

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1705

Amending Bar Rule 13 by adding new subsections concerning challenges to mediators and an attorney's failure to provide information; and

Amending Bar Rule 38 concerning the executive committee of the fee dispute arbitration program; and

Amending Bar Rule 40 concerning service.

IT IS ORDERED:

1. Alaska Bar Rule 13 is amended to read as follows:

Rule 13. Mediation Panels

(a) **Definition.** Mediation panels will be established for the purpose of settling disputes between attorneys and their clients or other persons 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 mediation panel will be established in each area defined in Rule 9(d).

(b) **Terms.** Each mediation panel will consist of at least three members qualified under guidelines set by the Board, each of whom resides in the area for which he or she is appointed. The members of each 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 mediation panel will be known as a mediator. Only one mediator need act on any single matter. 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 mediator will be informal and confidential. A mediator will not have subpoena power or the power to swear witnesses. A mediator does not have the authority to impose a resolution upon any party to the dispute.

(e) **Written Agreement.** If proceedings before a mediator produce resolution of the dispute in whole or in part, the 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 mediator further efforts at mediation would be unwarranted, the 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.

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

(h) **Peremptory Challenge.** Each side is entitled as a matter of right to one change of mediator. A party wishing to exercise the right to change the mediator must file a notice with Bar Counsel within ten days of the notice of assignment of the dispute to mediation. Bar Counsel will at once, and without requiring proof, relieve the challenged mediator of his or her obligation to participate and appoint a replacement, if needed, from the appropriate mediation panel.

(i) **Challenges for Cause.** A party wishing to challenge a mediator for cause must do so within ten days following notice of assignment of the dispute to mediation, unless new evidence is subsequently discovered which establishes grounds for challenge for cause. Bar Counsel will rule upon any challenge for cause. If Bar Counsel agrees that the challenged mediator should be dismissed, Bar Counsel will appoint a replacement mediator, if needed, from the appropriate mediation panel.

(j) **Referral for Failure to Proceed.** Bar Counsel will contact the attorneys and their clients or other persons involved in the mediation to determine their availability for hearing. If any party involved in the mediation fails to provide scheduling information within 30 days of the date of a written request, Bar Counsel shall refer the matter back to investigation if a grievance or back to fee arbitration if a fee dispute. Bar Counsel's initial written request to the parties for scheduling information must advise the parties that failure to respond may result in the referral provided in this rule.

2. Alaska Bar Rule 38(a) is amended to read as follows:

Rule 38. The Executive Committee of the Fee Dispute Resolution Program.

(a) **Definition.** The president will select one attorney member from each area fee dispute resolution division, one public member, and one mediator from any mediation panel, who will constitute the five member executive committee of the fee dispute resolution program. The Bar Counsel and the Bar Association's president-elect will serve in an ex-officio capacity and will be non-voting members of the executive committee. The board or Bar Counsel may orally or in writing direct the submission of any matter to the executive committee. The votes on any matter may be taken in person or by conference telephone call.

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3. Alaska Bar Rule 40 is amended to read as follows:

Rule 40. Procedure.

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(s) **Modification of Decision by the Arbitrator or Panel.** On application to the arbitrator or panel by a party to a fee dispute, the arbitrator or panel may modify or correct a decision if:

(1) there was an error in the computation of figures or a mistake in the description of a person, thing, or property referred to in the decision;

(2) the decision is imperfect in a matter of form not affecting the merits of the proceeding; or

(3) the decision needs clarification.

An application for modification shall be filed with bar counsel within twenty days after service of the decision on the parties. Written notice of the application for modification will be served promptly on the opposing party, stating that objection to the application must be served within ten days from the service of the notice of the application for modification. A decision on an application for modification will be issued within thirty (30) days after the time for filing an objection.

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DATED: May 14, 2009

EFFECTIVE DATE: October 15, 2009

/s/
Chief Justice Fabe

/s/
Justice Eastaugh

/s/
Justice Carpeneti

/s/
Justice Winfree

/s/
Justice Christen