requested, all clients who are involved in pending litigation or administrative proceedings, of the transfer to inactive status, disappearance, or death of the unavailable attorney, and that they should promptly seek the substitution of another attorney, (iii) to inventory promptly all of the files of the unavailable attorney, and, with respect to each such file, to prepare a brief summary of the status of the matter involved and an accounting of the costs and fees involved, and (iv) to render an overall accounting of the practice of the unavailable attorney. The order shall further provide for reasonable compensation paid by the estate of the unavailable attorney or by the Court in the event the estate of the unavailable attorney is insufficient to cover the costs of such reasonable compensation.

(c) The notices required by (b)(i) and (ii), above, shall further inform the addressees of the lien of the unavailable attorney and of the estate of the deceased attorney, on all his files, and of the requirement that all transfers of files shall require suitable arrangements regarding costs and fees, and shall require the approval of the superior court.

(d) The transfer of all files shall be conditioned upon prior approval of the superior court as to all arrangements regarding

Rule 29 (Cont'd.)

the payment of costs and fees.

(e) The superior court may require of the appointed attorney the posting of a bond conditioned upon the faithful performance of his duties hereunder.

(f) The affairs of the unavailable attorney shall, except as provided herein to the contrary, be administered in the same manner as the affairs of a deceased, except that any monies remaining after the completion of the administration shall be paid to the unavailable attorney, or to his guardian or personal representative.

(g) The powers and duties of an appointed attorney shall continue in full force and effect notwithstanding the subsequent appointment of a guardian or personal representative for an unavailable attorney, and notwithstanding the provisions of any other rule or law of the State of Alaska.

(h) No appointed attorney, and no partner or employee of a professional corporation of which the appointed attorney is an employee, may, for a period of one (1) year after the completion of the administration of the estate of the unavailable attorney, represent clients represented, at the time of the entry of the order appointing the appointed attorney, by the unavailable attorney, unless the client was also, at that time, represented by the appointed attorney, by a partner of his, or by another employee of a professional corporation of which the appointed attorney is an employee.

C. MISCELLANEOUS PROVISIONS

RULE 30

Expenses.

Except as otherwise provided herein, the salaries of Bar Counsel and staff shall be paid by the Alaska Bar Association. The expenses and administrative costs incurred by Bar Counsel and staff hereunder, and the expenses and administrative costs of the Board and of hearing committees, shall be paid by the Court.

RULE 31

Confidentiality.

All proceedings involving allegations of misconduct by or disability of an attorney shall be kept confidential at all levels of the proceedings, and members of the bar participating in those proceedings are required to keep them confidential; provided, that upon the filing of the record in the Court, the record shall be considered public information. Bar Counsel's files are also confidential, and are not to be reviewed by any person other than Bar Counsel and members of the Disciplinary Board. This provision shall not be construed: (1) to deny a complainant information regarding the status and disposition of his complaint, and Bar Counsel shall from time to time so notify complainants; (2) to deny to the Bar or to the public such statistical information, with the names of subject attorneys kept confidential, as Bar Counsel is, by Rule 15(b)(5), required to keep; or (3) to deny to the public facts regarding the existence or the non-existence of a proceeding (investigation, hearing, etc.), and facts regarding the stage of any such proceeding, with respect to a specific, named, respondent-attorney, when that proceeding is predicated upon that respondent-attorney's conviction of a crime, or when an inquiry is received regarding an attorney who has been convicted of a crime. In addition, the Board shall transmit notice of all public discipline imposed by the Court, and all transfers to inactive status due to disability, to the

Rule 31 (Cont'd.)

National Discipline Data Bank maintained by the American Bar Association. Nothing contained herein shall be construed to limit in any way the right of a respondent-attorney to a public hearing and to complete disclosure of all files pertaining to him to any person or persons or to the public.

RULE 32

Disciplinary Matters Take Precedence.

Disciplinary matters hereunder take precedence over all other matters before any court or administrative agency in this State, unless otherwise ordered by any Justice of the Court for good cause shown. Upon the filing of an affidavit setting forth the number of the proceeding herein, the number, name, and nature of the matter in which the named attorney or other person is or is expected to be involved at the time of the conflict between proceedings hereunder and such other matters, and a statement to the effect that the affidavit is made in good faith and not for purposes of delay, any judge of any court in this State and any hearing officer or other person responsible for the conduct of any administrative proceeding in this State, shall continue or take such other action with respect to any such matter as may be necessary to effect the requirements of this Rule. The respondent-attorney and his counsel, Bar Counsel, any member of a hearing committee, and any member of the Board, shall have authority to file such an affidavit on behalf of any other person, and Bar Counsel shall have the additional authority to file such an affidavit on behalf of the respondent-attorney and his counsel.

RULE 33

Effective Dates.

These Rules shall take effect April 1, 1974. Any disciplinary investigation pending as of the effective date of these Rules shall be transferred to the Board for appropriate action; provided, that any case then pending with respect to which a formal hearing before a trial committee has been commenced shall be concluded under the procedure existing prior to the effective date of these Rules.

PART III

ATTORNEY FEE REVIEW COMMITTEE RULES

RULE 34

Establishment of Fee Dispute Committee.

(a) There is hereby established a committee of the Alaska Bar Association entitled "Attorney Fee Review Committee," hereinafter called "Committee." The purpose of the Committee is to arbitrate fee disputes between attorneys and their clients.

(b) To the extent not inconsistent with these rules, the proceedings under these rules shall be subject to AS 09.43.010 to AS 09.43.180 and all parties shall be bound by the decision of the Committee.

RULE 35

Proceedings to Stay Civil Actions.

A court of this state shall stay any civil action upon the filing by a party thereto of a verified petition demonstrating that a proceeding involving a claim in that civil action has been initiated and is pending under these rules; provided, however, that the action shall be stayed only if the proceeding under these rules shall have been first filed before the filing of the complaint in the civil action or within the time provided for answering the complaint, and that the civil action shall be stayed only as to those claims defined in Rule 37 of these rules.

RULE 36

Fee Dispute Defined.

A dispute which shall come within the authority of this Committee is defined as any disagreement over fees, paid, charged, or claimed for legal services, where there exists an express or implied contract establishing an attorney-client relationship, rendered by either (i) an attorney licensed to practice in the State of Alaska, or (ii) an attorney who, although licensed in another state, but not in the State of Alaska, renders services in conjunction with legal matters conducted in the State of Alaska. This definition specifically excludes those disputes where the attorney fee subject to dispute was first determined by statute or by rule or decision of any court.

RULE 37

Composition and Appointment of Committee.

(a) The Committee shall be selected from the active members of the Alaska Bar Association and be appointed by the President of the Association, subject to rejection by the Board of Governors of the Association.

(b) The Committee shall consist of four (4) panels, one (1) panel being situated in each of the following communities:

Ketchikan	Juneau
Anchorage	Fairbanks

(c) Each panel shall consist of a chairman, vice-chairman, and secretary. In addition, one alternate shall be appointed for each panel to serve in the absence of a regular member.

(d) Initial appointments of each chairman shall be for a period of six (6) months, each vice-chairman shall be for a period of nine (9) months, each secretary for a period of one (1) year and each alternate for a period of fifteen (15) months. As each member's term of office on the panel expires his successor shall be appointed for a period of twelve (12) months, the first three (3) months to be served as alternate.

(e) As the initial appointments expire, the vice-chairman shall become chairman, the secretary shall become vice-chairman and the alternate shall become secretary.

(f) The rotational basis of selection of committee officers shall continue throughout the life of the Committee.

RULE 38

Initiation of Proceedings.

(a) Proceedings before the Committee shall be initiated by a written petition signed by the client. The petition must contain the following:

(1) A statement by the client of the efforts he has made to attempt to resolve the matter directly with the attorney.

(2) A statement by the client that he understands that by executing the petition, the determination of the Committee is conclusive as to all issues of fact disputed by the parties, the determination may be reviewed by a court only for the reasons set forth in AS 09.43.120 et seq., and the determination be reduced to an enforceable judgment by any court of competent jurisdiction.

(3) A statement of the dispute (including any amounts in dispute) that he has with the attorney in as specific terms as possible.

(4) A statement of the remedy the client seeks from the Committee against the attorney.

(b) Upon filing the petition at the office of the Association, the Executive Director of the Association shall review the petition to determine if the client has made reasonable efforts to resolve the dispute with the attorney prior to the filing of the petition. If the Executive Director determines that the client has not adequately attempted to resolve the dispute informally, or that the petition is otherwise incomplete, the petition shall be returned to the client

Rule 38 (Cont'd.)

with a letter from the Executive Director specifying to the client what steps shall be taken by the client to attempt to resolve the matter informally or to complete the petition before the Association will accept the petition.

(c) After the Executive Director has determined that the client has made adequate efforts to resolve the dispute informally with the attorney and that the petition is otherwise complete, the Executive Director shall forthwith notify both the client and the attorney of the acceptance of such petition and further notify both that the matter shall be held in abeyance for a period of ten (10) days in order for both the client and the attorney to have the opportunity of settling the matter without action by the Committee. Such notification shall also advise both parties that, if the matter is not settled within the ten (10) day period, it shall be referred to the appropriate hearing panel. The Executive Director, unless informed that the matter has been settled, shall refer it to the chairman of the appropriate panel at the end of this ten (10) day period.

RULE 39

Hearings.

(a) The Executive Director shall, at the time the matter is forwarded to the chairman of the appropriate panel and at least twenty (20) days in advance of the hearing, give written notice to the client of the time and placing of the hearing. The notice of the hearing shall also advise the client of his right to present witnesses and to submit documentary evidence in support of his position, to have the hearing recorded on tape and later, at his own expense, to request a transcript of the recording, and to be represented by an attorney-at-law. A similar notice shall at the same time be sent to the attorney. No response to a petition is required, and all material allegations are deemed denied. All notices shall be sent by certified mail, return receipt requested.

(b) Continuances will be granted only for good cause and when absolutely necessary. Application for continuance shall be made to the chairman of the appropriate panel. An application must be made at least ten (10) days prior to the date for hearing unless good cause is shown for making the application subsequent to that time.

(c) Each panel shall meet, if there are pending matters, on the second Tuesday of every month at 7:00 p.m. in a designated courtroom in the local superior court. The executive director, for good cause shown, may fix a different time or place for the meeting.

(d) Three members of the Committee must be present to

Rule-39 (Cont'd.)

constitute a quorum. The chairman of the Committee shall preside at the hearing and have the power to administer oaths. He shall exercise all powers relating to the conduct of the hearing. He shall judge the relevancy and materiality of the evidence offered and shall rule on all questions of evidence and procedure.

(e) Either party may submit a written statement in lieu of or in addition to presenting evidence at the hearing. Such written statement must be filed with the executive director and served on the other party at least ten (10) days before the date set for hearing. The other party may, within three (3) days prior to the date set for hearing, respond to the party's written statement. The other party may require the party filing the written statement to appear at the hearing and be subject to cross-examination by filing with the Committee and mailing to the party whose presence is required a notice of intention to cross-examine within five (5) days prior to the date set for hearing. Such notice must be made in good faith and not with an intention to cause delay or inconvenience. The Committee may award expenses of appearance if it determines that the notice was filed solely for the purpose of causing delay or inconvenience.

(f) In the event the matter involves an amount less than \$500.00 it may be heard, in the discretion of the chairman, by the chairman sitting alone.

(g) A committee member must disqualify himself from hearing any action in which: (1) he is a party or is directly interested; (2) he was not present and sitting as a member at the

Rule 39 (Cont'd.)

hearing of the matter when it was submitted for the Committee's decision; (3) he is a material witness; (4) he is related to either party by consanguinity or affinity within the third degree; (5) he has been retained by either party as an attorney or he has professionally counseled either party in any matter within two years preceding the filing of the petition; or (6) he feels that, for any reason he cannot give a fair and impartial decision. Provided, that in the instances specified in (4) and (5), disqualification shall be deemed waived unless raised by challenge to said member filed by any party with the Executive Director not later than ten (10) days following notice to the parties of the relationship between the member and a party. The Executive Director shall relieve the challenged member of his obligation to participate in the matter if the challenge is well taken. A replacement shall not be appointed if a quorum exists even in the absence of a challenged member. Otherwise, the Executive Director shall require the senior member of the Board of Governors in the area where the panel sits to designate an additional member of the panel.

(h) If either party files an affidavit alleging under oath that he believes that he cannot obtain a fair and impartial hearing before a named member of a hearing committee, the executive director shall at once, and without requiring proof, relieve the challenged member of his obligation to participate in the matter. A replacement shall not be appointed if a quorum exists in the absence of the challenged member, otherwise a replacement shall be designated by the senior member of the Board of Governors

Rule 39 (Cont'd.)

in the area where the panel sits. The affidavit shall contain a statement that it is made in good faith and not for the purpose of delay. The affidavit shall be filed not later than ten (10) days prior to the date set for hearing. Each party shall be entitled to one challenge under this paragraph.

(i) If any party to an arbitration who has been duly notified fails to appear at the hearing, the panel may proceed with the hearing and determine the controversy upon the evidence produced notwithstanding such failure to appear.

(j) Upon written request to the chairman of the panel, the chairman may issue subpoenas for witnesses. Any attack on the validity of the subpoena shall be heard and determined by the chairman. The cost of the service of the subpoena and the transportation of the witness shall be borne by the party requesting the subpoena to be issued. Any person subpoenaed by the chairman or ordered to appear or produce writings who refuses to appear, give testimony or produce the matter subpoenaed is in contempt of the panel. The chairman may report such contempt of the panel to the superior court for the judicial district in which the proceeding is being conducted. The court shall treat this in the same manner as any other contempt. The refusal or neglect of a party to respond to a subpoena or subpoena duces tecum shall constitute cause for a determination of all issues to which the subpoenaed testimony or matter is material in favor of the non-offending party, and a final decision of the Committee may issue upon the basis of such determination of issues. Costs may be assessed in the case of a party's contempt.

Rule 39 (Cont'd.)

(k) Each party may (1) call and examine witnesses, (2) introduce exhibits, (3) cross-examine opposing witnesses on a matter relevant to the issues, even though that matter was not covered in the direct examination, (4) impeach a witness regardless of which party first called the witness to testify, (5) rebut the evidence against himself, and (6) testify on his own behalf.

If a party does not testify on his own behalf he may be called and examined as if under cross-examination.

The hearing need not be conducted according to technical rules relating to evidence and witnesses. Relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule which makes improper the admission of the evidence over objection in a civil action. The rules of privilege are effective to the same extent that they are recognized in a civil action, except that neither the attorney nor the client may assert the attorney-client privilege with respect to the issues subject to arbitration. Irrelevant and unduly repetitious evidence shall be excluded. Any party to the arbitration has the right to be represented by an attorney-at-law at any hearing or at any stage of the arbitration. On request of any party to the arbitration, or any member of the panel, the testimony of the witness shall be given under oath. Where so requested, a member of the panel who is presiding at the hearing may administer oaths to witnesses testifying at the hearing.

(1) Any party may have a hearing before a panel recorded by a notary public or other person authorized to administer oaths, at

Rule 39 (Cont'd.)

his expense, by written request presented to the chairman of the panel at least three (3) days prior to the date of the hearing. In such event any other party to the arbitration shall be entitled to a copy of the reporter's transcript of the testimony at his own expense by arrangements made directly with the reporter. Where no party to the arbitration makes a request to have the hearing recorded, and the panel deems it necessary to have the hearing recorded, the panel may employ a reporter for such purpose, if authorized to do so by the Board of Governors of the Alaska Bar Association.

(m) All records, documents, files, proceedings and hearings pertaining to the arbitration of any dispute under these rules, except the award, shall be confidential, and shall not be open to the public or any person not a party to the dispute, unless ordered by a superior court upon good cause shown.

RULE 40

Decision.

(a) The panel shall render its decision within thirty (30) days after the close of the hearing. The decision of the panel shall be made by a majority of the panel and shall be based upon the standards set forth in the Code of Professional Responsibility.

(b) While it is not required that the decision be in any particular form, it should in general consist of a preliminary statement reciting the jurisdictional facts, (i.e., that a hearing was held upon proper notice to all parties, that the parties were given the opportunity to testify and cross-examine and present evidence), a brief statement of the dispute, findings and the decision. It shall include a determination of all questions submitted to the panel, the decision of which is necessary in order to determine the controversy.

(c) The decision of the panel shall include a specific finding as to whether the matter should or should not be referred to the Executive Director for appropriate disciplinary proceedings.

(d) The original of the decision shall be signed by the members of the panel concurring therein. The chairman shall forward this decision together with the entire file to the Executive Director, who shall thereupon, for and on behalf of the panel, serve a copy of the signed award on each party to the arbitration by registered or certified mail and notify the chairman of the Committee that the matter has been concluded.

RULE 41

Appeal.

Should either party appeal the matter to the superior court under the provisions of AS 09.43.120-180, the appeal shall be filed with the clerk of the superior court in accordance with Appellate Rule 45 and notice of such appeal must be filed with the Executive Director of the Bar Association.

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 176

Amendment No. 1
Amending Alaska Bar Rules,
Part III

IT IS ORDERED:

Part III of the Alaska Bar Rules is amended by adding the following:

Rule 43: Waivers to practice law for Alaska Legal Services Corporation:

Section 1. Eligibility. A person not admitted to the practice of law in this state may receive permission to practice law in the state for a period of not more than two years if such person meets all of the following conditions:

(a) The person is an attorney in good standing, licensed to practice before the courts of another state, territory or the District of Columbia;

(b) The person is employed by or associated with Alaska Legal Services Corporation on a full-time basis;

(c) The person has not failed the bar exam of this state.

Section 2. Application. Application for such permission shall be made as follows:

(a) The Executive Director of the Alaska Legal Services Corporation shall apply to the Board of Governors on behalf of a person eligible under Section 1;

(b) Application shall be made on forms approved by the Board of Governors;

(c) Proof shall be submitted with the application that the applicant is an attorney in good standing, licensed to practice before the courts of another state, territory or the District of Columbia.

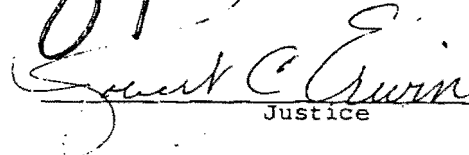
Section 3. Approval. The Board of Governors shall consider the application as soon as practicable after it has been submitted. If the Board finds that the applicant meets the requirements of Section 1 above, it shall grant the application and issue a waiver to allow the applicant to practice law before all courts of the State of Alaska. The Board of Governors may delegate the power to the Executive

Director of the Bar Association to approve such applications and issue waivers, but the Board shall review all waivers so issued at its regularly-scheduled meetings.

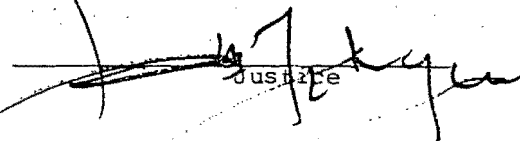
Section 4. Conditions. A person granted such permission may practice law only as required in the course of representing clients of Alaska Legal Services Corporation, and shall be subject to the provisions of Part II of these rules to the same extent as a member of the Alaska Bar Association. Such permission shall cease to be effective upon the failure of the person to pass the Alaska Bar examination.

Effective Date: July 1, 1974


Chief Justice


Justice


Justice


Justice

Justice Connor Dissents.

I dissent.



Distribution:

s/c Justices
Sup/Ct Judges
Dis/Ct. Judges
Magistrates
Magistrate Supr.
Clks/Ct
Law Librarian
Probate Masters
Adm Dir
All Members ABA
Gov
Lt/Gov
Dept/Law
Legis/Affairs
Pub Def Agency
Dept/Pub Safety
Alaska Legal Serv

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 176

Amendment No. 2
Amending the Alaska Bar Rules

IT IS NOW ORDERED THAT:

Part IV, Rule 2 of the Alaska Bar Rules be and is
adopted as follows:

Section 1. Legal Intern: Appearance

- (a) A legal intern may appear and participate in all proceedings before any court or any administrative tribunal of this state to the extent permitted by the judge or presiding officer if the attorney representing the client is himself personally present and able to supervise the intern.
- (b) A legal intern may also appear and participate before any district court in small claims matters, arraignments, pleas, bail hearings, sentencings and recorded in-chambers conferences without an attorney being personally present to supervise him.
 - (1) if the attorney representing the client has filed his appearance in the case;
 - (2) if the supervising attorney files a certificate stating that he has previously been present and supervised the intern in a similar proceeding and that the attorney believes the intern is competent to conduct such proceedings without the personal presence of the attorney;
 - (3) if the client gives his written consent to the appearance;
 - (4) if the district judge or magistrate agrees to permit the legal intern to participate in the proceedings.
- (c) A supervising attorney will not be required to file a certificate in each case if a general written approval authorizing appearances by the intern in district court in small claims matters, arraignments, pleas, bail hearings, sentencings and recorded in-chambers conferences has been filed with the clerk of the court before which the intern is to appear by:
 - (1) a member of the law firm in which the intern is employed, or

- (2) the attorney in charge of the office in which the intern is employed if the intern is a corporate or government employee.

- (d) For purposes of this section, a "supervising attorney" is any attorney who has appeared with an intern in one or more proceedings.

Section 2. A "legal intern" is any person who has on file with this court an effective permit issued by the Alaska Bar Association through its executive director authorizing him to perform legal services in this state subject to the conditions stated in Section 1. Permits shall be issued to:

- (a) any student who:

- (1) is duly enrolled in a law school approved by the American Bar Association;
- (2) has successfully completed at least 45 semester hours or the equivalent in course work required for a law degree;
- (3) has filed with the executive director a certificate from the dean of his law school stating that he meets the requirements set forth in subsections (a) (1) and (a) (2).

- (b) any law school graduate who:

- (1) has graduated from a law school approved by the American Bar Association;
- (2) has never failed a bar examination;
- (3) has filed with the executive director a certificate from the dean of his law school stating that he meets the requirements set forth in subsection (b) (1) and his personal affidavit stating that he has never failed a bar examination.

Section 3. A permit shall cease to be effective upon the occurrence of one of the following events, whichever occurs first:

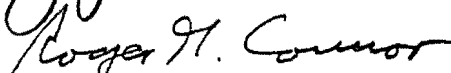
- (a) the expiration of a period of six months from date of issuance;
- (b) the failure of an intern to take the first Alaska bar examination for which he is eligible;
- (c) the failure of an intern to pass a bar examination.

Section 4. A permit which has expired under Section (3) (a) may be renewed upon compliance with the conditions for issuing an original permit, providing there has been no prior revocation of any certificate, authorization or approval required by Section 1 of this Rule. No other permit shall be renewed.

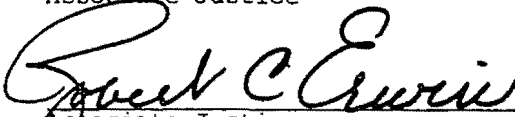
DATED: June 28, 1974.



Chief Justice



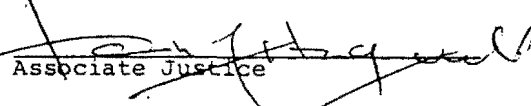
Associate Justice



Associate Justice



Associate Justice



Associate Justice

DISTRIBUTION:

S/C Justices
Sup/Ct Judges
Dist/Ct Judges
Magistrates
Mag/Supr
Clks/Ct
Law Librarian
Probate Masters
Adm/Dr
All Members ABA
Gov
Dep/Law
Legs Affairs
Pub Def Agency
Dept/Pub Safety
Alaska Legal Serv

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 176

Amendment No. 3
Amending Alaska Bar Rules
Correcting Amendment No. 2
of Order No. 176

IT IS NOW ORDERED THAT:

The following clause of Amendment No. 2, Order No. 176,
amending the Alaska Bar Rules is omitted:

"Part IV, Rule 2 of the Alaska Bar Rules be
and is adopted as follows:"

In its place the following language is adopted:


"IT IS NOW ORDERED:

- (1) that Part IV be added to the
Alaska Bar Rules;
- (2) that Part IV, Rule 1 of the Alaska
Bar Rules be and is adopted as
follows:"

DATED: September 17, 1974


Chief Justice


Associate Justice

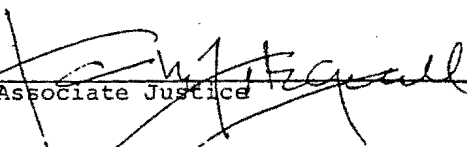

Associate Justice


Associate Justice

Distribution:

S/C Justices
Sup/Ct Judges
Dist/Ct Judges
Magistrates
Mag/Sup
Clks/Ct
Law Librarian
Probate Masters
Adm/Dir
All Members ABA
Gov
Dep/Law
Legs/Affairs
Pub Def Agency
Dept/Pub Safety

Alaska Legal Serv


Associate Justice

RULE 42

Informing the Public.

Blank copies of the petition form and explanatory booklets prepared by the Executive Director shall be provided to the clerks of the courts in every location in the state.