

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1314

Amending Alaska Bar Rules 11,  
13, 15, 39, and 40 concerning  
mediation of disputes between  
attorneys and clients.

IT IS ORDERED:

1. Paragraph (a) of Alaska Bar Rule 11 is amended to read:

(a) **Powers and Duties.** The Board will appoint an attorney admitted to the practice of law in Alaska to be the Bar Counsel of the Alaska Bar Association (hereinafter "Bar Counsel") who will serve at the pleasure of the Board. Bar Counsel will

\* \* \* \*

(11) in his or her discretion, refer a grievance to a Conciliator mediator, for proceedings under Rule 13, ~~if the grievance concerns matters other than a fee dispute or conduct referred to in Rule 15;~~

\* \* \* \*

2. Alaska Bar Rule 13 is amended to read:

**Rule 13. Conciliation Mediation Panels.**

(a) **Definition.** Conciliation Mediation panels will be established for the purpose of settling disputes between attorneys and their clients or other persons ~~not concerning fee disputes or misconduct as set out in Rule 15 referred to the panels by Bar Counsel under~~

guidelines set by the Board with the consent of the attorneys and the clients or other persons. However, matters likely to result in disbarment, suspension or probation or matters which involve dishonesty or material misrepresentation may not be referred to mediation. At least one conciliation mediation panel will be established in each area defined in Rule 9(d).

(b) **Terms.** Each conciliation mediation panel will consist of at least three active members ~~in good standing of the Bar~~ qualified under guidelines set by the Board, each of whom ~~maintains an office for the practice of law~~ resides in the area for which he or she is appointed. The members of each conciliation mediation panel will be appointed by the President subject to ratification by the Board. The members will serve staggered terms of three years, each to commence on July 1 and expire on June 30th of the third year.

(c) **Powers and Duties.** A member of a conciliation mediation panel will be known as a Conciliator mediator. Only one Conciliator mediator need act on any single matter. Conciliators Mediators will have the power and duty to mediate disputes referred to them by Bar Counsel pursuant to Rule 11(a)(11). A mediator will have the power to end a mediation if the mediator determines that further efforts at mediation would be unwarranted or that the matter is inappropriate for mediation under paragraph

(a). A mediator may recommend that the attorney seek the services of a lawyer's assistance program. A mediator may not be required to testify concerning the substance of the mediation.

(d) **Informal Proceedings.** Proceedings before a ~~Conciliator~~ mediator will be informal and confidential. A ~~Conciliator~~ mediator will not have subpoena power or the power to swear witnesses. A ~~Conciliator~~ mediator does not have the authority to impose a resolution upon any party to the dispute.

(e) **Written Agreement.** If proceedings before a ~~Conciliator~~ mediator produce resolution of the dispute in whole or in part, the ~~Conciliator~~ mediator will prepare a written agreement containing the resolution which will be signed by the parties to the dispute and which will be legally enforceable as any other civil contract.

(f) **Report to Bar Counsel.** When the dispute has been resolved, or when in the judgment of the ~~Conciliator~~ mediator further efforts at ~~conciliation~~ mediation would be unwarranted, the ~~Conciliator~~ mediator will submit a written report to the Bar Counsel which will include

(1) a summary of the dispute;

(2) the contentions of the parties to the dispute;

(3) any agreement which may have been reached; and

(4) any matters upon which agreement was not reached;

~~(5) the opinion of the Conciliator on the merits of the dispute; and~~

~~(6) the opinion of the Conciliator on the good faith or lack of good faith of the efforts made by any attorney to resolve the dispute.~~

(g) **Failure Obligation of Attorney to Participate in Good Faith.** Any attorney involved in a dispute referred to a ~~Conciliator~~ mediator has the obligation to confer expeditiously with the ~~Conciliator~~ mediator and with all other parties to the dispute and to cooperate in good faith with the ~~Conciliator~~ mediator in an effort to resolve the dispute. ~~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.~~

3. Paragraph (a) of Alaska Bar Rule 15 is amended to read:

(a) **Grounds for Discipline.** In addition to those standards of conduct prescribed by the Alaska Rules of Professional Conduct, Ethics Opinions adopted by the Board of

Governors of the Bar, 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, will constitute misconduct and will be grounds for discipline whether or not the act or omission occurred in the course of an attorney-client relationship:

\* \* \* \*

~~(5) failure to cooperate in a conciliation, as required by Rule 13(g);~~

~~(6)~~ (5) contempt of the Board, of a Hearing Committee, or of any duly appointed substitute;

~~(7)~~ (6) engaging in the practice of law while on inactive status, or while disbarred or suspended from the practice of law for any reason;

~~(8)~~ (7) failure to perform or comply with any condition of discipline imposed pursuant to these Rules; or

~~(9)~~ (8) failure to inform the Bar of his or her current mailing address and telephone number as provided in Rule 9(e).

4. Paragraph (a) of Alaska Bar Rule 39 is amended to read:

(a) **Notice Requirement by Attorney to Client.** At the time of service of a summons in a civil action against his or her client for the recovery of fees for professional services rendered, an attorney will serve upon the client a written "notice of client's right to arbitrate or mediate," which will state:

You are notified that you have a right to file a Petition for Arbitration of Fee Dispute or a Request for Mediation and stay this civil action. Forms and instructions for filing a Petition for Arbitration of Fee Dispute or a Request for Mediation and a motion for stay are available from the Alaska Bar Association, 510 L Street, Suite 602, Anchorage, AK 99501-1958, (907) 272-7469. If you do not file the Petition for Arbitration of Fee Dispute or a Request for Mediation within twenty (20) days after your receipt of this notice, you will waive your right to arbitration or mediation.

Failure to give this notice will be grounds for dismissal of the civil action.

5. Alaska Bar Rule 40 is amended to read:

\* \* \* \*

(c) **Petition Accepted; Notification.** If Bar Counsel accepts a petition, (s)he will promptly notify both the petitioner and the respondent of the acceptance of the petition and that the matter will be held in abeyance for a period of ten days in order for both

parties to have the opportunity to settle the dispute without action by an arbitrator or panel or to request mediation under Bar Rule 13. The notice will include a copy of the accepted petition and will advise both parties that if the matter is not settled or mediation requested within the ten-day period that it will be set for arbitration. Further action on the petition will be stayed during mediation. If the dispute is resolved through mediation, the matter will be closed by settlement by the parties. If mediation is unsuccessful, the stay will be lifted and the matter set for arbitration.

\* \* \* \*

**(e) Assignment to Arbitration,  
Dismissal for Failure to Proceed with  
Arbitration.**

(1) If, at the end of the ten-day period, Bar Counsel has not been informed that the matter has been settled or mediation requested, in accordance with Rule 37(c) or (e), (s)he will select and assign an arbitrator or arbitration panel from the members of the appropriate area division to consider the matter.

(2) Bar counsel will contact the petitioner, the respondent, and the arbitrator(s) to determine their availability for hearing. If the petitioner fails to provide scheduling information within 30 days

of the date of a written request, Bar Counsel shall transfer the matter to inactive status and notify the parties in writing that the petition will be dismissed unless the petitioner provides the information within 30 days of the date of the notice. If the petitioner fails to provide the information, Bar Counsel shall dismiss the petition without prejudice to refile subject to the jurisdictional limitations of Rule 34(c). Bar Counsel's initial written request to a petitioner for scheduling information must advise the petitioner that failure to respond may result in dismissal of the petition.

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Supreme Court Order No. 1314  
Effective Date: July 15, 1998  
Page 9

DATED: February 12, 1998

EFFECTIVE DATE: July 15, 1998

/s/  
Chief Justice Matthews

/s/  
Justice Compton

/s/  
Justice Eastaugh

/s/  
Justice Fabe

/s/  
Justice Bryner