

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 345

Amending Alaska Bar Rules
9 through 27, Relating to
Disciplinary Enforcement.

IT IS ORDERED:

1. Rule 9, Alaska Bar Rules, is amended to read:

Rule 9. General Principles and Jurisdiction

The license to practice law in Alaska is, among other things, a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and counselor, and as an officer of the courts. It is the duty of every member of the bar of this State to act at all times in conformity with standards imposed upon members of the Bar as conditions for the privilege to practice law. These standards include, but are not limited to, the code of professional responsibility, and the code of judicial conduct, that have been, and any that may be from time to time hereafter, adopted or recognized by the Supreme Court of Alaska.

Each member of the Alaska Bar Association has the duty to assist any member of the public to communicate, in appropriate form, requests for investigation against members of the Bar to the State Bar Disciplinary Administrator (hereinafter referred to as the "Administrator").

Each member of the Alaska Bar Association has the duty to assist the Administrator in the investigation, prosecution and disposition of complaints filed with or by the Administrator.

Any attorney admitted to practice law in Alaska or any other attorney who appears, participates, or otherwise engages in the practice of law in this State 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.

2. Rule 10, Alaska Bar Rules, is amended to read:

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 or any area in which the conduct under investigation occurred.

3. Rule 11, Alaska Bar Rules, is rescinded and re-promulgated to read:

Rule 11. Grounds for Discipline.

In addition to those standards of conduct prescribed by the Code of Professional Responsibility and the Code of Judicial Conduct, the following acts or omissions by a member of the Alaska Bar Association or by any attorney who appears, participates, or otherwise engages in the practice of law in this State individually or in concert with any other person or persons, 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:

(1) Knowing misrepresentation of any facts or circumstances surrounding a grievance complaint;

(2) Failure to answer a Request for Investigation or formal complaint in conformity with the Alaska Bar Rules;

(3) Contempt of the Disciplinary Board of the Alaska Bar Association or of a hearing panel.

4. Rule 12, Alaska Bar Rules, is amended to read:

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 the Administrator.

5. Rule 13, Alaska Bar Rules, is amended to read:

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 power or 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 a Board member by direction of the President, may direct the submission of any matter to the Board 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.

(b) Four members shall constitute a quorum and the Board shall act only with the concurrence of a majority of the members sitting.

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

(1) To appoint a State Bar Disciplinary Administrator (hereinafter referred to as "Administrator").

(2) To supervise the investigation of all complaints against lawyers and to supervise the Administrator and his staff.

(3) To retain legal counsel.

(4) To appoint one or more Hearing Committees within each disciplinary area. The appointment of Hearing Committees is governed by Rule 15(a), below.

(5) To hear appeals from the recommendations of Hearing Committees and to modify the findings of fact, conclusions of law or proposed orders of Hearing Committees.

(6) To forward to the Court the findings of fact, conclusions of law and proposed orders of Hearing Committees, together with any modifications thereto made by the Board upon appeal, in cases where the Board, or the Hearing Committee if no appeal is taken to the Board, has recommended discipline as provided in Rule 12(a), (b) or (c).

(7) In cases where the Hearing Committee has recommended discipline as provided in Rule 12(d) or (e), and where the Board upon appeal shall not have recommended more severe discipline, or where the Board shall have ordered discipline as provided in Rule 12 (d) or (e), to enter an order: (i) dismissing the petition; (ii) directing private informal admonition by the Administrator; or (iii) directing private reprimand by the Board. The President or the President-Elect shall administer private reprimand.

(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 the Administrator for permanent safekeeping upon final disposition of any such matter. Such records shall then be subject to the provisions of Rule 31 with respect to confidentiality.

(d) The Board may adopt regulations not inconsistent with these Rules

6. Rule 14, Alaska Bar Rules, is amended to read:

Rule 14. The State Bar Disciplinary Administrator.

(a) The Board shall appoint an attorney to be Administrator who shall serve at the pleasure of the Board. The Administrator shall:

(1) With the approval of the Board, employ attorneys as Assistant Disciplinary Administrators and others needed for the performance of his duties.

(2) Appoint and assign duties to Investigators.

(3) Assist members of the public in preparation of requests for investigation.

(4) Supervise the Assistant Disciplinary Administrators, his staff, Investigators and the maintenance of records created hereunder.

(5) Investigate alleged misconduct of attorneys.

(6) Process all complaints.

(7) In his discretion, prosecute complaints and appeals.

(8) In the absence of a specific complaint, initiate investigation of misconduct of attorneys and prepare and serve in his own name Requests for Investigation.

(9) Appear at hearings conducted with respect to motions for reinstatement by suspected or disbarred attorneys; cross-examine witnesses testifying in support of the motion and present available evidence in opposition thereto.

(10) Keep the Board fully informed about the progress of all matters in his charge.

(11) Perform other duties set forth herein or assigned by the Board.

(b) The Administrator shall furnish forms for a Request for Investigation to each person who alleges misconduct against an attorney. Forms for a Request

for Investigation shall also be made available to the public through the office of the State Bar and through the office of every clerk of court. Each Request for Investigation of any misconduct alleged to have been committed by an attorney shall:

(1) Be in writing and signed by the complainant.

(2) Contain a statement of the details of each act of alleged misconduct and the approximate time and place thereof.

(3) Be filed with the Administrator.

(c) After making such preliminary investigation that he may deem appropriate, the Administrator shall either notify the Complainant that the allegations of the Request for Investigation are inadequate, incomplete, or insufficient to warrant the further attention of the Board, or he shall serve a copy of the Request upon the Respondent, who shall thereafter make full and fair disclosure in writing of all the facts and circumstances pertaining to his alleged misconduct unless his refusal to do so is predicated upon express constitutional or professional grounds, or defenses permitted by the Rules of Civil Procedure. Misrepresentation in such disclosure shall itself be grounds for discipline. Failure to answer within 20 days after service of the Request for Investigation or such further time as may be granted by the Administrator shall be grounds for entry of the Respondent's default, to the same effect as default in civil cases. The Administrator shall make such further investigation of the facts alleged in the Request and answer as he may deem appropriate before taking any action.

(d) The Administrator shall forward to the Judicial Qualifications Commission any Request for Investigation of a judge, even if the Request arises from the judge's conduct before he became a judge, or

from conduct unconnected with his judicial office.

(e) If it appears from the Request for Investigation, answer and further investigation that there is no reasonable cause to believe that misconduct has occurred, the Administrator may dismiss the request. Requests not dismissed may be assigned to one or more Investigators assigned by the Administrator to conduct investigations and informal hearings thereon and to report findings of fact to the Administrator.

(f) The Administrator may thereafter, if no informal resolution to the Request for Investigation can be achieved, refer the Request for Investigation (1) to a Fee Arbitration Panel, for proceedings under Part III of the Alaska Bar Rules, if the Request for Investigation is principally concerned with a fee dispute; (2) for presentation to a Hearing Committee, if the Request for Investigation is principally concerned with a matter referred to in Rule 11; (3) to a Conciliator, if the Request for Investigation is principally concerned with matters other than fee dispute or conduct referred to in Rule 11.

(g) Any Request for Investigation not referred for further action as provided in the preceding subparagraph shall be the subject of a report prepared by the Administrator. The report shall be served upon the Complainant and Respondent and filed with the Board.

(h) The Administrator shall maintain permanent records of all matters 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.

(i) The Administrator may delegate such tasks as he deems appropriate to Assistant Disciplinary Administrators (hereinafter referred to as "Assistants") appointed as provided in subparagraph (a)(1) of this Rule. In these Rules, the reference to the Administrator shall be deemed to refer to the Assistants, where the tasks referred to in the Rules have been delegated to the Assistants by the Administrator.

7. Rule 15, Alaska Bar Rules, is amended to read:

Rule 15. Hearing Committees and Disciplinary Procedures.

(a) Each Hearing Committee shall consist of six members of the Alaska Bar Association, each of whom maintains an office for the practice of law within the disciplinary area for which he is appointed and three non-attorney members, each of whom resides in the disciplinary area for which he is appointed, each of whom is a United States citizen, at least 25 years of age, and a resident of the State of Alaska.

Initially the appointment of two attorney members and one non-attorney member shall be for a one year term, the appointment of two of the attorney members and one non-attorney member shall be for a two year term and the appointment of two attorney members and one non-attorney member shall be for a three year term. Thereafter each appointment shall be for a three year term. No member shall serve for more than two consecutive 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 consecutive terms may be reappointed after the expiration of one year. Any Committee member who fails to attend two consecutive hearings of the Committee, shall be removed by the President who shall appoint a replacement attorney or non-attorney member, as the case may be, to fill the balance of the term of such member so removed. The President of the Association shall designate one of the non-attorney members of each Committee as the regular member; the other non-attorney members shall be alternate members. No non-attorney member shall serve as regular member for more than one year of the term for which he has been appointed to a Committee. The Board shall designate the chairman of the Committee.

(b) Each Committee shall act only with the concurrence of a majority of its members sitting for the transaction of business before it. Three members shall constitute a quorum, one of whom shall be the regular non-attorney member, or, if he is not able or willing to serve for any matter, then one of the alternate non-attorney members shall be designated by the President to serve in place of the regular non-attorney member on such matter. The Committee Chairman shall vote except when an even number of Committee members is sitting for the transaction of matters before the Committee.

(c) 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 by consanguinity or affinity within the third degree; (5) the Respondent has retained him as his attorney or has been professionally counseled by him in any matter within two 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 disqualifications may be waived by both the Respondent and the Administrator, and shall be deemed waived by the Respondent unless raised by challenge to the said member not later than 10 days following notice of the composition of the Hearing Committee to the Respondent and shall be deemed waived by the Administrator unless raised by challenge to the said member not later than 10 days following notice to the Administrator of the relationship between the member and the Respondent. 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, the President shall assign another member of the Hearing Committee to the matter except that if a quorum exists in the absence of the challenged member, the President need not appoint a replacement for him.

(d) If a Respondent, his attorney, or the Administrator 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 the President shall assign another member of the Hearing Committee to the matter, except that if a quorum exists in the absence of the challenged member, the President need not appoint a replacement. 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 days following notice to the Respondent and to the Administrator of the composition of the Hearing Committee. Neither Respondent nor his attorney (who shall, between them, have one challenge), nor the Administrator,

may file more than one affidavit under this paragraph.

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

(f) 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 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 assignment the Administrator shall serve a notice of hearing upon the Respondent, 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 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 subparagraphs (c) and (d) above, and to have an attorney appointed to represent him as provided in Rule 22 below. The Administrator shall have the burden at such hearings of demonstrating by the preponderance of the evidence that the Respondent has, by act or omission, committed an offense as provided in Rule 11. The rules of evidence applicable in administrative hearings shall apply in all hearings before Hearing

Committees.

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

(g) Hearing Committees shall have the power and duty:

(1) To swear witnesses, who shall be examined under oath or affirmation and to conduct hearings on formal charges of misconduct referred to them by the Administrator;

(2) Acting as a body, or through any single member, to issue subpoenas and to hear attacks on their validity.

(h) 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 proposed order together with a record, including any briefs submitted and a transcript of the proceedings before it. Either the Respondent or the Administrator may appeal to the Board from the recommendation of the Hearing Committee by serving and filing notice thereof within ten (10) days from the submission of the Hearing Committee's report. Upon receipt of a notice of appeal, the Board shall set the dates for the submission of briefs.

(i) Unless the Respondent or the Administrator makes a written request to the Board for oral argument within the date established for the submission of briefs, oral argument shall be waived. If neither the Respondent nor the Administrator objects to the conclusions and recommendations of the Hearing Committee within ten (10) days from the submission of the Hearing Committee's report, the submission of briefs may be waived by stipulation, subject to approval by the Board. The Board shall review the record and briefs and enter an appropriate order as provided in

Rule 13(c)6 and 7. Proceedings before the Board shall be conducted by the Administrator.

(j) If the Board has recommended discipline as provided in Rule 12(a), (b) or (c), the Board shall submit the record, which shall include a transcript of all proceedings before the Board, with briefs to be submitted in accordance with Appellate Rule 11. Unless the Respondent or the Administrator makes a written request to the Court for oral argument within the date established for the submission of briefs, oral argument shall be waived. If neither the Respondent nor the Administrator 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 and enter an appropriate order. Proceedings before the Court shall be conducted by the Administrator.

(k) 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 Hearing Committee and the Board, as provided in these rules.

(l) Proceedings against members of Hearing Committees and against the Administrator or any Assistant Administrator 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 proceedings against the Administrator, the Board shall appoint counsel which shall in such cases perform the duties and have the powers of the Administrator, as provided in these rules.

8. Rule 16, Alaska Bar Rules, is rescinded and re-promulgated to read:

Rule 16. Conciliation Panels.

(a) There are hereby established committees of the Alaska Bar Association entitled "Conciliation Panels", (hereinafter called "Panels"). The purpose of the Panels is to settle disputes between attorneys and their clients.

(b) Each Panel shall consist of three active members of the Alaska Bar Association, each of whom maintains an office for the practice of law in the disciplinary area for which he is appointed. At least one Panel shall be appointed for each disciplinary area. The members of each Panel shall be appointed by the President of the Association, subject to rejection by the Board. Each member is referred to herein as a Conciliator. Only one Conciliator need act on any single matter referred for conciliation.

(c) Conciliators shall have the power and duty to attempt to resolve disputes referred to them by the Administrator pursuant to Rule 14(f)(3). Any attorney involved in a dispute referred to a Conciliator has the obligation expeditiously to confer with the Conciliator and with all other parties to the dispute and to cooperate in good faith with the Conciliator in an effort to resolve the dispute, but the Conciliator does not have the authority to impose a resolution upon any party to the dispute.

(d) Proceedings before the Conciliator shall be informal, and the Conciliator shall not have subpoena power or the power to swear witnesses.

(e) If proceedings before a Conciliator produce resolution of the dispute in whole or in part, the Conciliator shall prepare a written agreement embodying the resolution which shall be signed by the parties to the dispute.

(f) When the dispute has been resolved, or when in the judgment of the Conciliator further efforts at

conciliation would be unwarranted, the Conciliator shall submit a written report to the Administrator, which report shall include a summary of the dispute, the contentions of the parties to the dispute, any agreement which may have been reached, any matters upon which agreement was not reached, the opinion of the Conciliator on the merits of the dispute, and the opinion of the Conciliator on the good faith, or lack of good faith, of the resolution efforts made by any attorney party to the dispute.

(g) Failure by any attorney to participate in good faith in an effort to resolve a dispute submitted to a Conciliator may be grounds for disciplinary action under these rules.

9. Rule 17, Alaska Bar Rules, is amended to read:

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, 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 this rule the language and the philosophy of the said Rules of Appellate Procedure shall be read to be consistent with the language and philosophy of these Disciplinary Rules.

10. Rules 18, Alaska Bar Rules, is amended to read:

Rule 18. Immunity.

Members of the Board, members of the Hearing Committees, the Administrator and staff shall be immune from suit for any conduct in the course of their official duties hereunder.

11. Rule 19, Alaska Bar Rules, is amended to read:

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 and of itself, justify abatement of an investigation into the conduct of an

attorney.

12. Rule 20, Alaska Bar Rules, is amended to read:

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 shall make all reasonable efforts to obtain the prompt trial and disposition of such pending litigation. In the event the Respondent 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 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.

13. Rule 21, Alaska Bar Rules, is amended to read:

Rule 21. Personal Service.

All notices which these rules require be personally served upon the Respondent may be served by any competent adult by: (1) delivering a copy thereof to the Respondent personally; (2) by leaving a copy thereof at the office of the Respondent with his clerk or other person in charge thereof; (3) by leaving a copy thereof at the place of residence of the Respondent 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 to the Alaska Bar Association.

14. Rule 22, Alaska Bar Association, is amended to read:

Rule 22. Subpoena Power, Depositions and Related Services.

At any stage of an investigation, the Administrator 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 the Administrator 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 15(g)).

Both the Administrator and a Respondent 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 the Administrator or a Respondent 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 15(g)).

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 of 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. 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 communication 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 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 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.

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

15. Rule 23, Alaska Bar Rules, is amended to read:

Rule 23. Attorneys Convicted of Serious Crimes.

(a) Upon the filing with the Court of a certificate demonstrating 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, 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.

(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 unless the Respondent requests an earlier hearing.

(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 by 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.

(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.

16. Rule 24, Alaska Bar Rules, is repromulgated without amendment to read:

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 subject 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 disbaring the attorney on consent.

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

17. Rule 25, Alaska Bar Rules is amended to read:

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

(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 the Administrator or the Respondent 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 of that subject; or (3) that the imposition 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.

18. Rule 26, Alaska Bar Rules, is amended to read:

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 to 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 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 on 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 jurisdiction to which he is admitted to practice; and (3) that he has served a copy of such affidavit upon the Administrator. 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 newspapers published in this State, and in a newspaper of general circulation in the judicial district in which the disciplined attorney maintained his practice.

(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, to the presiding judge of the United States District Court for the District of Alaska and to the Attorney General for the State of Alaska with the request that he notify the appropriate administrative agencies. 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 the rules shall be a condition precedent to any petition for reinstatement.

19. Rule 27, Alaska Bar Rules, is amended to read:

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 maintained an office at the time of his disbarment or suspension. The Hearing Committee shall promptly schedule a hearing at which the Respondent shall have the burden of demonstrating by the preponderance of the evidence that he has the

moral qualifications, competency and learning of 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 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's witnesses and the submission of evidence, if any, in opposition to the petition shall be conducted by the Administrator.

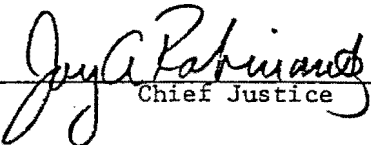
(e) The Court in its discretion may direct that the necessary expenses incurred in the investigation and processing of a petition for reinstatement be paid by the Respondent.

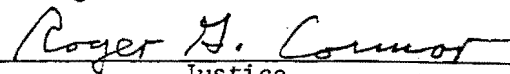
DATED: December 18, 1978

EFFECTIVE DATE: April 1, 1979

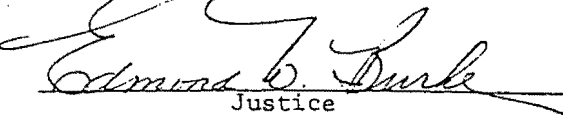
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