

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 780

Alaska Bar Rules, Part
III, Relating to the
Rules of Fee Arbitration
Resolution

IT IS ORDERED:

Bar Rules 34 - 42 are amended to provide:

RULE 34. GENERAL PRINCIPLES AND JURISDICTION.

(a) Fee Dispute Resolution Program Established. It is the policy of the Alaska Bar Association to encourage the amicable resolution of fee disputes between attorneys and their clients which fall within the Bar's jurisdiction and, in the event such resolution is not achieved, to arbitrate and determine such disputes. To that end, the Board of Governors (hereinafter "Board") of the Alaska Bar Association (hereinafter "Bar") hereby establishes through the adoption of these Rules of Fee Dispute Resolution (hereinafter "Rules"), a program and procedures for the arbitration of disputes concerning any and all fees paid, charged, or claimed for professional services by attorneys.

(b) Mandatory Arbitration for Attorneys. Arbitration pursuant to these Rules is mandatory for an attorney when commenced by a client. For the purpose of these Rules, a "client" includes any person who is legally responsible to pay the fees for professional services rendered by an attorney.

(c) Fee Disputes Subject to Arbitration. All disputes concerning fees charged for professional services by an attorney are subject to arbitration under these Rules except for:

(1) disputes where the attorney is also admitted to practice in another state or jurisdiction and (s)he maintains no office in the State of Alaska and no material portion of the legal services were rendered in the State of Alaska, unless (s)he appeared under Alaska Civil Rule 81;

(2) disputes where the client seeks affirmative relief against the attorney for damages based upon alleged malpractice or professional misconduct; or

(3) disputes where the fee to be paid by the client or on his or her behalf has been determined pursuant to State statute or by a court rule, order or decision.

(4) disputes over fees which were charged more than six (6) years earlier, unless the attorney or client could maintain a civil action over the disputed amount.

(d) Attorney Jurisdiction. Any attorney admitted to the practice of law in Alaska, or any other attorney who appears, participates or otherwise engages in the practice of law in this State, unless exempted under Section (c)(1) of this Rule, is subject to the jurisdiction of the courts of this State, the Board of Governors of the Alaska Bar Association, and these Rules of Attorney Fee Dispute Resolution.

(e) Duty to Assist. Each member of the Bar is encouraged to inform any member of the public who has a fee dispute of the existence of the Fee Dispute Resolution Program. Each member of the Bar has the duty to cooperate with and assist Arbitration Counsel for the Alaska Bar Association (hereinafter "Arbitration Counsel") in the efficient and timely arrangement for and disposition of fee arbitrations. This duty to assist Arbitration Counsel extends to the staff of the Alaska Bar Association, and to the staff of any entity outside the Association designated by the Board to assist in or assume administration of the Bar's Fee Dispute Resolution Program.

(f) Venue. Fee dispute arbitration in this State will be divided into the following three (3) areas:

(1) Area 1 - the First Judicial District;

(2) Area 2 - the Second and Fourth Judicial Districts combined and;

(3) Area 3 - the Third Judicial District.

Venue will lie in that area in which an attorney maintains an office or in the area in which the legal services for which fees were paid, charged, or claimed occurred. The parties may, by stipulation, agree to a different venue.

(g) Immunity. Members of the Board, members of Area Fee Dispute Resolution Divisions, members of the Executive Committee, Arbitration Counsel, Bar staff, and the staff of any entity designated by the Board to assist in or assume administration of the Bar's Fee Dispute Resolution Program are immune from suit for conduct in the course and scope of their official duties as set forth in these Rules.

RULE 35. FEES FOR LEGAL SERVICES; AGREEMENTS.

(a) Basis or Rate of an Attorney's Fee. An attorney's fee will be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to properly perform the legal service;

(2) the likelihood that the acceptance of the particular employment will preclude other employment by the attorney;

(3) the fees customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the nature and length of the professional relationship with the client;

(6) the time limitations imposed by the client or by the circumstances;

(7) the experience, reputation, and ability of the attorney or attorneys performing the services; and

(8) whether the fee is fixed or contingent.

(b) Written Fee Agreement. When the attorney has not previously or regularly represented a client, the basis or rate of the fee to be charged, including any fee of retainer or initial deposit, should be communicated to that client in

writing, before commencing the representation or within a reasonable time thereafter. In the absence of a written fee agreement, the attorney must present clear and convincing evidence that the basis or rate of fee exceeded the amount alleged by the client.

(c) Contingent Fees. A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by Section (d) of this Rule, or by other law or court rules or decisions. A contingent fee agreement will be in writing and will state the method by which the fee is to be determined, including:

(i) the percentage or percentages that shall accrue to the attorney in the event of settlement, trial or appeal; provided, however, fees on appeal may be left to later negotiation;

(ii) litigation and other expenses to be deducted from the recovery; and

(iii) whether such expenses are to be deducted before the contingent fee is calculated.

Upon conclusion of a contingent fee matter, the attorney will provide the client with a written statement reporting the outcome of the matter and, if there is a recovery, showing the amount of the remittance to the client and the method of its determination.

(d) Prohibited Attorney Fee Agreements. An attorney will not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof, except an action to collect past-due alimony or support payments; or

(2) a fee contingent upon the outcome of a criminal case.

(e) Fee Divisions Between Attorneys. A division of fees between attorneys who are not in the same law firm may be made only if:

(1) the division is in proportion to the services performed by each attorney or, by written agreement with the client, each attorney assumes joint responsibility for the representation;

(2) the client is advised of and does not object to the participation of all the attorneys involved; and

(3) the total fee is reasonable.

RULE 36. ARBITRATION COUNSEL OF THE ALASKA BAR ASSOCIATION.

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

(1) with the approval of the Board, employ and supervise attorneys and other administrative support staff as needed for the performance of his or her duties;

(2) supervise the maintenance of any records;

(3) aid members of the public in filing petitions for the arbitration of fee disputes (hereinafter "Petitions");

(4) deny a Petition if it appears that the matter:

(i) is not subject to arbitration under these Rules;

(ii) does not involve an attorney subject to the jurisdiction of these Rules; or

(iii) was not timely filed, in accordance with the provisions of Rules 34(c)(4) and 40;

(5) accept Petitions in accordance with the procedures set forth in Rule 40;

(6) process all Petitions in accordance with the procedures set forth in Rule 40;

(7) select an Arbitrator or Arbitration Panel to arbitrate and determine a fee dispute;

(8) rule upon challenges for cause pursuant to Rule 37(g);

(9) accept for filing documents submitted by parties for consideration by Arbitration Counsel, an Arbitrator, or Arbitration panel pursuant to these rules; and

(10) perform other duties as set forth in these Rules or as assigned by the Board or the Executive Committee of the Fee Dispute Resolution Program (hereinafter "Executive Committee").

(b) Arbitration Forms. Arbitration Counsel will furnish forms which may be used by any person to petition the Bar for the arbitration of his or her fee dispute. The forms will be available to the public through the Office of the Bar.

(c) Denial of Arbitration. Any Petition for fee arbitration denied by Arbitration Counsel will be the subject of a summary prepared by Counsel and submitted to the Executive Committee. The names of the parties involved will not be provided in the summary. Arbitration Counsel will promptly communicate disposition of the matter to the client and the attorney.

(d) Record Keeping. The Arbitration Counsel will maintain records of all Petitions processed and maintain statistical data reflecting:

(1) the amount of the fee in dispute;

(2) the status and ultimate disposition of each arbitration, including any amount by which the fee is reduced;

(3) whether the matter resulted in a referral by the Arbitrator or Arbitration Panel to Discipline Counsel of the Bar for possible discipline action against the attorney; and

(4) the number of times each attorney is the subject of a petition for fee arbitration, including the amount and ultimate disposition of each dispute.

(e) Quarterly Report to the Board and Executive Committee. Arbitration Counsel will provide a quarterly report to the Alaska Supreme Court, the Board, and the Executive Committee, which will include information about the number of Petitions filed and arbitrations concluded during the quarter, the status

of pending Petitions, the dispositions of concluded arbitrations, and the amount of the disputes involved. The names of the parties involved will not be provided in the report.

(f) Delegation of Responsibility. Arbitration Counsel, with the approval of the Board, may delegate such tasks as (s)he deems appropriate to other staff of the Alaska Bar Association and/or to the staff of any organization or entity outside the Association retained or employed by the Board to assume or assist in the administration of the Bar's Fee Dispute Resolution Program. Any reference in these Rules to Arbitration Counsel will be deemed to include any persons, organizations or entities delegated responsibility, whether in whole or in part, for the administration of the program.

(g) Disposal of Files. Arbitration Counsel will destroy files of arbitrations (5) five years after they are closed.

RULE 37. AREA FEE DISPUTE RESOLUTION DIVISIONS; ARBITRATION PANELS; SINGLE ARBITRATORS.

(a) Appointment of Area Division Members. Members of Area Fee Dispute Resolution Divisions (hereinafter "Area Divisions") will be appointed by the President of the Bar (hereinafter "President") subject to ratification by the Board. One Area Division will be established in each area defined in Rule 34 (f). Each Area Division will consist of:

(1) not less than six members in good standing of the Bar, each of whom maintains an office for the practice of law within the area of fee dispute resolution for which (s)he is appointed; and

(2) not less than three non-attorney members of the public (hereinafter "public member"), each of whom resides in the area of fee dispute resolution for which (s)he is appointed, is a United States Citizen, is at least 21 years of age, and is a resident of the State of Alaska.

Area Division members (hereinafter "arbitrators") will each serve a three year term, with each term to commence on July 1 and expire on June 30 of the third year. A member whose term has expired prior to the disposition of a fee dispute matter to which (s)he has been assigned will continue to serve until the conclusion and disposition of that matter. This continued service will not prevent immediate appointment of his or her successor. The President will appoint a replacement to fill the unexpired term of a member who resigns prior to the expiration of his or her term.

(b) Failure to Perform. The President has the power to remove an Area Division member for good cause. The President will appoint, subject to ratification by the Board, a replacement attorney or public member to serve the balance of the term of the removed member.

(c) Assignment of Arbitration Panel Members for Disputes in Excess of \$2000.00. Arbitration Counsel will select and assign members of an Area Division to an Arbitration Panel (hereinafter "Panel") of not less than two attorney members and one public member when the amount in dispute exceeds \$2000.00. In addition, Arbitration Counsel will appoint an attorney member as chair of the Panel.

(d) Arbitration Panel Quorum. Three members of a Panel created under Section (c) of this Rule will constitute a quorum, one of whom will be a public member. The Panel chair will vote except when an even number of Panel members is sitting. Each Panel will act only with the agreement of a majority of its voting members sitting on the matter before it.

(e) Assignment of Single Arbitrator for Disputes of \$2000.00 or less. Arbitration Counsel will select and assign an attorney member of an Area Division to sit as a single Arbitrator when the amount in dispute is \$2000.00 or less.

(f) Conflict of Interest. An arbitrator will not consider a matter when:

(1) (s)he is a party or is directly interested;

(2) (s)he is a material witness;

(3) (s)he is related to either party to the dispute by blood or affinity in the third degree;

(4) (s)he has been previously or is currently retained by either party as an attorney or has professionally counseled either party in any matter within two years preceding the filing of the Petition for fee arbitration; or

(5) (s)he believes that for any reason, (s)he cannot give a fair and impartial decision.

(g) Challenges for Cause. Any challenge for cause of an arbitrator assigned to an arbitration must be made by either party within 10 days following notice of assignment to arbitration, unless new evidence is subsequently discovered which establishes grounds for challenge for cause. The challenge will be ruled upon by Arbitration Counsel. If Arbitration Counsel finds the challenge well taken a replacement arbitrator, if needed, will be appointed by Arbitration Counsel from the appropriate Area Division.

(h) Peremptory Challenge. Within 10 days of the notice of assignment to arbitration, either party may file one peremptory challenge. Arbitration Counsel will at once, and without requiring proof, relieve the challenged arbitrator of his or her obligation to participate and appoint a replacement, if needed, from the appropriate Area Division.

(i) Powers and Duties of Arbitrators. In the conduct of arbitrations under these Rules, arbitrators, sitting as a Panel or a single Arbitrator, will have the powers and duties to:

(1) take and hear evidence pertaining to the proceeding;

(2) swear witnesses, who will be examined under oath or affirmation on the request of any party to the dispute or by an arbitrator;

(3) compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding, and consider challenges to the validity of subpoenas;

(4) submit a written decision to Arbitration Counsel, in accordance with Rule 40; and

(5) interpret and apply these Rules insofar as they relate to their powers and duties. When a difference arises among Panel members concerning the meaning or application of any Rule, the matter will be decided by a majority vote. If that is unobtainable, the matter in question will be referred to the Executive Committee.

(j) Panel Chair Duties Take Precedence. The powers and duties of arbitrators described in Section (i) of this Rule accrue first to the arbitrator appointed chair of the Panel and will be performed by the chair unless another panelist is designated by the chair to act in his or her stead or the chair determines that the full Panel will consider and rule on the particular issues in question before it. The chair of a Panel, or a single arbitrator, will preside at the arbitration hearing. (S)he will judge the relevancy and materiality of the evidence offered and will rule on all questions of evidence and procedure except as described in Section (i)(5) of this Rule.

RULE 38. THE EXECUTIVE COMMITTEE OF THE FEE DISPUTE
RESOLUTION PROGRAM.

(a) Definition. The President will select one (1) attorney member from each Area Fee Dispute Resolution Division, and one (1) public member, who together with the Bar's President-Elect will constitute the five (5) member Executive Committee of the Fee Dispute Resolution Program. The Arbitration Counsel will serve in an ex-officio capacity and will be a non-voting member of the Executive Committee. The Board or Arbitration 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.

(b) Quorum. Three (3) voting members of the Executive Committee will constitute a quorum at any meeting.

(c) Powers and Duties. The Executive Committee will have the powers and duties to:

(1) review the general operations of the Bar's Fee Dispute Resolution Program;

(2) review the summaries of denials of Petitions prepared by Arbitration Counsel;

(3) formulate rules of procedure and determine matters of policy not inconsistent with these Rules;

(4) in accordance with Rule 37(j)(5), hear and determine questions regarding the interpretation and application of these Rules; and

(5) approve forms developed by Arbitration Counsel to implement the procedures described in these Rules.

(d) Meetings. The Executive Committee will meet at least biannually and may meet at such other times as it deems appropriate, either in person or by conference telephone call. Minutes outlining the actions taken by the Executive Committee during its meetings will be the responsibility of the Arbitration Counsel and will be available to the Board, members of Area Divisions, Bar members, and to the public, except that the Executive Committee will meet in executive session when discussing a specific Petition or arbitration proceeding.

RULE 39. NOTICE OF RIGHT TO ARBITRATION; STAY OF PROCEEDINGS; WAIVER BY CLIENT.

(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," which will state that:

You are notified that you have a right to file a Petition for Arbitration of Fee Dispute and stay this civil action by completing the enclosed form and sending it to the Alaska Bar Association, P.O. Box 100279, Anchorage, AK, 99510. If you do not file the Petition for Arbitration of Fee Dispute within 30 days after your receipt of this notice, you will waive your right to arbitration.

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

(b) Stay of Civil Proceedings. If an attorney, or the attorney's assignee, commences a fee collection action in any court, the client may stay the action by filing notice with the court that the client has requested arbitration of his or her fee dispute by the Bar within 30 days of receiving the Notice of the Client's Right to Arbitration. This notice will include proof of service on the attorney or the attorney's assignee.

(c) Stay of Non-Judicial Collection Actions. After a client files a Petition, the attorney will stay any non-judicial collection actions related to the fee in dispute pending the outcome of the arbitration.

(d) Waiver of Right to Request or Maintain Arbitration. A client's right to request or maintain an arbitration is waived if:

(1) the attorney files a civil action relating to the fee dispute, and the client does not file a petition for arbitration of a fee dispute within 30 days of receiving the "Client's Notice of Right to Arbitrate" pursuant to Section (a) of this Rule; or

(2) after the client received notice of the fee dispute resolution program, the client commences or maintains a civil action or files any pleading seeking judicial resolution of the fee dispute, except an action to compel fee arbitration, or seeking affirmative relief against the attorney for damages based upon alleged malpractice or professional misconduct.

RULE 40. PROCEDURE.

(a) Petition for Arbitration of Fee Disputes. Fee arbitration proceedings will be initiated by a client by filing a Petition with the Arbitration Counsel on a form provided by the Bar. The Petition will be in writing, signed by the client (hereinafter "Petitioner"), seeking resolution of the fee dispute with his or her attorney (hereinafter "Respondent"), and will contain the following:

(1) a statement by the Petitioner of the efforts made to attempt to resolve the matter directly with the Respondent.

(2) a statement by the Petitioner that (s)he understands in filing the Petition that the determination of the Arbitrator or Panel is binding upon the parties; that the determination may be reviewed by a superior court only for the reasons set forth in AS 09.43.120 through AS 09.43.180; and that the determination may be reduced to judgment; and

(3) a statement of the dollar amount in dispute and the reasons in as specific language as possible, (s)he disputes the fee.

(b) Petition Review. Arbitration Counsel will review each Petition to determine if:

- (1) the Petition is properly completed;
- (2) the Petitioner has made adequate attempts to informally resolve the dispute, and;
- (3) the Petition, in accordance with Rule 36(a)(4), should be denied.

Arbitration Counsel may return the Petition to the Petitioner with an explanation if (s)he determines that the Petitioner has not adequately attempted to resolve the dispute or if the Petition is otherwise incomplete. The Counsel will specify to the Petitioner what further steps need to be taken by him or her to attempt to resolve the matter informally or what portions of the Petition require additional clarification or information before the Bar will accept the Petition. If Arbitration Counsel determines that the Petition should be denied, (s)he will promptly notify the Petitioner.

(c) Petition Accepted; Notification. If Arbitration 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 (10) days in order for both parties to have the opportunity to settle the dispute without action by an Arbitrator or Panel.

The notice will include a copy of the accepted Petition and will advise both parties that if the matter is not settled within the ten (10) day period that it will be set for arbitration.

(d) Respondent Answer to Petition Not Required. No response to a Petition is required or expected of the Respondent and all material allegations contained in the Petition are deemed denied.

(e) Assignment to Arbitration. If, at the end of the ten day period, Arbitration Counsel has not been informed that the matter has been settled, in accordance with Rule 37(d) or (f), (s)he will select and assign an Arbitrator or Arbitration Panel from the members of the appropriate Area Division to consider the matter.

(f) Notice of Arbitration Hearing. Arbitration Counsel will, at the time the Arbitrator or Arbitration Panel is assigned, and at least twenty (20) days in advance of the arbitration hearing, mail written notice of the time and place of the hearing to the Petitioner and Respondent. The Notice of Arbitration Hearing will indicate the name(s) of the Arbitrator or Panelists assigned to hear the matter and will advise the Petitioner and Respondent that they are entitled to:

(1) be represented by counsel, at his or her expense;

(2) present and examine witnesses;

(3) cross-examine opposing witnesses, including examination on a matter relevant to the dispute 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) present documentary evidence in his or her own behalf;

(6) rebut the evidence presented against him or her;

(7) testify on his or her own behalf, although even if a party does not testify on his or her own behalf, (s)he may be called and examined as if under cross-examination;

(8) upon written request to the Arbitrator or chair of the Panel, and for good cause shown, have subpoenas issued in his or her behalf, as provided in Rule 37(i)(3);

(9) challenge peremptorily and for cause any arbitrator assigned, as provided in Rule 37(g) and (h); and

(10) have the hearing recorded on tape.

(g) Continuances; Adjournments. Continuances will be granted only for good cause and when absolutely necessary. An application for continuance will be made to the Arbitrator or Panel chair. Application must be made at least ten (10) days prior to the date for hearing unless good cause is shown for making the application for continuance subsequent to that time. Nothing in this section, however, will preclude an Arbitrator or Arbitration Panel from adjourning an arbitration hearing from time to time as necessary, for good cause shown, at the request of either party.

(h) Telephonic Hearings. A party may appear or present witness testimony at the hearing by telephonic conference call. The costs of the telephone call will be paid by the party unless the Bar, in its discretion, agrees to pay the costs.

(i) Arbitration Without Hearing. If both parties, in writing, waive appearances at an arbitration hearing, the matter may be decided on the basis of written submissions. In such case, Arbitration Counsel will give each party suitable time to present his or her case in writing and to respond to the assertions of the other. If the Arbitrator or Panel, after reviewing the written submissions, concludes that oral presentations by the parties are necessary, a hearing will be scheduled; otherwise, the Arbitrator or Panel will render the decision on the basis of the written submissions.

(j) Written Evidentiary Submissions Allowable. Either the Petitioner or the Respondent may submit a written statement under oath in lieu of or in addition to presenting evidence at the arbitration hearing. Such written statements must be filed with Arbitration Counsel at least ten (10) days prior to the date set for hearing. The other party may, within three (3)

days prior to the hearing date, respond to the party's written statement. The other party may also require the party filing the written statement to appear at the hearing or be available by telephone conference call and be subject to cross-examination, in which instance notice of the intention to cross-examine must be filed with Arbitration Counsel, and served upon the party whose presence is required within five (5) days prior to the hearing date. Such notice must be made in good faith and not made with an intention to cause delay or inconvenience. The Arbitrator or Panel may award expenses of appearance if it determines that the notice of intention to cross-examine was filed solely for the purpose of causing delay or inconvenience.

(k) Affidavit Submissions. Either the Petitioner or Respondent may submit written affidavits by witnesses on their behalf in lieu of or in addition to presenting evidence at the arbitration hearing. Such affidavits must be filed with Arbitration Counsel and served on the other party at least ten (10) days before the date set for the hearing. The other party may require the witness filing the affidavit to appear at the hearing or be available by telephone conference call and be subject to cross-examination, in which instance notice of the intention to cross-examine the witness must be filed with the Arbitration Counsel and served on the party on whose behalf the witness would appear, within five (5) days prior to the hearing date. Such notice must be made in good faith and not made with an intention to cause delay or inconvenience. The Arbitrator or Panel may award expenses of appearance if it determines that the notice was filed solely for the purpose of causing delay or inconvenience. It will be the responsibility of the party on whose behalf the witness is appearing or giving telephonic testimony to insure the availability of that witness.

(l) Appearance. Appearance and non-objection by a party to the dispute at a scheduled arbitration hearing will constitute waiver by that party of any deficiency with respect to the giving of notice of the arbitration hearing.

(m) Failure of a Party to Appear. In spite of the failure of either party to appear at the scheduled arbitration hearing for which they were provided notice, the Arbitrator or Panel will proceed with the hearing and determine the dispute upon the basis of the evidence produced. If neither party attends, the Arbitrator or Panel may terminate the arbitration by deciding that neither party is entitled to any relief.

(n) Evidence. The Arbitration hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence will be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule to the contrary. Irrelevant and unduly repetitious evidence will be excluded.

(o) Attorney-Client Privilege. The rules of privilege are effective to the same extent that they are recognized in a civil action, except that the Respondent may reveal confidences or secrets of the client to the extent necessary to establish his or her fee claim.

(p) Subpoenas; Costs. In accordance with Rule 37(i)(3) and Section (f)(8) of this Rule, an arbitrator will, for good cause shown, issue subpoenas and/or subpoenas duces tecum (hereinafter "subpoenas") at the written request of a party. 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 an Arbitrator or the chair of a Panel or ordered to appear or produce writings who refuses to appear, give testimony, or produce the matter(s) subpoenaed is in contempt of the Arbitrator or Arbitration Panel. The Arbitrator or Panel chair may report such contempt 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 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 Arbitrator or Panel may be based upon such determination of issues.

(q) Decision of the Arbitrator or Arbitration Panel.

The Arbitrator or Arbitration Panel will make its decision within thirty (30) days of the close of the arbitration hearing. The decision will be based upon the standards set forth in these Rules and the Alaska Code of Professional Responsibility. The decision will be in writing and need not be in any particular form; however, the decision will include:

(1) a preliminary statement reciting the jurisdictional facts, including that a hearing was held upon proper notice to all parties and that the parties were given the opportunity to testify, cross-examine witnesses, and present evidence;

(2) a brief statement of the dispute;

(3) the findings of the Arbitrator or Panel on all issues and questions submitted which are necessary to resolve the dispute;

(4) a specific finding as to whether the matter should be referred to Bar Discipline Counsel for appropriate disciplinary proceedings; and

(5) the award, if any.

The original of the decision shall be signed by the Arbitrator or members of the Arbitration Panel concurring in the decision. A separate dissent may be filed. The Arbitrator or the Panel chair will forward the decision, together with the file and the record, to Arbitration Counsel who will then serve a copy of the signed decision on each party to the arbitration.

(r) Confidentiality. All records, documents, files, proceedings and hearings pertaining to the arbitration of any dispute under these Rules will be confidential and will be closed to the public, unless ordered open by a superior court

upon good cause shown, except that a summary of the facts, without reference to either party by name, may be publicized in all cases once the proceeding has been formally closed.

(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 Arbitration Counsel within twenty (20) days after delivery of the decision to 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 (10) days from the receipt of the notice of the application for modification.

(t) Confirmation of an Award. Upon application of a party, and in accordance with the provisions of AS 09.43.110 and AS 09.43.140, the superior court will confirm an award, reducing it to a judgment, unless within ninety (90) days either party seeks through the superior court to vacate, modify or correct the award in accordance with the provisions of AS 09.43.120 through 140.

(u) Appeal. Should either party appeal the decision of an Arbitrator or Panel to the superior court under the provisions of AS 09.43.120 through AS 09.43.180, the appeal shall be filed with the clerk of the superior court in accordance with Appellate Rules 601 through 609, and notice of such appeal will be filed with Arbitration Counsel.

(v) Suspensions for Nonpayment of an Award. Failure to pay a final and binding award will subject the Respondent attorney to suspension for nonpayment as prescribed in Alaska Bar Rule 61 (c).

RULE 41. SERVICE.

Unless otherwise specifically stated in these Rules, service shall be by personal delivery or by certified mail, postage paid, addressed to the person on whom it is to be served at his or her office or home address as last given to the Bar. The service is complete five (5) business days after mailing. The time for performing any act shall commence on the date after service is complete.

RULE 42. INFORMING THE PUBLIC.

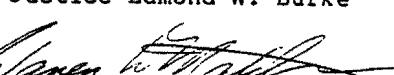
Blank copies of the petition form and explanatory booklets prepared by the Arbitration Counsel shall be provided to the clerks of courts in every location in the state.

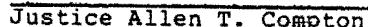
DATED: November 13, 1986

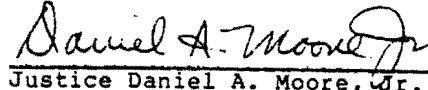
EFFECTIVE DATE: March 15, 1987


Chief Justice Jay A. Rabinowitz


Justice Edmond W. Burke


Justice Warren W. Matthews


Justice Allen T. Compton


Justice Daniel A. Moore, Jr.