

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 809

Amendments and Additions to  
Alaska Bar Rule 31, Part II of  
the Rules of Disciplinary  
Enforcement

IT IS ORDERED:

Bar Rule 31 is amended to provide:

Bar Rule 31. Appointment of Trustee Counsel to Protect Client's Interests.

(a) Appointment; Procedure. Whenever an attorney is deceased, [OR] has disappeared[,] or abandoned the practice of law leaving a client matter unattended, or been transferred to disability inactive status because of incapacity or disability (hereinafter "unavailable attorney")[, ] and no partner of the attorney [NOR] or shareholder in the professional corporation of which the unavailable attorney was an employee is known to exist, Discipline Counsel will petition the Superior Court in the judicial district in which the unavailable attorney maintained an office for the appointment of trustee counsel to represent the interests of the unavailable attorney and his or her clients. This petition will be made ex parte, will state the basis for its filing, and will state that the appointment of trustee counsel is necessary for the protection of the unavailable attorney and his or her clients. The petition will be heard ex parte, unless the court otherwise directs, at the earliest available time. Discipline Counsel shall submit to the Superior Court the names of attorneys who have agreed to serve voluntarily as trustee counsel. The Superior Court shall make appropriate inquiries to ascertain that a volunteer attorney possesses qualifications suitable to perform the duties of trustee counsel. In the event there are no volunteer attorneys, the Superior Court shall appoint a suitable

attorney actively practicing law in the judicial district in which the unavailable attorney maintained his or her office. Only attorneys who maintain errors and omissions insurance coverage may be appointed as trustee counsel.  
[THE TRUSTEE COUNSEL WILL BE BOUND BY THE ATTORNEY-CLIENT PRIVILEGE WITH RESPECT TO CLIENT CONFIDENCES CONTAINED IN THE RECORDS OF THE UNAVAILABLE ATTORNEY, EXCEPT TO THE EXTENT NECESSARY TO EFFECT THE ORDER APPOINTING HIM OR HER TRUSTEE COUNSEL.]

(b) Powers and Duties. The order granting the petition will grant the trustee counsel all the 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 will further direct the trustee counsel to

(1) 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 basis for the entry of the order and of the need to seek legal advice from another attorney;

(2) notify promptly, by certified or registered mail, return receipt requested, all clients who are involved in pending litigation or administrative proceedings of the basis for the entry of the order and that they should promptly seek the substitution of another attorney;

(3) promptly inventory all of the open files of the unavailable attorney and, with respect to each open file, prepare a brief summary of each file to include name of client(s), nature of legal matter, and status of legal matter [THE STATUS OF THE MATTERS INVOLVED] and an accounting of the costs and fees involved; and

(4) Trustee counsel shall have the same authority to collect accounts receivables and assert the same claims as the unavailable attorney would have. The notices required in this section of the Rule will inform clients

(A) of the lien of the unavailable attorney, or of the estate of the deceased attorney, on all his or her files;

(B) of the requirement that all transfers of files require suitable arrangements regarding costs and fees;

(C) of the trustee counsel's authority to arrange the payment of the costs and fees by the clients of the unavailable attorney before any transfer of the files to substitute counsel.

(5) [(4)] render an [OVERALL] accounting of [THE PRACTICE OF THE UNAVAILABLE ATTORNEY] office, trust or other bank accounts.

[THE ORDER WILL FURTHER PROVIDE FOR REASONABLE COMPENSATION TO BE PAID TO THE TRUSTEE COUNSEL BY THE ESTATE OF THE UNAVAILABLE ATTORNEY OR BY THE COURT IN THE EVENT THAT THE ESTATE OF THE UNAVAILABLE ATTORNEY IS INSUFFICIENT TO COVER THE COSTS OF COMPENSATION.]

(6) Trustee counsel will be bound by the attorney-client privilege with respect to client confidences contained in the records of the unavailable attorney, except to the extent necessary to effect the order appointing him or her trustee counsel. The Superior Court shall issue an order staying any pending state court proceedings which the unavailable attorney was counsel of record for a period of time not to exceed sixty

(60) days. The unavailable attorney shall remain attorney of record during the period of stay or until substitute counsel has entered an appearance, whichever occurs first.

[(c) LIEN ON FILES. THE NOTICE REQUIRED IN SECTION (b) OF THIS RULE WILL INFORM THE CLIENTS

(1) OF THE LIEN OF THE UNAVAILABLE ATTORNEY, OR OF THE ESTATE OF THE DECEASED ATTORNEY, ON ALL HIS OR HER FILES;

(2) OF THE REQUIREMENT THAT ALL TRANSFERS OF FILES REQUIRE SUITABLE ARRANGEMENTS REGARDING COSTS AND FEES; AND

(3) THAT TRANSFER WILL REQUIRE THE APPROVAL OF THE SUPERIOR COURT.

TRUSTEE COUNSEL WILL TAKE ALL REASONABLE STEPS TO ARRANGE PAYMENT OF THE COSTS AND FEES BY THE CLIENTS OF THE UNAVAILABLE ATTORNEY BEFORE ANY TRANSFER OF THE FILES TO SUBSTITUTE COUNSEL.]

(c) [(d)] Requirement of Bond. The superior court may require the trustee counsel to post bond, conditioned upon the faithful performance of his or her duties.

(d) [(e)] Disposition of Assets. Any monies or assets remaining after the completion of the client matters, and after compensation of trustee counsel, will be returned to the unavailable attorney or to his or her guardian [OR PERSONAL REPRESENTATIVE]. In the case of a deceased attorney any monies or assets remaining after the completion of client matters shall be returned to the personal representative and trustee counsel shall apply for compensation under section (g).

(e) [(f)] Force and Effect of Appointment. The powers and duties of a trustee counsel are not affected by the appointment of a guardian or personal representative or by any other rule or law of the State.

[(g) WAITING PERIOD. NEITHER A TRUSTEE COUNSEL NOR A PARTNER OR EMPLOYEE OF THE PROFESSIONAL CORPORATION TO WHICH THE TRUSTEE COUNSEL BELONGS MAY, FOR A PERIOD OF SIX MONTHS FROM THE COMPLETION OF THE ADMINISTRATION OF THE UNAVAILABLE ATTORNEY'S ESTATE UNDER THIS RULE, REPRESENT CLIENTS OF THE UNAVAILABLE ATTORNEY UNLESS THE CLIENT WAS PREVIOUSLY REPRESENTED BY THE TRUSTEE COUNSEL, BY A PARTNER, OR BY ANOTHER EMPLOYEE OF THE PROFESSIONAL CORPORATION TO WHICH THE TRUSTEE COUNSEL BELONGS.]

(f) [(h)] Reports to Discipline Counsel. Trustee counsel[S] appointed under this Rule will make written reports to Discipline Counsel within six months of the date of the order appointing him or her as trustee, and every six months thereafter until completion of his or her duties under this Rule. The report will state the progress made under Section (b) of this Rule and the work to be accomplished within the next six month period.

(g) Compensation.

(1) Any attorney serving as trustee counsel shall be entitled to compensation for reasonable fees and costs incurred in the performance of duties set forth in this Rule. Trustee counsel may seek payment of fees and costs from the estate of the unavailable attorney. Such a bill for fees and costs must be approved by the court as reasonable.

(2) An attorney who serves as trustee counsel may substitute as counsel for a client of the unavailable attorney after disclosure to the client that the client is free to select any attorney to substitute as counsel for the unavailable attorney and after obtaining the client's consent to substitution.

(3) In the event that the estate of the unavailable attorney is insufficient to compensate trustee counsel, an attorney appointed to serve as trustee counsel may submit a claim to the Board of Governors of the Alaska Bar Association. Reasonable compensation shall be determined by the Board and will not exceed \$5,000.

(h) [(i)] Discharge of Trustee: Destruction of Files. After completion of his or her duties under this Rule, trustee counsel will submit a final report to the Court. The Court will [APPROVE THE TRUSTEE'S FEES AND EXPENSES AND WILL DISCHARGE THE TRUSTEE] review the report and will discharge the trustee. The trustee counsel will deliver to the Alaska Bar Association any files belonging to clients who cannot be located. The Alaska Bar Association will store the files for one [THREE] year[S], after which time the Bar may exercise its discretion in maintaining or destroying the files.

DATED: April 1, 1987

EFFECTIVE DATE: April 1, 1987

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Chief Justice Rabinowitz

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Justice Burke

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Justice Matthews

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Justice Compton

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Justice Moore