

**ALASKA BAR RULES**

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**PART I. ADMISSIONS****Rule 1. Board of Governors: General Powers Relating to Admissions.**

**Section 1.** As used in Rules I–VIII:

(a) “Attorney applicant” means a person who has complied with the eligibility requirements of Rule 2, Section 2;

(b) “Bar examination” means the examination offered to applicants for admission to the practice of law in Alaska;

(c) “Board” means the Board of Governors of the Alaska Bar Association;

(d) “Committee” means the Committee of Law Examiners appointed by the Board;

(e) “Executive Director” means the Executive Director of the Alaska Bar Association;

(f) “General applicant” means a person who has complied with the eligibility requirement of Rule 2, Section 1(a) through (e);

(g) “President” means the President of the Alaska Bar Association;

(h) “Receipt of written notice” means the delivery of a written notice personally to the addressee or by mail to the most current address which the addressee has provided to the Alaska Bar Association. Written notices shall be presumed to be received by the addressee five days after the postmark date of certified or registered mail sent to the most current address which the addressee has provided to the Alaska Bar Association.

**Section 2.** Only those persons who fulfill all requirements for admission as provided by these rules shall be admitted to the practice of law in the State of Alaska and shall be members of the Alaska Bar Association.

**Section 3.** The Board shall examine or provide by contract or otherwise for the examination of all general applicants for admission to the practice of law and shall determine or approve the time, place, scope, form and content of all bar examinations.

Bar examinations may, in whole or in part, be prepared, administered and graded by or in cooperation with other states or the National Conference of Bar Examiners consistent with standards fixed or approved by the Board acting with the advice of the Committee of Law Examiners. No contract or cooperative agreement for the preparation, administration or grading of a bar examination shall operate to divest the Board of its authority to independently determine the eligibility of an applicant to be admitted to the practice of law.

**Section 4.** There shall be appointed a Committee of Law Examiners. The appointments shall be made by the President. Except as specified in this rule, members of the Committee shall serve for three years and until their successors

are appointed. The terms of the members of the Committee shall be staggered so that the terms of at least one-third of the members shall expire on June 30 of each year. Any person who has served on the Committee within the previous three years may serve as an alternate member in the event that one or more of the regular members is unable to participate in a portion of the grading process. The President shall appoint the Chairperson of the Committee, who shall act as Chairperson for one year commencing on July 1. The Chairperson may be reappointed to successive terms. The Chairperson shall designate alternate members to serve, as necessary.

**Section 5.** The Committee shall grade the bar examination except the Multistate Bar Examination which shall be graded by the National Conference of Bar Examiners. The Committee shall advise the Board concerning the grading or administration of bar examinations as from time to time directed by the Board. The Board shall furnish to the Committee clerical and other assistance as may be deemed necessary by the Board.

**Section 6.** A majority of the members of the Committee shall constitute a quorum for the transaction of business relating to admissions. Seven members of the Board shall constitute a quorum for such business.

**Section 7.** Any member of the Board, upon application by the Executive Director or by a master appointed by the President, shall have the power to issue subpoenas for the attendance of witnesses, or for the production of documentary evidence before the Board or before anyone authorized to act in its behalf.

**Section 8.** A member of the Board or anyone authorized to act in its behalf shall have power to administer oaths and affirmations and to take testimony concerning the admission of an applicant or administration of this rule.

**Section 9.** Any person subpoenaed by the Board or its designee to appear or produce writings who refuses to appear, give testimony, or produce the matter subpoenaed is in contempt of the Board. A member of the Board may report a contempt of the Board to the Superior Court for the judicial District in which the proceeding is being conducted. The refusal or neglect of an applicant to respond to a subpoena or subpoena duces tecum shall constitute cause for abatement of further proceedings and dismissal of the application by order of the Board and costs may be assessed in the case of the applicant’s contempt.

**Section 10.** On verified petition of the Executive Director or of an applicant, any member of the Board may order that the testimony of a material witness residing inside or outside the state be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set out (1) the name and address of the witness whose testimony is desired; (2) a showing of the materiality of the witness’ testimony; (3) a showing that he witness will be unable or cannot be compelled to attend; and (4) a request for an order requiring the witness to appear and testify before an officer named in the petition for that purpose. If the witness resides outside the state and if a member of the Board orders

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the taking of the witness' testimony by deposition, the member of the Board shall obtain an order of court to that effect by filing a petition for the taking of the deposition in the superior court. The proceedings on this order shall be in accordance with provisions governing the taking of a deposition in the superior court in a civil action.

**Section 11.** (a) *General Immunity.* Members of the Board, members of the Committee, the Executive Director, Bar Counsel, and all Bar staff are immune from suit for conduct in the course and scope of their official duties as set forth in these rules.

(b) *Witness Immunity.* The Court or its designee may, in its discretion, grant immunity from criminal prosecution to witnesses in admissions proceedings upon application of the Board, Bar Counsel, the lawyer, or counsel for the lawyer, and after receiving the consent of the appropriate prosecuting authority.

(Added by SCO 161 effective immediately and amended by SCO 205 effective, nunc pro tunc, March 15, 1975; amended by SCO 285 effective September 22, 1977; by SCO 399 effective May 1, 1980; by SCO 400 effective, nunc pro tunc January 1, 1980; by SCO 504(1) effective March 1, 1982; by SCO 1153 effective July 15, 1994; by SCO 1174 effective July 15, 1995; by SCO 1193 effective July 15, 1995; by SCO 1814(1) effective January 1, 2014; by SCO 1814(2) effective May 16, 2014; and by SCO 1830 effective October 15, 2014)

### **Rule 2. Eligibility for Admission.\***

**Section 1.** Every general applicant for examination shall:

(a) File an application in a form prescribed by the Board and produce and file the evidence and documents prescribed by the Board in proof of eligibility for admission;

(b) Be a graduate with a degree of Juris Doctor (JD) or Bachelor of Laws (LLB) of a law school which was accredited or approved by the Council of Legal Education of the American Bar Association or the Association of American Law Schools when the applicant entered or graduated, or submit proof that the law course required for graduation for either the JD or LLB degree from such a law school will be completed and that a JD or LLB degree will be received as a matter of course before the date of examination. Certified proof of graduation shall be sent directly from the law school to the Alaska Bar Association and received prior to the date of the examination;

(c) Have attained the age of 18 years; and

(d) Be one whose conduct justifies the trust of clients, adversaries, courts and others with respect to the professional duties owed to them. Conduct manifesting a significant deficiency in the honesty, trustworthiness, diligence or reliability of an applicant is a basis for denial of admission.

Any of the following should be treated as cause for further inquiry before the bar examining authority decides whether the applicant possesses the character and fitness to practice law:

- (1) a criminal conviction except minor traffic violations;
- (2) academic misconduct which has resulted in disciplinary action;
- (3) making of false statements under oath or affirmation, including omissions;
- (4) acts involving dishonesty, fraud, deceit or misrepresentation;
- (5) unjustifiable neglect of financial obligations;
- (6) violation of an order of a court;
- (7) evidence of mental or emotional disorders;
- (8) evidence of drug or alcohol abuse or dependency;
- (9) denial of admission to the Bar in another jurisdiction on character and fitness grounds;
- (10) disciplinary action by an attorney disciplinary agency, other professional disciplinary agency or any governmental or administrative agency of any jurisdiction.

In weighing each of the above factors, the following should be considered in assigning weight and significance to prior conduct or condition:

- (1) the applicant's age at the time of the conduct or condition;
- (2) the recency of the conduct or condition;
- (3) the reliability of the information concerning the conduct or condition;
- (4) the seriousness of the conduct or condition;
- (5) the circumstances surrounding the conduct or condition;
- (6) the cumulative effect of conduct, condition or information;
- (7) the evidence of stabilization or rehabilitation;
- (8) the applicant's positive social contribution since the conduct or condition;
- (9) the applicant's truthfulness in the admissions process; and
- (10) the materiality of any omissions or misrepresentations.

(e) Not be disbarred or suspended for disciplinary reasons, not have resigned with disciplinary charges pending, or otherwise not be in good standing for disciplinary reasons in any jurisdiction. A person who cannot satisfy this subsection may not submit an application for admission.

**Section 2.** (a) An applicant who meets the requirements of (a) through (e) of Section 1 of this Rule and



(1) has passed a written bar examination required by another reciprocal state, territory, or the District of Columbia for admission to the active practice of law, and

(2) has engaged in the active practice of law in one or more states, territories or the District of Columbia for five of the seven years immediately preceding the date of his or her application, may, upon motion be admitted to the Alaska Bar Association without taking the bar examination. The motion shall be served on the executive director of the Alaska Bar Association. An applicant will be excused from taking the bar examination upon compliance with the conditions above, and payment of a non-refundable fee to be set by the Board for applicants seeking admission on motion. For the purposes of this section, "reciprocal state, territory or district" shall mean a jurisdiction which offers admission without bar examination to attorneys licensed to practice law in Alaska, upon their compliance with specific conditions detailed by that jurisdiction, providing the conditions are not more demanding than those set forth in this Rule.

(b) An applicant is not eligible for admission under this section if

(1) the applicant was admitted to the practice of law in the reciprocal state, territory or district without taking a written bar examination;

(2) the applicant has engaged in the unauthorized practice of law in Alaska; or

(3) the applicant has taken and failed to pass an Alaska Bar examination, unless this occurred before the applicant engaged in the five years of practice required by (a)(2) of this section.

(c) For the purposes of this section, the "active practice of law" shall mean at least 750 hours per year in one or more of the following activities:

(1) engaged in representing one or more clients in the private practice of law, which may include pro bono legal services as described in the Alaska Rules of Professional Conduct 6.1(a) and (b)(1)-(2);

(2) serving as an attorney in governmental employment, or as a law clerk for a judicial officer, provided graduation from an ABA or AALS accredited law school is a required qualification of such employment;

(3) serving as counsel for a non-governmental corporation, entity or person and performing legal services of a nature requiring a license to practice law in the jurisdiction(s) in which performed;

(4) teaching law at one or more accredited law schools in the United States, its territories, or the District of Columbia;

(5) serving as a judge in a court of the United States, its states, its territories, or the District of Columbia; or

(6) employed by a Legal Services Corporation program or a not-for-profit law firm, performing legal services of a

nature requiring a license to practice law in the jurisdiction(s) in which performed.

(d) An applicant not eligible for admission pursuant to this section may qualify for general applicant status.

(Repealed and replaced by SCO 607 effective January 1, 1985; amended by SCO 1230 effective April 12, 1996)

**Section 3.** (a) An individual who has not graduated from a law school accredited or approved by the Council of Legal Education of the American Bar Association or the Association of American Law Schools shall be eligible to take the bar examination as a general applicant if he/she (1) has been licensed to practice law in one or more jurisdictions in the United States for five of the seven years immediately preceding the date of his/her first or subsequent applications for admission to the practice of law in Alaska, (2) was engaged in the active practice of law for five of those seven years, and (3) meets the requirements of (a), (c), and (d) of Section 1 of this Rule.

(b) An individual shall also be eligible to take the bar examination as a general applicant if he/she (1) has successfully completed not less than one academic year of education at a law school accredited or approved by the Council of Legal Education of the American Bar Association or the Association of American Law Schools, (2) has successfully completed a clerkship program under AS 08.08.207, and (3) meets the requirements of (a), (c), and (d) of Section 1 of this Rule.

(c) An individual who is a graduate of a law school in which the principles of English law are taught but which is located outside the United States and beyond the jurisdiction of the Council of Legal Education of the American Bar Association or the Association of American Law Schools may be eligible to take the bar examination as a general applicant if he/she submits proof that (1) the foreign law school from which he/she graduated meets the American Bar Association's Council of Legal Education standards for approval, (2) he/she has either (a) successfully completed not less than one academic year of education at a law school accredited or approved by the Council of Legal Education of the American Bar Association or the Association of American Law Schools, including evidence satisfactory to the Board of Governors that the applicant has successfully completed not less than one course in United States Constitutional Law and one course in Civil Procedure in the United States, or (b) is a member in good standing of the Bar of one or more states, territories, or the District of Columbia and was admitted to the Bar of that state, territory, or the District of Columbia after written examination, and (3) meets the requirements of (a), (c), and (d) of Section 1 of this Rule.

(d) An individual eligible to take the bar examination as a general applicant under (a) through (c) of this section shall request that: (1) certified proof of graduation and/or attendance be sent directly from the law school(s) attended to the Alaska Bar Association, and (2) where applicable under Section 3(c)(2)(b), a certificate of good standing from the Bar of the state, territory, or District of Columbia where he/she is

licensed to practice law be sent directly to the Alaska Bar Association. Proof of attendance and/or graduation and the certificate of good standing must be received prior to the date of the examination.

**Section 4.** An applicant who meets the requirements of (a) through (e) of Section 1 of this Rule and has achieved a scaled score of 280 or above on a Uniform Bar Examination (UBE) administered in another state, territory, or the District of Columbia within five years preceding the date of the application to the Alaska Bar Association may be admitted to the Alaska Bar Association.

(Added by SCO 161 effective immediately; amended by Amendment No. 1 to SCO 161 effective April 12, 1974; by SCO 220 effective December 15, 1975; by SCO 347 effective April 1, 1979; by SCO 401 effective May 1, 1980; by SCO 431 effective November 1, 1980; by SCO 466 effective June 1, 1981; by Ch. 52, § 15 of Session Laws of Alaska 1981; by SCO 593 effective May 3, 1984; by SCO 971 effective July 15, 1989; by SCO 1005 effective January 15, 1990; by SCO 1042 effective January 15, 1991; by SCO 1051 effective January 15, 1991; by SCO 1380 effective April 15, 2000; by SCO 1394 effective October 15, 2000; by SCO 1418 effective April 15, 2001; by SCO 1553 effective October 15, 2004; by SCO 1548 effective November 15, 2004; and by SCO 1704 effective October 15, 2009; by SCO 1814(1) effective January 1, 2014; by SCO 1830 effective October 15, 2014 and by SCO 1831 effective October 15, 2014.)

**\*Editor's Note:** Section 9, Chapter 119, Session Laws of Alaska 1978, provides that "Section 1-8 of this Act [Chapter 119, Session Laws of Alaska, 1978] have the effect of changing section 5 of Rule 2 of the Alaska Bar Rules of the Rules of Court by transferring the responsibility for the program of law clerk study under AS 08.08.207 from the Supreme Court to the University of Alaska."

### Rule 3. Applications.

**Section 1.** An application form shall be provided by the Board upon request and upon payment of such fees as the Board shall deem appropriate. Bar examinations shall be held in the months of February and July of each calendar year. The time, date, place or places of each bar examination shall be announced by the Board no fewer than 120 days prior to the first day of such bar examination, and prompt notice thereof shall be provided all applicants and persons who have been provided applications following the date of the last preceding bar examination. Application forms provided by the Board shall be transmitted with a copy of the Alaska Bar Rules governing admission to the practice of law. The Board may provide applicants with such other matter as it may deem pertinent.

**Section 2.** Any person seeking admission to the practice of law shall file with the Executive Director at the office of the Alaska Bar Association an application in the form provided by the board. The application shall be made under oath and contain such information relating to the applicant's age, residence, addresses, citizenship, occupations, general education, legal education, moral character and other matters

as may be required by the Board; however, the application must contain the applicant's social security number. Any notice required or permitted to be given an applicant under these rules, if not personally delivered shall be delivered to the mailing address declared on the application unless notice in writing is actually received by the Board declaring a different mailing address. Any notice concerning the eligibility of the applicant sent by certified mail to the last mailing address provided shall be deemed sufficient under these rules. Every applicant shall submit two 2-inch by 3-inch photographs of the applicant showing a front view of the applicant's head and shoulders. The application shall be deemed filed only upon receipt of a substantially completed form with payment of all required fees. Applications received without payment of all fees or which are not substantially complete shall be promptly returned to the applicant with a notice stating the reasons for rejection and requiring payment of such additional fees as may be fixed by the Board as a condition of reapplication.

**Section 3.** An application shall be filed not later than May 1 for the July bar examination and not later than December 1 for the February bar examination. In the event that an application is filed late, an additional late filing fee of \$25 shall be paid if filed not later than fourteen days after the last day for filing a timely application, and a late filing fee of \$100 shall be paid if filed thereafter; provided, however, no application shall be accepted for late filing unless such application is filed at the office of the Alaska Bar Association not later than June 15 for the July bar examination and January 15 for the February bar examination. The Executive Director may, for good cause, accept applications for late filing after the June 15 and January 15 deadlines. A total late filing fee of \$125.00 shall be paid for applications accepted after June 15 and January 15.

**Section 4.** The application fee shall be in an amount fixed by the Board from time to time. Fees shall be paid at the time the application is filed.

**Section 5.** If an applicant fails to meet the requirements of Rule 2, or to take a bar examination, no refund shall be made unless the application shall be withdrawn within 10 days following notice of its receipt by the Board in which event the application fee, less a reasonable cancellation fee, shall be refunded.

**Section 6.** An applicant who has failed to pass a bar examination required by Rule 2 may reapply for admission to take a subsequent bar examination.

Reapplications shall be made by filing a reapplication form as required by the Board by January 15 for the February bar examination and by June 15 for the July bar examination.

Applicants for reexamination shall be required to pay the reapplication fee fixed by the Board. An applicant who does not comply with this Section must reapply pursuant to Sections 1 through 5 of this Rule.

(Added by SCO 161 effective immediately; amended by SCO 204 effective, nunc pro tunc, November 25, 1974; by SCO 473 effective July 1, 1981; by Ch. 52, § 15 of Session Laws of

Alaska 1981; by SCO 504(2) effective March 1, 1982; by SCO 1036 effective January 15, 1991; by SCO 1153 effective July 15, 1994; by SCO 1177 effective July 15, 1995; by SCO 1202 effective July 15, 1995; by SCO 1295 effective January 15, 1998; and by SCO 1652 effective October 15, 2007)

#### **Rule 4. Examinations.**

**Section 1.** An applicant shall be allowed to take the bar examination once the applicant's application is approved by the board. Every applicant shall be notified no fewer than ten days in advance of the bar examination whether the application has been approved and shall be provided an examination permit. The examination permit shall be presented to the examination proctor on the first day of the examination.

**Section 2.** If an application is approved by the board, the applicant shall submit to a bar examination. The bar examination shall be given not less than once every 12 months, shall be written, and shall be conducted in the manner and at the time and place established by the board. The board may direct that the bar examination be administered to applicants with physical handicaps in a fair and reasonable manner other than the manner by which it is administered to other applicants. An applicant with a physical handicap who desires the bar examination to be administered in a manner other than the manner by which it is administered to other applicants shall so petition the board at the time of filing the application. Approval of an application and subsequent bar examination shall not operate to foreclose a subsequent determination by the board that the applicant is unfit or ineligible for certification to the supreme court for admission to the practice of law.

**Section 3.** The committee shall, as soon as practicable after the bar examination, certify to the board its written report of bar examination. Except to the extent that such material or information is unavailable to the committee under the rules or policies of the National Conference of Bar Examiners, the committee shall submit to the board a copy of the bar examination questions, the graders' analyses thereof, a representative sampling of passing and failing answers to the bar examination, and a written report stating the total number of applicants examined, the number passing and the number failing the bar examination, the average performance of each as designated by the code number of each, the maximum possible point value of each bar examination part or section and other information the committee or the board may deem relevant.

**Section 4.** The board shall determine the qualifications of each applicant upon the basis of the report of the Law Examiners Committee, proof of passage of the Multistate Professional Responsibility Examination, the recommendations of the executive director, and such other matter it may consider pertinent under these rules. The board shall certify to the supreme court the results of the bar examination and its recommendations as to those applicants who are determined qualified for admission to the practice of law and who have complied with the provisions of Rule 5. Notice of the board's determination shall be provided in

writing to each applicant. Notice to an applicant determined not qualified shall state the reason for such determination.

**Section 5.** If written request is made to the board within one month following notice of failure to pass a bar examination, an applicant who takes and fails to pass the bar examination has the right to inspect his or her Multistate Essay Examination (MEE) and the Multistate Performance Test (MPT) examination books, the grades assigned thereto, and a representative sampling of passing and failing MEE or MPT answers to the bar examination at the office of the Alaska Bar Association, or at such place as the board may designate. Absent an express prohibition by the National Conference of Bar Examiners (NCBE), an applicant who takes and fails to pass the bar examination has the right to inspect a copy of his or her Multistate Bar Examination (MBE) answer sheet or Multistate Professional Responsibility Examination answer sheet, scores, and the correct answer key to the form of his or her MBE examination or Multistate Professional Responsibility Examination under the procedures designated by the board. An applicant has no right to a copy of any of these MBE materials or Multistate Professional Responsibility Examination materials for removal from the place of inspection. An applicant who passes the bar examination is not entitled to inspect any MEE or MPT examination books or discover the individual grades assigned thereto. The Executive Director will provide all applicants their total written scaled score (based on the MEE and MPT), MBE scaled score, and UBE total scaled score.

**(Section 6.** A combined score of 140 or above, as determined by the National Conference of Bar Examiners, shall be the passing grade on the bar examination.

#### **Section 7.**

(Added by SCO 247 (II) effective April 1, 1976; amended by SCO 293 effective March 15, 1978; repealed by SCO 608 effective July 1, 1985)

**Section 8.** All examination books and answers, including those designated by the committee as comprising a representative sampling of passing and failing answers to the bar examination, may be destroyed one year following the last date an applicant has been notified of the applicant's failure; except that no examination book and answers shall be destroyed until one year following the final disposition of any proceeding to which they may be relevant.

(Added by SCO 161 effective immediately; amended by SCO 233(1) effective April 1, 1976; by SCO 247 (I) effective April 1, 1976; by SCO 504(3) effective June 1, 1982; by SCO 762 effective October 30, 1986; by SCO 1153 effective July 15, 1994; by SCO 1178 effective July 15, 1995; by SCO 1487 effective December 11, 2002; by SCO 1487 effective April 15, 2003; by SCO 1807 effective October 15, 2013; by SCO 1814(1) effective January 1, 2014; by SCO 1814(2) effective May 16, 2014; and by SCO 1856 effective May 1, 2015)

**Rule 5. Requirements for Admission to the Practice of Law.**

**Section 1.** (a) To be admitted to the practice of law in Alaska, an applicant must

(1) pass the bar examination prescribed pursuant to Rule 4; be excused from taking the bar examination under Rule 2, Section 2; or transfer a UBE scaled score of 280 or above achieved on a UBE administered in another state, territory, or the District of Columbia within five years preceding the date of the application to the Alaska Bar Association;

(2) pass the Multistate Professional Responsibility Examination by obtaining a scaled score of 80 at an examination taken not more than eight years prior to the applicant's Alaska application for admission;

(3) be found by the Board to meet the standard of character and fitness, as required pursuant to Rule 2(1)(d);

(4) be determined by the Board to be eligible in all other respects;

(5) pay prorated active membership dues for the balance of the year in which he or she is admitted, computed from the first day of admission;

(6) attend a presentation on attorney ethics as prescribed by the Board prior to taking the oath prescribed in Section 3 of this rule;

(7) file an affidavit as required by Bar Rule 64 stating that the applicant has read and is familiar with the Alaska Rules of Professional Conduct; and

(8) take the oath prescribed in Section 3 of this rule.

(b) Within 60 days after completion of the requirements stated in subparagraphs (a)(1), (2), (6), and (7) of Section 1 of this Rule, an applicant must file with the Alaska Bar Association the forms provided by the Board, formally accepting membership in the Association and admission to the practice of law in Alaska.

(c) The Board may conduct a character investigation of an applicant, or may continue such an investigation, after the applicant has been permitted to take, or has passed, the examination prescribed by the Board pursuant to Rule 4. The fact that the Board has permitted the applicant to take the examination, and has given the applicant notice that he or she has passed the examination, shall not thereafter preclude the Board from denying the admission of the applicant on the grounds of character and fitness as set forth in Bar Rule 2(1)(d).

(Amended by SCO 504(4) effective June 1, 1982; amended and renumbered by SCO 609 effective January 1, 1985; amended by SCO 1228 effective July 15, 1996; and by SCO 1488 effective April 15, 2003; by SCO 1652 effective October 15, 2007)

**Section 2.** An applicant who fails to comply with the provisions of Section 1 of this Rule shall not be eligible for certification to the Supreme Court for admission and shall be deemed to have abandoned the application.

**Section 3.** Upon receiving certification of the eligibility of an applicant, any state or federal judicial officer may enter an order admitting the applicant as an attorney at law in all the courts of the state and to membership in the Alaska Bar Association. Each applicant ordered admitted to the practice of law shall take the following oath before any state or federal judicial officer:

I do affirm:

I will support the Constitution of the United States and the Constitution of the State of Alaska;

I will adhere to the Rules of Professional Conduct in my dealings with clients, judicial officers, attorneys, and all other persons;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any proceedings that I believe are taken in bad faith or any defense that I do not believe is honestly debatable under the law of the land;

I will be truthful and honorable in the causes entrusted to me, and will never seek to mislead the judge or jury by an artifice or false statement of fact or law;

I will maintain the confidences and preserve inviolate the secrets of my client, and will not accept compensation in connection with my client's business except from my client or with my client's knowledge or approval;

I will be candid, fair, and courteous before the court and with other attorneys, and will advance no fact prejudicial to the honor or reputation of a party or witness unless I am required to do so in order to obtain justice for my client;

I will uphold the honor and maintain the dignity of the profession, and will strive to improve both the law and the administration of justice.

A certificate of admission shall thereupon be issued to the applicant by the clerk of the court.

(Added by SCO 161 effective immediately; amended by SCO 346 effective April 1, 1979; by SCO 392 effective January 1, 1980; by SCO 402 effective May 1, 1980; and by SCO 504(4) effective June 1, 1982; by SCO 971 effective July 15, 1989; by SCO 1083 effective January 15, 1992; by SCO 1087 effective January 15, 1992; by SCO 1146 effective September 9, 1993; by SCO 1148 effective July 15, 1994; by SCO 1153 effective July 15, 1994; by SCO 1228 effective July 15, 1996; by SCO 1229 effective April 12, 1996; by SCO 1378 effective December 16, 1999; by SCO 1380 effective April 15, 2000; by SCO 1488 effective April 15, 2003; by SCO 1652 effective October 15, 2007; by SCO 1704 effective October 15, 2009; by SCO 1808 effective October 15, 2013; and by SCO 1814

effective January 1, 2014)

## **Rule 6. Review.**

### **Section 1.** Notice and representation by counsel.

(a) Notice of any final adverse determination by the Board, a master, or a committee appointed by the Board, shall be given to an applicant. Such notice shall be sufficiently specific to allow the applicant to be able to prepare a response, petition for review, or request for hearing as may be permitted under these rules.

(b) The Board shall send written notice by certified mail to the applicant's latest address on file with the Executive Director.

(c) An applicant may be represented by counsel in all proceedings for admission to the practice of law. Such counsel shall be admitted to practice in the State of Alaska or authorized to practice law pursuant to the provisions of Rule 81 Alaska R. Civ. P., and shall file a written appearance with the Board. Thereafter, notices required or permitted to be served upon the applicant shall be served upon the applicant's counsel.

**Section 2.** An applicant who has been denied an examination permit or who has been denied certification to the Supreme Court for admission to practice shall have the right, within thirty days after receipt of written notice of such denial, to file with the Board a written statement of appeal. Such statement of appeal shall be verified by the oath of the applicant that all statements contained therein are true, on the applicant's own knowledge, or on the basis of information furnished to the applicant. Failure to file a timely appeal statement shall constitute a waiver of any right to appeal. The statement of appeal filed by the applicant shall state all grounds upon which the applicant intends to rely and may:

(a) Object to the form of notice from which such appeal is taken on the ground that it is so indefinite or uncertain that the applicant cannot reasonably prepare his or her statement;

(b) Present the materials and documents on which the applicant relies to establish his or her eligibility to take the examination or for admission to practice, whichever is applicable.

An applicant who is denied an examination permit or who is denied certification shall allege facts which, if true, would establish an abuse of discretion or improper conduct on the part of the Board, the Executive Director, the Committee, or a master. If the allegations in the verified statement are found to be sufficient by the Board, a hearing shall be granted. If a hearing is denied, the applicant may appeal from the denial of the hearing under the procedures of Rule 8.

**Section 3.** In any appeal the applicant shall have the burden of proving the material facts upon which the applicant relies.

**Section 4.** A master appointed by the President from among the active membership of the association shall preside

at all hearings convened under this rule. The master shall hear the evidence without the Board unless the President shall order the hearing in the presence of the Board. No fewer than twenty days before the hearing the applicant shall be given notice of the date of the hearing, the identity of the master, and whether the hearing is to be before the master alone, or before the Board with the master. All notices shall be given by the Executive Director, as required by the master or the President.

**Section 5.** When the Board hears the case with the master, the master shall preside and rule on the admission of evidence. The hearing shall be administered as directed by the Board.

**Section 6.** Board members or masters appointed under this rule shall disqualify themselves and withdraw from any case in which they cannot accord a fair and impartial hearing. The applicant may request the disqualification of the master or of a Board member by filing an affidavit within ten days following the first notice of the hearing. The affidavit shall state with particularity why a fair and impartial hearing cannot be accorded by the person sought to be disqualified. Where the request concerns a Board member the issue shall be determined by the master. Notice of the determination shall be given applicant no fewer than 10 days before commencement of the hearing and such notice shall include the name of a new master if one is appointed. The time for notice fixed by Section 3 and by this Section shall not apply to notice concerning a master appointed to replace a disqualified master.

**Section 7.** Only the following materials shall be subject to production by the Alaska Bar Association in any proceedings held pursuant to this Rule:

(a) Where certification for admission to practice has been denied, the failing applicant has the right to inspect examination materials only as provided in Rule 4(5); and,

(b) Where an examination permit has been denied on the basis of character and fitness, the applicant has a right to inspect the minutes of any meeting of the Board of Governors at which the applicant's character and fitness has been discussed, together with a statement of the specific grounds upon which denial of the permit was based.

**Section 8.** When the Board denies an examination permit on the basis of character and fitness, the Board shall give the applicant immediate written notice of its action, together with a statement of the specific grounds on which the denial of the examination permit is based. Within 10 days of receipt of such written notice, the applicant may submit to the Board such written argument, documentation, or other material as the applicant deems relevant to the proof of his or her character and fitness. Upon receipt of any such material, the Board shall reconsider the denial in a timely fashion and give written notice of its decision.

(Added by SCO 161 effective immediately; amended by SCO 341 § 1 effective April 1, 1979; by SCO 402 effective May 1, 1980; by SCO 463 effective June 1, 1981; by SCO 761 effective October 30, 1986; by SCO 971 effective July 15,

1989; by SCO 1153 effective July 15, 1994; and by SCO 1669 effective April 15, 2008)

### **Rule 7. Procedures.**

**Section 1.** All hearings before the master shall be electronically recorded with the facilities provided by the Alaska Court System. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision. The record may be destroyed two years following the last date upon which administrative appeal rights may be available under the provisions of this Rule.

**Section 2.** From the time the master has been designated to preside until issuance of the master's proposed decision and the transfer of the proceeding to the board, the master shall have the following authority to:

- (a) Take or cause depositions to be taken;
- (b) Require the filing of memoranda of law and the presentation of oral argument with respect to any question of law upon which a ruling will be required;
- (c) Hold conferences for the settlement or simplification of the issues by consent of the parties;
- (d) Dispose of procedural requests;
- (e) Establish the time limitations for the filing of pleadings and set the times for any hearings;
- (f) Preside at and regulate the course of the hearing, maintain decorum, and exclude from the hearing any person engaged in contentious conduct or otherwise disrupting the proceedings;
- (g) Administer oaths and affirmations;
- (h) Examine witnesses;
- (i) Rule upon questions of evidence; and
- (j) Render interlocutory decisions which are appealable to the Board of Governors of which no fewer than three members shall constitute a quorum.

**Section 3.** The Alaska Rules of Civil Procedure shall not apply to proceedings held pursuant to Rule I-7.

**Section 4.** The applicant shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues, even if not covered in direct examination, to impeach any witness regardless of which party called the witness, and to rebut the evidence against the applicant. The applicant may be called and examined as if under cross-examination whether or not the applicant testified on the applicant's own behalf. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient standing alone to support a finding

unless it would be admissible over objections in civil actions. Irrelevant and unduly repetitious evidence shall be excluded. The sworn testimony of a witness subpoenaed under these rules shall be deemed testimony received in a judicial proceeding. In any action for defamation arising out of such sworn testimony, the witness shall be entitled to the defense of privilege to the same extent available to witnesses in judicial proceedings with the State of Alaska.

**Section 5.** The master shall prepare in writing a proposed decision supported by findings of fact and conclusions of law. In cases in which the majority of the board was not present during the evidentiary hearing, the master shall file the proposed decision with the Board and cause the entire record to be certified to the Board for decision. The record, upon payment of costs, shall be made available to the applicant. Copies of the proposed decision shall be served by the master on the applicant or the applicant's attorney of record and on the Executive Director, or the Bar Association's attorney of record. Within twenty days after service of the proposed decision, the applicant and the Executive Director or attorney for the Alaska Bar Association may file exceptions and briefs and, upon request, may appear and present oral argument to the Board. Copies of the exceptions and briefs, when filed, shall be served on the applicant or the Executive Director or attorney for the Bar Association, as the case may be.

**Section 6.** The Board may adopt the proposed findings, conclusions and decisions, ruling or order of the master in whole or in part or reject it in its entirety and adopt its own findings of fact, conclusions of law, decision or order.

**Section 7.** The findings of fact, conclusions of law and final decision of the Board shall be conclusive as to the matter alleged in applicant's statement of appeal unless an appeal to the Supreme Court shall be filed within 30 days following service upon applicant of the findings of fact, conclusions of law and decision in the manner provided by these rules.

(Added by SCO 341 § 2 effective April 1, 1979; amended by SCO 402 effective May 1, 1980; and by SCO 1153 effective July 15, 1994)

### **Rule 8. Supreme Court Review.**

**Section 1.** Any interlocutory order of the Board of Governors may be subject to review as provided by Part IV of the Alaska Rules of Appellate Procedure.

**Section 2.** An appeal to the Supreme Court may be filed by an applicant from a decision of the Board entered as provided in Section 7 of Rule 7.

**Section 3.** To the extent practicable, the procedure governing an appeal by an applicant for admission to the practice of law from a final decision of the Board of Governors shall be governed by the rules of practice in civil matters set forth in Parts II and V of the Alaska Rules of Appellate Procedure, except that for purposes of Appellate Rule 210(c)(2), excerpts of record must contain:

(a) the applicant's statement of points on appeal and any attachments;

(b) the Board's decision whether to grant a hearing on the applicant's appeal;

(c) the report of any master appointed to hear the applicant's appeal and any amended or supplemental reports;

(d) all briefing and transcripts of proceedings before the Board and the Board's findings of fact, conclusions of law, and final decision, and any amended or supplemental findings, conclusions, and final decisions;

(e) all master or Board orders or rulings sought to be reviewed;

(f) if the grant or denial of a motion is at issue in the appeal, the motion, the transcript of any discussion of the motion, and briefs, memoranda, and relevant portions of documents filed in support of or opposition to the motion; and

(g) specific portions of other documents in the record, including documentary exhibits, that are referred to in the brief and essential to the resolution of an issue on appeal.

**Section 4.** The filing fees normally charged for matters brought before the Supreme Court shall be applicable in all admissions cases.

(Added by SCO 161 effective immediately; and rescinded and repromulgated by SCO 341 § 3 effective April 1, 1979; amended by SCO 402 effective May 1, 1980; by SCO 450 effective November 24, 1980; and by SCO 1601 effective April 16, 2007)

## PART II. RULES OF DISCIPLINARY ENFORCEMENT

**\*EDITOR'S NOTE:** This part replaces former Part II, Grievances and Reinstatement, which was repealed by Supreme Court Order 176 dated February 26, 1974.

### A. MISCONDUCT

#### Rule 9. General Principles and Jurisdiction.

(a) **License.** The license to practice law in Alaska is a continuing proclamation by the supreme court of the State of Alaska (hereinafter 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 to act as an officer of the courts. As a condition of the privilege to practice law, it is the duty of every member of the Bar of this State to act at all times in conformity with the standards imposed upon members of the Alaska Bar Association (hereinafter the "Bar"). These standards include, but are not limited to, the Rules of Professional Conduct and the Code of Judicial Conduct that have been or may hereafter be adopted or recognized by the Court, and Ethics Opinions that have been or may hereafter be adopted by the Board of Governors of the Bar.

(b) **Duty to Assist.** Each member of the Bar has the duty to assist any member of the public in filing grievances against members of the Bar with the Bar Counsel of the Alaska Bar Association (hereinafter "Bar Counsel"). This duty may be fulfilled by assisting that person in preparing a grievance, contacting Bar Counsel regarding that person's grievance, or giving that person information for contacting Bar Counsel regarding a grievance. Each member of the Bar has the duty to assist Bar Counsel in the investigation, prosecution, and disposition of grievances filed with or by Bar Counsel. Each member has the duty to support the members of Area Discipline Divisions in the performance of their duties.

(c) **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, is subject to the jurisdiction of the Court, the Disciplinary Board of the Alaska Bar Association, and these Rules of Disciplinary Enforcement (hereinafter "Rules"). These Rules will not be interpreted to deny to any other court the powers necessary for that court to maintain control and supervision over proceedings conducted before it, such as the power of contempt.

(d) **Venue.** Disciplinary jurisdiction in this State will be divided into the following 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 any area in which the conduct under investigation occurred.

(e) **Attorney Roster.** Within 30 days of any change, each member of the Bar has the duty to inform the Bar or otherwise make available to the public his or her current mailing address and telephone number to which communications may be directed by clients and the Bar.

(Added by SCO 176 dated February 26, 1974; amended by SCO 345 § 1 effective April 1, 1979; and rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 658 effective March 15, 1986; by SCO 962 effective July 15, 1989; by SCO 1365 effective April 15, 2000; and by SCO 1518 effective October 15, 2004)

#### Rule 10. The Disciplinary Board of the Alaska Bar Association.

(a) **Definition.** The Board of Governors of the Bar, when meeting to consider grievance and disability matters, will be known as the Disciplinary Board of the Alaska Bar Association (hereinafter the "Board"). The President of the Board (hereinafter "President"), or a Board member at the President's direction, may direct the submission of any matter to the Board by mail, telegraph or telephone. The votes on any matter may be taken in person at a Board meeting, or by conference telephone call.

(b) **Quorum.** A majority of the appointed and elected members of the Board will constitute a quorum. A quorum being present, the Board will act only with the agreement of a majority of the members sitting.

(c) **Powers and Duties.** The Board will have the powers and duties to

(1) appoint and supervise Bar Counsel and his or her staff;

(2) supervise the investigation of all complaints against attorneys;

(3) retain legal counsel and authorize the Executive Director of the Bar (hereinafter "Director") to appoint Special Bar Counsel;

(4) hear appeals from the recommendations of Hearing Committees;

(5) review and modify the findings of fact, conclusions of law, and recommendations of Hearing Committees regardless of whether there has been an appeal to the Board, and without regard to the discipline recommended by the Hearing Committees;

(6) recommend discipline to the Court as provided in Rule 16(a)(1), (2), (3) or (4); order discipline as provided in Rule 16(a)(5); or order the grievance dismissed;

(7) in cases where the Board has recommended discipline as provided in Rule 16(a)(1), (2), (3), or (4), forward to the Court its findings of fact, conclusions of law, recommendation, and record of proceedings;

(8) impose reprimand as a Board upon a respondent attorney (hereinafter "Respondent") upon referral by Bar Counsel under Rule 22(d);

(9) maintain complete records of all discipline matters in which the Board or any of its members may participate, and furnish complete records to the Bar Counsel upon final disposition; these records are subject to the provisions of Rule 21 concerning public access and confidentiality;

(10) issue subpoenas requested by disciplinary authorities of other jurisdictions;

(11) adopt regulations not inconsistent with these Rules; and

(12) after reasonable notice and an opportunity to show cause to the contrary, impose monetary sanctions of not more than \$500.00 on any attorney appearing before the Board in a discipline or disability matter, whether the attorney is appearing as a respondent or in a representative capacity, for the attorney's failure to comply with the Rules of Disciplinary Enforcement or orders issued by or on behalf of the Board.

(d) **Judicial Members.** The Board will have the authority to recommend to the Commission on Judicial Conduct discipline for judicial members of the Bar.

(e) **Proceedings Against Board Members.** Investigations of grievances or disability proceedings against attorney members of the Board will be conducted by Special Bar Counsel in the same manner as investigations and proceedings against other Respondents, except that in the event a formal petition is filed, the Court will perform the duties and have the powers of the Board, as provided in these Rules.

(f) **Board Discipline Liaison.** The president will appoint on an annual basis one or more members of the Board to serve as the Board Discipline Liaison to Bar Counsel and Bar Counsel's staff. The Board Discipline Liaison will

(1) provide guidance and assistance to Bar Counsel and Bar Counsel's staff in implementing the Board's policies;

(2) have the duties provided in these Rules and as assigned by the President;

(3) be excused from sitting on any grievance or disability matter in which the Liaison has knowledge of the matter arising from the performance of the Liaison's duties;

(4) not be considered a member of the Disciplinary Board for the purposes of establishing a quorum when excused from sitting on a grievance or disability matter;

(5) have access to any grievance or disability matter necessary to perform the Liaison's duties or to assist Bar Counsel in making a decision on a grievance or disability matter;

(6) maintain the confidentiality of Bar Counsel's files as required by Rule 21(c).

(Added by SCO 176 dated February 26, 1974; amended by SCO 345 § 2 effective April 1, 1979; and rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 962 effective July 15, 1989; by SCO 1048 effective nunc pro tunc September 12, 1990; by SCO 1082 effective January 15, 1992; by SCO 1243 effective July 15, 1996; by SCO 1451 effective October 15, 2001; and by SCO 1756, effective October 14, 2011)

## **Rule 11. Bar 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 Bar Counsel of the Alaska Bar Association (hereinafter "Bar Counsel") who will serve at the pleasure of the Board. Bar Counsel will

(1) with the approval of the Board, employ attorneys as Assistant Bar Counsel and other staff as needed for the performance of his or her duties;

(2) supervise Assistant Bar Counsel and the staff of the discipline section of the Bar;

(3) with the approval of the Board, retain and supervise investigators;

(4) supervise the maintenance of any records;



- (5) aid members of the public in filing grievances;
- (6) process all grievances;
- (7) investigate alleged misconduct of attorneys;

(8) after finding probable cause to believe that client funds have not been properly handled, and with the approval of one Area Division member, verify the accuracy of a Respondent's bank accounts that contain, should contain, or have contained client funds; Bar Council will serve upon Respondent the results of the verification in writing; any costs associated with the examination or subsequent proceedings may be assessed against the Respondent when substantial irregularities in the accounts are found;

(9) dismiss grievances if it appears from the investigation that there is no probable cause to believe that misconduct has occurred;

(10) in his or her discretion, refer a grievance to the Attorney Fee Review Committee for proceedings under Part III of the Alaska Bar Rules, if the grievance concerns a fee dispute;

(11) in his or her discretion, refer a grievance to a mediator, for proceedings under Rule 13;

(12) in his or her discretion, upon a finding of misconduct and with the approval of one member of an Area Division, impose a written private admonition upon a Respondent;

(13) in his or her discretion, after seeking review in accordance with Rule 25(d), and upon a finding of probable cause to believe that misconduct has occurred, file a petition for formal hearing initiating public proceedings;

(14) in his or her discretion, appeal a recommendation of a Hearing Committee to the Board or, pursuant to Part III of the Rules of Appellate Procedure, file a petition to the Court for hearing on a recommendation or order of the Board;

(15) in the absence of a specific grievance, initiate investigation of any misconduct and prepare and file grievances in the name of the Bar;

(16) appear at reinstatement hearings requested by suspended or disbarred attorneys;

(17) report to the Commission on Judicial Conduct any grievance involving a judge, even if the grievance arises from the judge's conduct before (s)he became a judge, or from conduct unconnected with his or her judicial office;

(18) in his or her discretion, initiate a grievance proceeding against a Respondent who is the subject of disciplinary proceedings before the Commission on Judicial Conduct, whether or not a finding of misconduct has been made by the Commission;

(19) keep the Board fully informed about the progress of all matters in his or her charge;

(20) cooperate with individuals authorized by other jurisdictions to perform disciplinary functions for that jurisdiction; and

(21) perform other duties as set forth in these Rules or as assigned by the Board.

(b) **Grievance Forms.** Bar Council will furnish forms which may be used by any person to allege misconduct against an attorney. The forms will be available to the public through the office of the Bar and through the office of every clerk of court.

(c) **Dismissal of Grievance.** Any grievance dismissed by Bar Council will be the subject of a summary prepared by Bar Council and filed with the Board. The names of the parties involved will not be provided in the summary. Bar Council will communicate disposition of the matter promptly to the Complainant and Respondent.

(d) **Record Keeping.** This Bar Council will maintain records of all grievances processed and maintain statistical data reflecting

(1) the subject of the grievances received and acted upon;

(2) the status and ultimate disposition of each grievance; and

(3) the number of times each attorney is the Respondent in a grievance, including the subjects of the grievances, and the ultimate disposition of each.

(e) **Quarterly Report to Court and Board.** The Bar Council will provide a quarterly report to the Court and the Board providing information about the number of cases filed and closed during the quarter, the status of pending cases, the disposition of closed cases, and the subject of the grievances received. The names of the Respondents will not be provided in the report.

(f) **Delegation to Assistant Bar Counsel.** Bar Council may delegate such tasks as (s)he deems appropriate to Assistant Bar Counsel (hereinafter "Assistants"). Any reference in these Rules to Bar Council will include the Assistants.

(g) **Proceedings Against Bar Council.** Proceedings against Bar Council or any Assistant Bar Council will be conducted in the same manner as proceedings against any other Respondent. In these matters, the Board will appoint Special Bar Council who will perform the duties and have the powers of Bar Council as provided in these Rules.

(h) **Disposal of Files.** Bar Council will destroy files of disciplinary, disability, and reinstatement proceedings in accordance with Rule 32.

(Added by SCO 176 dated February 26, 1974; rescinded and repromulgated by SCO 345 § 3 effective April 1, 1979; and rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 658 effective March 15, 1986; by

SCO 962 effective July 15, 1989; and by SCO 1314 effective July 15, 1998)

**Rule 12. Area Discipline Divisions and Hearing Committees.**

(a) **Appointment of Area Division Members.** Members of Area Discipline Divisions (hereinafter “Area Divisions”) will be appointed by the chief justice under the procedure set out in this rule. One Area Division will be established in each area defined in Rule 9(d). Each Area Division will consist of

(1) not less than six members in good standing of the Bar, each of whom resided within the area of disciplinary jurisdiction for which he or she 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 disciplinary jurisdiction for which he or she is appointed, is a United States Citizen, is at least 25 years of age, and is a resident of the State of Alaska.

Area Division members will each serve a four year term, with each term to commence July 1 and expire on June 30th of the fourth year. No member will serve for more than two consecutive terms. A member whose term has expired prior to the disposition of a disciplinary or disability matter to which he or she 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. A member who has served two consecutive terms may be reappointed after the expiration of one year.

By May 15 of each year, the Board will send the chief justice lists of proposed Area Division members meeting these qualifications together with their resumes. The chief justice will appoint the members of the Area Discipline Divisions from these lists.

(b) **Powers and Duties of Area Division Members.** Upon selection and assignment by the Director, Area Division members will have the powers and duties to

(1) sit on Hearing Committees;

(2) review requests from Bar Counsel to impose private admonitions upon Respondents pursuant to Rule 22(d);

(3) hear appeals from complainants from dismissals of grievances pursuant to Rule 25(c);

(4) review Bar Counsel’s decision to file a formal petition pursuant to Rule 25(e);

(5) review challenges to Hearing Committee members pursuant to Section (h) of this Rule; and

(6) issue subpoenas and hear challenges to their validity pursuant to Rule 24(a).

(c) **Representation of Respondents Prohibited.** Members serving on Area Divisions will not represent a Respondent in disability or grievance matters during his or her

term.

(d) **Failure to Perform.** The chief justice has the power to remove an Area Division member for good cause. The chief justice will appoint a replacement attorney or public member to serve the balance of the term of the removed member.

(e) **Assignment of Hearing Committee Members.** The Director will select and assign members of an Area Division to a Hearing Committee of not less than two attorney members and one public member. In addition, the Director will appoint an attorney member as chair of the Hearing Committee.

(f) **Hearing Committee Quorum.** Three members of a Hearing Committee will constitute a quorum, one of whom will be a public member. The Hearing Committee chair will vote except when an even number of Hearing Committee members is sitting. Each Hearing Committee will act only with the agreement of a majority of its voting members sitting for the matter before it.

(g) **Conflict of Interest.** A Hearing Committee member may 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 the Respondent by blood or affinity within the third degree;

(4) the Respondent has retained the Hearing Committee member as his or her attorney or has been professionally counseled by him or her in any matter within two years preceding the filing of the formal petition before the Committee; or

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

(h) **Challenged Member.** Any challenge for cause to an Area Division member assigned to a Hearing Committee must be made by either Respondent or Bar Counsel within 10 days following notice of the assignment, unless new evidence is discovered which establishes grounds for a challenge for cause. The challenge will be ruled upon by an Area Division member selected by the Director from the Area Division from which the Hearing Committee was chosen. If the Area Division member finds the challenge well taken, he or she will notify the Director, who will assign another member of the Area Division to the Hearing Committee. If a quorum exists in the absence of the challenged member, the Director need not assign a replacement.

Within 10 days of the notice of assignment of Hearing Committee members, a Respondent may file one peremptory challenge and the Bar Counsel may file one peremptory challenge. The Director will at once, and without requiring proof, relieve the challenged member of his or her obligation to participate, and the Director will assign another member of the Area Division to the Hearing Committee. If a quorum exists in the absence of the challenged member, the Director need not appoint a replacement.

(i) **Powers and Duties of Committees.** Hearing Committees will have the powers and duties to

(1) swear witnesses, who will be examined under oath or affirmation, and conduct hearings on formal charges of misconduct referred to them by Bar Counsel;

(2) acting as a body, or through a single member, issue subpoenas and consider challenges to their validity;

(3) direct, in their discretion, the submission of proposed findings of fact, conclusions of law, recommendations, and briefs; and

(4) submit a written report to the Board. This report will contain the Hearing Committee's findings of fact, conclusions of law, and recommendation, and will be submitted together with the record, including any briefs submitted and a transcript of the proceedings before it.

(j) **Proceedings Against Division Members.** Proceedings against attorney members of Area Divisions will be conducted in the same manner as proceedings against any other Respondent. In the event a formal petition is filed against an Area Division member, or the attorney member is placed on disability inactive status, (s)he will not be assigned to any future matters pending disposition of the proceeding. If a finding of misconduct or disability is made against an attorney Area Division member, (s)he will be removed from the Division in accordance with Section (d) of this Rule.

(k) **Procedure for Selection and Assignment of Area Division Members by the Director.** The Director will select and assign Area Division Members as required by this rule from a roster of the members appointed by the chief justice.

(Added by SCO 176 dated February 26, 1974; amended by SCO 345 § 4 effective April 1, 1979; and rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 962 effective July 15, 1989; by SCO 1082 effective January 15, 1992; by SCO 1244 effective July 15, 1996; by SCO 1451 effective October 15, 2001; by SCO 1809 effective October 15, 2013; and by SCO 1815 effective April 15, 2014)

### **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.

(Added by SCO 176 dated February 26, 1974; amended by SCO 233(2) effective April 1, 1976; by SCO 345 § 5 effective April 1, 1979; by SCO 403 effective May 1, 1980; by SCO 467 effective June 1, 1981; and rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 962 effective July 15, 1989; by SCO 1314 effective July 15, 1998; by SCO 1705 effective October 15, 2009)

#### **Rule 14. Executive Director of Alaska Bar Association.**

The Executive Director of the Alaska Bar Association (hereinafter "Director"), or an assistant designated by the Director, has the administrative powers and duties to

(1) appoint and supervise an administrative staff for purposes of maintaining documents generated by disciplinary, disability, and reinstatement proceedings;

(2) on behalf of Hearing Committees and the Disciplinary Board

(A) accept petitions for formal hearing;

(B) accept Board and Hearing Committee reports, records, pleadings, and other documents generated in the course of disciplinary, disability, and reinstatement proceedings; and

(C) act as clerk in calendaring and scheduling hearing matters;

(3) select and assign not less than three members of Area Divisions to serve on Hearing Committees in accordance with Rule 12(e), and to appoint an attorney as chair of the Hearing Committee;

(4) replace and assign Hearing Committee members when necessary in accordance with Rule 12(h);

(5) as set forth in these Rules, select members from the Area Divisions for purposes of

(A) consultation with Bar Counsel;

(B) appeals from or review of Bar Counsel determinations; and

(C) review of challenges to Hearing Committee members; and

(6) perform other duties for and on behalf of the Board as set forth in these Rules or as assigned by the President or the Board.

(Added by SCO 176 dated February 26, 1974; and amended by SCO 233(3) and (4) effective April 1, 1976; by SCO 294 effective March 1, 1978; by SCO 345 § 6 effective April 1, 1979; by SCO 353 effective April 1, 1979; by SCO 404, effective, nunc pro tunc, January 1, 1980; by SCO 467 effective June 1, 1981; and rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 962 effective July 15, 1989)

#### **Rule 15. Grounds For Discipline.**

(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:

(1) conduct which results in conviction of a serious crime as defined in Rule 26(b);

(2) conduct which results in attorney or judicial discipline in any other jurisdiction, as provided in Rule 27;

(3) knowing misrepresentation of any facts or circumstances surrounding a grievance;

(4) failure to answer a grievance, failure to answer a formal petition for hearing, or failure to furnish information or respond to a request from the Board, Bar Counsel, an Area Division member, or a Hearing Committee in conforming with any of these Rules;

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

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

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

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

#### **(b) Unauthorized Practice of Law.**

(1) For purposes of the practice of law prohibition for disbarred and suspended attorneys in subparagraph (a)(6) of

this rule, except for attorneys suspended solely for non-payment of bar fees, “practice of law” is defined as:

(A) holding oneself out as an attorney or lawyer authorized to practice law;

(B) rendering legal consultation or advice to a client;

(C) appearing on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate judge, commissioner, hearing officer, or governmental body which is operating in its adjudicative capacity, including the submission of pleadings;

(D) appearing as a representative of the client at a deposition or other discovery matter;

(E) negotiating or transacting any matter for or on behalf of a client with third parties; or

(F) receiving, disbursing, or otherwise handling a client’s funds.

(2) For purposes of the practice of law prohibition for attorneys suspended solely for the non-payment of fees and for inactive attorneys, “practice of law” is defined as it is in subparagraph (b)(1) of this rule, except that these persons may represent another to the extent that a layperson would be allowed to do so.

**(c) Employment of Disbarred, Suspended, or Resigned Attorney.**

(1) For purposes of this rule:

(A) “disbarred or suspended attorney” means an attorney who has been disbarred or suspended from the practice of law in any jurisdiction;

(B) “employ” means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;

(C) “involuntarily inactive attorney” means an attorney who has been transferred to interim disability inactive status or to disability inactive status under Alaska Bar Rule 30 or under a comparable rule in another jurisdiction; and

(D) “resigned attorney” means an attorney who has resigned from the bar association of any jurisdiction while disciplinary charges are pending.

(2) A member shall not employ, associate professionally with, or aid a person the member knows or reasonably should know is a disbarred, suspended, resigned, or involuntarily inactive attorney to perform the following on behalf of the member’s client:

(A) render legal consultation or advice to the client;

(B) appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate judge, commissioner, or hearing officer;

(C) appear as a representative of the client at a deposition or other discovery matter;

(D) negotiate or transact any matter for or on behalf of the client with third parties;

(E) receive, disburse, or otherwise handle the client’s funds; or

(F) engage in activities which constitute the practice of law.

(3) A member may employ, associate professionally with, or aid a disbarred, suspended, resigned, or involuntarily inactive attorney to perform research, drafting or clerical activities, including but not limited to:

(A) legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;

(B) direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or

(C) accompanying an active member in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active member who will appear as the representative of the client.

(4) Prior to or at the time of employing a person the member knows or reasonably should know is a disbarred, suspended, resigned, or involuntarily inactive attorney, the member shall serve upon the Alaska Bar Association written notice of the employment, including a full description of such person’s current bar status. The written notice shall also list the activities prohibited in paragraph (c)(2) and state that the disbarred, suspended, resigned, or involuntarily inactive attorney will not perform such activities. The member shall serve similar written notice upon each client on whose specific matter such person will work, prior to or at the time of employing such person to work on the client’s specific matter. The member shall obtain proof of service of the client’s written notice and shall retain such proof and a true and correct copy of the client’s written notice for two years following termination of the member’s employment with the client.

(5) A member may, without client or Bar Association notification, employ a disbarred, suspended, resigned, or involuntarily inactive attorney whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.

(6) Upon termination of the disbarred, suspended, resigned or involuntarily inactive attorney, the member shall promptly serve upon the Bar Association written notice of the termination.

(Added by SCO 176 dated February 26, 1974; amended by SCO 304 effective March 20, 1978; by SCO 345 § 7 effective

April 1, 1979; by SCO 405 effective, nunc pro tunc, January 1, 1980; by SCO 467 effective June 1, 1981; and rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 658 effective March 15, 1986; by SCO 888 effective July 15, 1988; by SCO 941 effective January 15, 1989; by SCO 962 effective July 15, 1989; by SCO 1017 effective January 15, 1990; by SCO 1156 effective July 15, 1994; by SCO 1314 effective July 15, 1998; by SCO 1320 effective July 15, 1998; corrected May 1998; and by SCO 1829 effective October 15, 2014)

**Rule 15.1. Maintenance of Trust Funds in Financial Institutions That Agree to Provide Overdraft Notification.**

**(a) Clearly Identified Trust Accounts in Financial Institutions Required.**

(1) Lawyers subject to Alaska Rule of Professional Conduct 1.15 shall deposit all funds held in trust in accounts clearly identified as “trust” or “escrow” accounts, referred to herein as “trust accounts,” and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, executor, or otherwise.

(2) Lawyers subject to Alaska Rule of Professional Conduct 1.15 shall maintain and preserve for a period of at least five years after termination of the representation, the records of the accounts, including checkbooks, canceled checks, check stubs, vouchers, ledgers, journals, closing statements, accountings or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries, and disbursements of the funds or other property of a client.

**(b) Overdraft Notification Agreement Required.** A financial institution may be a depository for lawyer trust accounts if it agrees in a form provided by the Bar Association to report to Bar Counsel whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether the instrument is honored. No trust account shall be maintained in any financial institution that does not agree to so report. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon 30 days’ notice in writing to the Bar Counsel.

**(c) Overdraft Reports.** The overdraft notification reports made by the financial institution shall be in the following format:

(1) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(2) in the case of an instrument that is presented against insufficient funds but which instrument is honored, the report

shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

**(d) Timing of Reports.** Reports under subsection (c) shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

**(e) Consent By Lawyers.** Lawyers subject to Alaska Rule of Professional Conduct 1.15 shall be conclusively deemed to have consented to the reporting and production requirements mandated by this rule. A lawyer shall sign a waiver of confidentiality under AS 06.01.028.

**(f) Costs.** Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule.

**(g) Definitions.** For purposes of this rule:

(1) “Financial institution” includes a bank, savings and loan association, credit union, savings bank, and any other business or person that accepts for deposit funds held in trust by lawyers;

(2) “Properly payable” refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction; and

(3) “Notice of dishonor” refers to the notice that a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument that the institution dishonors.

(Added by SCO 1706 dated April 15, 2014.)

**Rule 16. Types of Discipline and Costs.**

**(a) Discipline Imposed by the Court or Board.** A finding of misconduct by the Court or Board will be grounds for

(1) disbarment by the Court; or

(2) suspension by the Court for a period not to exceed five years; or

(3) probation imposed by the Court; or

(4) public censure by the Court; or

(5) reprimand by the Disciplinary Board.

**(b) Discipline Imposed by the Board or Bar Counsel.** When Bar Counsel has made a finding that misconduct has occurred, the following discipline may be imposed:

(1) reprimand in person by the Board, pursuant to Rule 10(c)(8); or

(2) written private admonition by Bar Counsel, pursuant to Rule 11(a) (12).

(c) **Restitution; Reimbursement; Costs.** When a finding of misconduct is made, in addition to any discipline listed above, the Court or the Board may impose the following requirements against the Respondent:

- (1) restitution to aggrieved persons or organizations;
- (2) reimbursement of the Lawyers' Fund for Client Protection; or
- (3) payment of the costs, including attorney's fees, of the proceedings or investigation or any parts thereof. In imposing costs and fees, consideration shall be given to the following factors:
  - (A) the complexity of the disciplinary matter;
  - (B) the duration of the case;
  - (C) the reasonableness of the number of hours expended by Bar Counsel and the reasonableness of the costs incurred;
  - (D) the reasonableness of the number of Bar Counsel used;
  - (E) Bar Counsel's efforts to minimize fees;
  - (F) the reasonableness of the defenses raised by the Respondent;
  - (G) vexatious or bad faith conduct by the Respondent;
  - (H) the relationship between the amount of work performed by Bar Counsel and the significance of the matters at stake;
  - (I) the financial ability of the Respondent to pay attorney's fees; and
  - (J) the existence of other equitable factors deemed relevant.

(d) **Conditions.** Written conditions may be attached to a reprimand or to a private admonition. Failure to comply with such conditions will be grounds for reconsideration of the matter by the Board or Bar Counsel.

(Added by SCO 176 dated February 26, 1974; amended by SCO 345 § 8 effective April 1, 1979; by SCO 438 effective November 1, 1980; and rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 658 effective March 15, 1986; by SCO 962 effective July 15, 1989; by SCO 1037 effective January 15, 1991; by SCO 1048 effective nunc pro tunc September 12, 1990; by SCO 1233 effective July 15, 1996; and by SCO 1313 effective July 15, 1998)

### **Rule 17. Immunity.**

(a) **General Immunity.** Members of the Board, members of Area Divisions, Bar Counsel, Special Bar Counsel, the Executive Director, Trustee Counsel,

Conciliators, and all Bar staff are immune from suit for conduct in the course and scope of their official duties as set forth in these Rules.

(b) **Witness Immunity.** The Court or its designee may, in its discretion, grant immunity from criminal prosecution to witnesses in disciplinary, disability, or reinstatement proceedings upon application by the Board, Bar Counsel, or counsel for Respondent, and after receiving the consent of the appropriate prosecuting authority.

(Added by SCO 176 dated February 26, 1974; amended by SCO 345 § 9 effective April 1, 1979; and rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 658 effective March 15, 1986; and by SCO 962 effective July 15, 1989)

### **Rule 18. Statute of Limitations.**

Grievances against Respondents will be filed within five years of the time that the Complainant discovers or reasonably should discover the misconduct. This Rule will, however, be interpreted to allow traditional principles of tolling, equity, and due process.

(Added by SCO 176 dated February 26, 1974; amended by SCO 345 § 10 effective April 1, 1979; and rescinded and repromulgated by SCO 614 effective January 1, 1985)

### **Rule 19. Refusal of Complainant to Proceed.**

The unwillingness of a Complainant to continue his or her grievance, the withdrawal of the grievance, a compromise between the Complainant and the Respondent, or restitution by the Respondent may, but need not in and of itself, justify abatement of a disciplinary investigation or proceeding.

(Added by SCO 176 dated February 26, 1974; amended by SCO 345 § 11, effective April 1, 1979; and rescinded and repromulgated by SCO 614 effective January 1, 1985)

### **Rule 20. Matters Related to Pending Civil or Criminal Litigation.**

Prosecution of grievances involving material allegations which are substantially similar to the material allegations of criminal or civil litigation pending in a court will not be deferred unless the Board, in its discretion, and for good cause shown, authorizes deferment. In the event deferment of a disciplinary investigation or proceeding is authorized by the Board, the Respondent will make all reasonable efforts to obtain a prompt trial and disposition of the pending litigation. In the event the litigation is unreasonably delayed, the Board may direct, upon motion, that the investigation and any subsequent disciplinary proceedings be conducted promptly.

The acquittal of the Respondent on criminal charges or a verdict or judgment in his or her favor in civil litigation involving substantially similar material allegations will not in and of itself justify abatement of a disciplinary investigation or proceeding predicated upon the same material allegations.

(Added by SCO 176 dated February 26, 1974; amended by SCO 345 § 12 effective April 1, 1979; and rescinded and repromulgated by SCO 614 effective January 1, 1985)

**Rule 21. Public Access to Disciplinary Proceedings.**

(a) **Discipline and Reinstatement Proceedings.** After the filing of a petition for formal hearing, hearings held before either a Hearing Committee or the Board will be open to the public. This Rule will not be interpreted to allow public access to disability proceedings described in Rule 30.

(b) **Deliberations.** The deliberations of any adjudicative body will be kept confidential.

(c) **Bar Counsel's Files.** All files maintained by Bar Counsel and staff will be confidential and are not to be reviewed by any person other than Bar Counsel or Area Division members appointed for purposes of review or appeal under these Rules. This provision will not be interpreted to:

(1) preclude Bar Counsel from introducing into evidence any documents from his or her files;

(2) preclude Bar Counsel from providing the Board, the Court, or the public with statistical information compiled pursuant to Rule 11(e), provided that the name of the Respondent is kept confidential;

(3) deny a complainant information regarding the status or disposition of his or her grievance;

(4) deny the public facts regarding the stage of any proceeding or investigation concerning a Respondent's conviction of a crime, except as provided under Rule 26(i);

(5) deny the Alaska Judicial Council confidential information about attorney applicants for judicial vacancies;

(6) preclude a court from reviewing in camera a confidential file upon a discovery request made pursuant to Criminal Rule 16(b)(7), and from exercising discretion as to whether to release relevant information from the file to counsel pursuant to Criminal Rule 16(d)(3); or

(7) prevent the Board Discipline Liaison from having access to any and all files maintained by Bar Counsel as necessary in the performance of the Liaison's duties.

(d) **Director's File.** The file maintained by the Director, acting in his or her capacity as clerk, will be open for public review.

(Added by SCO 176 dated February 26, 1974; amended by SCO 345 § 13 effective April 1, 1979; rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 962 effective July 15, 1989; by SCO 963 effective July 15, 1989; by SCO 1043 effective January 15, 1991; by SCO 1082 effective January 15, 1992; and by SCO 1811 effective April 15, 2014)

**Rule 22. Procedure.**

(a) **Grievances.** Grievances will be in writing, signed and verified by the Complainant, and contain a clear statement of the details of each act of alleged misconduct, including the approximate time and place of each. Grievances will be filed with Bar Counsel. Bar Counsel will review the grievance filed to determine whether it is properly completed and contains allegations that warrant investigation. Bar Counsel may require the Complainant to provide additional information and may request a voluntary verified response from the Respondent prior to accepting a grievance.

If Bar Counsel determines that the allegations contained in the grievance do not warrant an investigation, Bar Counsel will so notify the Complainant and Respondent in writing. Complainant may file a request for review of the determination within 30 days of the date of Bar Counsel's written notification. The request shall be reviewed by the Board Discipline Liaison, who may affirm Bar Counsel's decision not to accept the grievance for investigation or may direct that an investigation be opened as to one or more of the allegations in the grievance.

If a grievance is accepted for investigation, Bar Counsel will serve a copy of the grievance upon the Respondent for a response. Bar Counsel may require the Respondent to provide, within 20 days of service, verified full and fair disclosure in writing of all facts and circumstances pertaining to the alleged misconduct. Misrepresentation in a response to Bar Counsel will itself be grounds for discipline. Failure to answer within the prescribed time, or within such further time that may be granted in writing by Bar Counsel, will be deemed an admission to the allegations in the grievance, and will result in a petition for immediate administrative suspension from the practice of law as provided in Bar Rule 61(e).

For the purposes of this Rule, a grievance or response is "verified" if it is accompanied by a signed statement that the writing is true and correct to the best knowledge and belief of the writer.

(b) **Confidentiality.** Complainants and all persons contacted during the course of an investigation have a duty to maintain the confidentiality of discipline and disability proceedings prior to the initiation of formal proceedings subject to Bar Rule 21(c). It will be regarded as contempt of court to breach this confidentiality in any way. It will not be regarded as a breach of confidentiality for a person so contacted to consult with an attorney. A Respondent may waive confidentiality in writing and request disclosure of any information pertaining to the Respondent to any person or to the public.

(c) **Dismissal Before Formal Proceedings.** If after investigation it appears that there is no probable cause to believe that misconduct has occurred, Bar Counsel may dismiss the grievance.

(d) **Imposition of Private Admonition or Reprimand.** Upon a finding of misconduct, and with the approval of one Area Division member, Bar Counsel may impose a written



private admonition upon a Respondent. A Respondent will not be entitled to appeal a private admonition by Bar Counsel but may demand, within 30 days of receipt of the admonition, that a formal proceeding be instituted against him or her before a Hearing Committee. If Respondent demands a formal proceeding, the admonition will be vacated and Bar Counsel will proceed under Section (e) of this Rule.

In the discretion of Bar Counsel, (s)he may refer a matter to the Board for approval and imposition of a reprimand by the Board, provided that the Respondent has, under Section (h) of this Rule, consented to the discipline before the Board.

(e) **Formal Proceedings.** Upon a finding of misconduct, and after seeking review in accordance with Rule 25(d), Bar Counsel may initiate discipline proceedings by filing with the Director a petition for formal hearing which specifically sets forth the charge(s) of misconduct. A copy of the petition will be served upon the Respondent.

Respondent will be required to file the original answer with the Director, and serve a copy upon Bar Counsel, within 20 days after the service of the petition for formal hearing. Should Respondent fail to timely answer, the charges will be deemed admitted without need of any further action by Bar Counsel.

Charges before a Hearing Committee will be presented by Bar Counsel. Bar Counsel will have the burden at any hearing of demonstrating by clear and convincing evidence that the Respondent has, by act or omission, committed misconduct as provided in Rule 15.

Bar Counsel may amend a petition for formal hearing at any time before an answer is filed. Bar Counsel may amend a petition for formal hearing after an answer is filed only by leave of the Hearing Committee or by written consent of the Respondent. Leave to amend will be freely given when justice requires. A Respondent will file an answer to an amended petition for formal hearing within the time remaining to file an answer to the original petition, or within 10 days after service of the amended petition, whichever is later.

(f) **Assignment to Hearing Committee.** In accordance with Rule 12(e), a petition for formal hearing will be assigned by the Director to a Hearing Committee after an answer is filed or after the expiration of the time for filing an answer, unless Respondent tenders conditional consent to a specific discipline. The notice of assignment to Hearing Committee will indicate the names of the members of the Hearing Committee assigned to hear the matter and will advise Respondent that (s)he is entitled to

- (1) be represented by counsel;
- (2) examine and cross-examine witnesses;
- (3) present evidence in his or her own behalf;
- (4) have subpoenas issued in his or her behalf; and

(5) challenge preemptorily and for cause members of the Hearing Committee, as provided in Rule 12(h).

(g) **Pre-Hearing Conference.** A pre-hearing conference may be convened by the Chair of the Hearing Committee or the Director for stipulation as to matters of fact, simplification of issues, scheduling of pre-hearing motions, the establishment of a date for the formal hearing, and other similar matters which may be resolved prior to hearing.

(h) **Discipline by Consent.** Respondent may tender a conditional consent to a specific discipline contained in Rule 16. This conditional consent will be submitted to Bar Counsel for his or her approval. If accepted by Bar Counsel, (s)he will refer the conditional admission to the Board for its approval or rejection of the requested discipline.

The consenting Respondent will present to the Board an affidavit stating that (s)he desires to consent to the specific discipline and that

- (1) his or her consent is freely and voluntarily given and is not the subject of any coercion or duress; and
- (2) (s)he admits to the charges stated in the grievance.

Acceptance of the conditional consent by the Board will be subject to Court approval if the specific discipline to be imposed includes discipline provided in Rule 16(a) (1), (2), (3) and (4). Any conditional admission rejected by the Board or the Court will be withdrawn and Bar Counsel will proceed under Section (e) of this Rule. Any admission made by Respondent in a conditional consent rejected by the Board or the Court cannot be used against the Respondent in any subsequent proceeding.

If the Court or the Board rejects a conditional consent, the matter will be remanded to the Hearing Committee, if any, which was appointed to hear the petition. If no Hearing Committee has been appointed, the Director will appoint one in accordance with Section (f) of this Rule.

(i) **Notice of Hearing.** The Director will serve a notice of formal hearing upon Respondent, or his or her counsel, indicating the date and place of the formal hearing.

(j) **Rules of Evidence.** The rules of evidence applicable in administrative hearings will apply in all hearings before Hearing Committees. No new evidence shall be allowed by the Committee chair after the hearing without notice to the opposing party and an opportunity to respond.

(k) **Motions, Findings, Conclusions, Recommendation.** Hearing Committees may consider and rule on pre-hearing motions. On procedural motions, the Committee chair will rule; on dispositive or substantive motions, the full Hearing Committee will rule. The Hearing Committee may direct either or both parties to submit proposed findings of fact, conclusions of law, and a recommendation after the formal hearing, which will be filed within 10 days of the date of the request by the Committee.

(l) **Report of Hearing Committee and Appeal.** Within 30 days of the conclusion of a formal hearing, the Hearing Committee will submit its report to the Board in accordance with 12(i) (4), unless an extension of time is granted by the

President of the Board. Within 10 days of service of the report, Bar Counsel or Respondent may appeal the Hearing Committee's findings of fact, conclusions of law, and recommendation and request oral argument before the Board, as provided in Rule 25(f). The Director will thereafter set the dates for submission of briefs and oral argument before the Board.

(m) **Oral Argument.** Oral argument before the Board will be waived unless either Bar Counsel or Respondent requests argument as provided in Section (1) of this Rule.

(n) **Board Recommendation or Order.** The Board will review the Hearing Committee report and record and enter an appropriate recommendation or order as provided in Rule 10(c) (4), (5), and (6). If the Board has recommended discipline as provided in Rule 16(a) (1), (2), (3) or (4), it will submit to the Court its findings of fact, conclusions of law, recommendation, and the record. The record will include a transcript of all proceedings before the Board as well as the Hearing Committee report.

(o) **Notification of Disposition.** The Director will promptly notify all parties of the Board's action.

(p) **Appeal from Board Order or Recommendation.** Bar Counsel or Respondent may appeal from an order or recommendation of the Board made under Section (n) of this Rule by filing a notice of appeal with the Court within 10 days of service of the Board's order or recommendation. Parts II and V of the Alaska Rules of Appellate Procedure will govern appeals filed under this Rule, except that for purposes of Appellate Rule 210(c)(2), excerpts of record must contain:

(1) the petition for formal hearing and answer and any amended petition or answer;

(2) the Hearing Committee report and any amended or supplemental report;

(3) all briefing and transcripts of proceedings before the Board and the Board's findings of fact, conclusions of law, and recommendation, and any amended or supplemental findings of fact, conclusions of law, and recommendation;

(4) all Hearing Committee or Board orders or rulings sought to be reviewed;

(5) if the grant or denial of a motion is at issue in the appeal, the motion, the transcript of any discussion of the motion, and briefs, memoranda, and relevant portions of documents filed in support of or in opposition to the motion; and

(6) specific portions of other documents in the record, including documentary exhibits, that are referred to in the brief and essential to the resolution of an issue on appeal.

(q) **Record of Proceedings.** A complete stenographic or electronic record of all proceedings before Hearing Committees and before the Board will 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.

(r) **Review by Supreme Court.** The Court will review findings of fact, conclusions of law, and recommendations of discipline made by the Board pursuant to Section (n) of this Rule. The Court will decide the grounds for discipline, pursuant to Rule 15; the type of discipline to be imposed, pursuant to Rule 16(a); and any requirements to be imposed, pursuant to Rule 16(c). When no appeal has been taken pursuant to Section (p) of this Rule, and if the Court determines that discipline different than that recommended by the Board may be warranted, the Court will so notify the parties and give them an opportunity to be heard.

(Added by SCO 176 dated February 26, 1974; amended by SCO 345 § 14 effective April 1, 1979; and rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 658 effective March 15, 1986; by SCO 962 effective July 15, 1989; by SCO 963 effective July 15, 1989; by SCO 1048 effective nunc pro tunc September 12, 1990; by SCO 1153 effective July 15, 1994; by SCO 1454 effective October 15, 2003; by SCO 1601 effective April 16, 2007; and by SCO 1707 effective October 15, 2013)

### Rule 23. Service.

All service of petitions will be accomplished in accordance with Rule 4 of the Alaska Rules of Civil Procedure. All service of pleadings, motions, and other documents contemplated by any requirement of these Rules will be accomplished in accordance with Rule 5 of the Alaska Rules of Civil Procedure.

(Added by SCO 176 dated February 26, 1974; amended by SCO 345 § 15 effective April 1, 1979; by SCO 432 effective November 1, 1980; and rescinded and repromulgated by SCO 614 effective January 1, 1985)

### Rule 24. Discovery; Subpoena Power; Witness Compensation.

(a) **Subpoenas during Investigation.** At any stage of an investigation, only the Bar Counsel will have the right to summon witnesses and require the production of records by issuance of subpoenas. Subpoenas will be issued at the request of Bar Counsel by any member of any Area Division. Subpoenas will be served in accordance with Rule 23. Any challenge to the validity of a subpoena so issued will be heard and determined by any member of any Area Division. All subpoenas issued under this Section will clearly indicate on their face that they are issued in connection with a confidential investigation and that it is regarded as contempt of court for any member of the Alaska Court System, a process server, or a person subpoenaed to in any way breach the confidentiality of the investigation. It will not be regarded as a breach of confidentiality for a person subpoenaed to consult with an attorney.

(b) **Subpoenas during Formal Proceedings.** Both Bar Counsel and Respondent have the right to summon witnesses before a Hearing Committee and to require production of

records before the Committee by issuance of subpoenas. Subpoenas will be issued at the request of Bar Counsel or Respondent by any member of the Hearing Committee. Subpoenas will be served in accordance with Rule 23. Any challenge to the validity of a subpoena will be heard and determined by the chair of the Hearing Committee or any Committee member designated by the chair.

(c) **Enforcement of Subpoenas.** Subpoenas issued pursuant to this Rule will be enforceable in any superior court in this State.

(d) **Discovery.** Requests for production, requests for admissions, and the taking of deposition testimony may ensue for a period of 60 days following the filing of Respondent's answer to a petition for formal hearing. Both Bar Counsel and Respondent will be afforded reciprocal discovery under this Rule of all matters not privileged. Any disputes under this Section will be ruled upon by the chair of the Hearing Committee. Any discovery ruling is interlocutory and may only be appealed in accordance with Rule 25(a). The Alaska Rules of Civil Procedure, to the extent applicable, will govern discovery under this Rule.

Deposition testimony may be taken by stenographic, electronic, or video means. The Court will furnish, at its expense, the necessary equipment, operator, and stenographic services for recording and transcription of deposition testimony taken by Bar Counsel.

(e) **Witness Compensation.** Witnesses may be compensated in accordance with the administrative rules of court. Respondents will not be paid witness fees for attendance at hearings.

(Added by SCO 176 dated February 26, 1974; repromulgated by SCO 345 § 16 effective April 1, 1979; and rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 962 effective July 15, 1989)

**Note:** Ch. 75 SLA 2002 (HB 106), Section 4, adds a new section to AS 06.01 relating to the confidentiality of depositor and customer records at banking and other financial institutions. According to Section 56 of the Act, AS 06.01.028(b) has the effect of changing Civil Rule 45, Criminal Rules 17 and 37, and Alaska Bar Rule 24 by requiring certain court orders compelling disclosure of records to provide for reimbursement of a financial institution's reasonable costs of complying with the order.

## **Rule 25. Appeals; Review of Bar Counsel Determinations.**

(a) **Interlocutory Appeal.** Only upon the conditions and subject to the Rules of Procedure set forth in Part IV of the Alaska Rules of Appellate Procedure may parties petition the Court for review of an interlocutory order, recommendation, or decision of

- (1) any member of any Area Division;
- (2) a Hearing Committee or a single member thereof; or

(3) the Board or a single member thereof.

(b) **Admonition Not Appealable.** A Respondent cannot appeal the imposition of a written private admonition. In accordance with Rule 22(d), (s)he may request initiation of formal proceedings before a Hearing Committee within 30 days of receipt of the admonition.

(c) **Appeal by Complainant from Bar Counsel's Decision to Dismiss.** A Complainant may appeal the decision of the Bar Counsel to dismiss a complaint within 15 days of receipt of notice of the dismissal. The Director will appoint a member of an Area Division of the appropriate area of jurisdiction to review the Complainant's appeal. The appointed Area Division member may reverse the decision of Bar Counsel, affirm the decision, or request additional investigation. This Division member will be disqualified from any future consideration of the matter should formal proceedings be initiated.

(d) **Review of Bar Counsel's Decision to File Formal Petition.** A decision by Bar Counsel to initiate formal proceedings before a Hearing Committee will be reviewed by the Board Discipline Liaison prior to the filing of a formal petition. The Board Discipline Liaison will, within 20 days, approve, modify, or disapprove the filing of a petition, or order further investigation.

(e) **Appeal by Bar Counsel.** Bar Counsel may appeal the decision made under Section (d) of this Rule within 10 days following receipt of the Board Discipline Liaison's decision. The Director will designate an Area Division Member to hear this appeal. The decision of the Area Division Member will be final.

(f) **Appeal of Hearing Committee Findings, Conclusions, and Recommendation.** Within 10 days of service of the Hearing Committee's report to the Board, as set forth in Rule 22(1), the Respondent or Bar Counsel may appeal the findings of fact, conclusions of law, or recommendation by filing with the Board, and serving upon opposing party, a notice of appeal. Oral argument before the Board will be waived unless either Bar Counsel or Respondent requests argument as provided in Section (l) of Rule 22.

(g) **Respondent Appeal from Board Recommendation or Order.** Respondent may appeal from a recommendation or order of the Board made under Rule 22(n) by filing a notice of appeal with the Court within 10 days of service of the Board's recommendation or order. Part II of the Rules of Appellate Procedure will govern appeals filed under this Rule.

(h) **Bar Counsel Petition for Hearing of a Board Recommendation or Order.** Bar Counsel may petition from a recommendation or order of the Board made under Rule 22(n) by filing a petition for hearing with the Court within 10 days of service of the Board's recommendation or order. Part III of the Rules of Appellate Procedure will govern petitions filed under this Rule.

(Added by SCO 176 dated February 26, 1974; amended by SCO 345 § 17 effective April 1, 1979; and rescinded and repromulgated by SCO 614 effective January 1, 1985;

amended by SCO 658 effective March 15, 1986; by SCO 962 effective July 15, 1989; and by SCO 1082 effective January 15, 1992)

**Rule 26. Criminal Conviction; Interim Suspension.**

**(a) Interim Suspension for Criminal Conviction.**

Upon the filing with the Court of a certificate that an attorney has been convicted of a serious crime as defined in Section (b) of this Rule, the Court will issue an order directing the attorney to inform the Court within seven days from service of the order of any good cause why interim suspension should not be ordered. Unless good cause is shown, the Court will enter an order of interim suspension immediately suspending the attorney. The order of interim suspension will be entered 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. The Court will notify the Bar and the attorney of the order placing the attorney on interim suspension. The order of interim suspension shall be effective immediately upon filing and entry and will continue in effect pending final disposition of the disciplinary proceeding initiated by reason of the conviction.

**(b) Definition of Serious Crime.** The term “serious crime” shall include any crime which is or would be a felony in the State of Alaska 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) Certificate of Conviction.** A certificate of conviction for any crime will be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against an attorney based upon the conviction. The requirement of a certificate of conviction may be satisfied by a certificate from a clerk of court that an attorney has been convicted of a crime in that court, by a certified copy of a judgment of conviction or another court document evidencing the conviction, or by an affidavit establishing the fact of conviction which is also served on the attorney. A certificate of conviction may be filed with the Court by any clerk of court, Bar Counsel, the Board, or any District Attorney.

**(d) Duty to Report.** The clerk of court of any court of this state in which an attorney is convicted of a crime shall advise the Alaska Bar Association of the conviction, and upon request shall provide the Association with a certificate that the attorney has been convicted of a crime in that court, or with a certified copy of the judgment of conviction or another court document evidencing the conviction. An attorney admitted to practice in Alaska shall also self-report his or her conviction of any crime to the Alaska Bar Association within 30 days of that conviction.

**(e) Interim Suspension for Threat of Irreparable Harm.** Interim suspension will be imposed by the Court on a showing by Bar Counsel of conduct by an attorney that

constitutes a substantial threat of irreparable harm to his or her clients or prospective clients or where there is a showing that the attorney’s conduct is causing great harm to the public by a continuing course of misconduct. The attorney may file an objection to the order of interim suspension within seven days after service of the order on the attorney. The Bar may file an opposition to the objection within seven days after service of the attorney’s objection. The Court will consider the objection and any opposition and may take such action as it deems warranted.

**(f) Reinstatement after Interim Suspension.** An attorney suspended under Section (a) of this Rule may petition for reinstatement upon the filing of a certificate demonstrating that the underlying conviction for a serious crime has been reversed or set aside. 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) Proceedings Following Interim Suspension.** Upon receipt of the certificate of conviction for a serious crime, the Court, in addition to suspending the attorney in accordance with Section (a) of this Rule, will refer the matter to Bar Counsel for the initiation of a formal proceeding before a Hearing Committee. The sole issue to be determined by the Hearing Committee will be the extent of the final discipline to be imposed; however, the matter will not be brought to hearing until all appeals from the conviction are concluded, unless the Respondent requests an earlier hearing.

**(h) Proceedings Following Conviction for Other Than Serious Crimes.** Upon receipt of a certificate of conviction for a crime other than those described in Section (b) of this Rule, the Court may, in its discretion, refer the matter to Bar Counsel for whatever action (s)he deems warranted, including the possible initiation of a formal proceeding.

**(i) Proceedings Following Conviction of a Crime Relating to Alcohol or Drug Abuse; Interim Suspension for Noncompliance.**

(1) Upon receipt of a certificate of conviction of a crime relating to alcohol or drug abuse, other than a crime described in Section (b) of this Rule, the Court may, in its discretion, refer the matter to the Lawyers’ Assistance Committee of the Alaska Bar Association.

(2) The convicted attorney shall meet with the Committee. The Committee shall serve on the attorney in writing any recommendations for professional evaluation and professionally recommended treatment. The attorney shall comply with any recommendations of the Committee. All information received by the Committee shall remain confidential. The Committee shall report to Bar Counsel once the matter has been concluded to the satisfaction of the Committee.

(3) *Reconsideration and Appeal.*

(A) The attorney may, within 10 days of service, ask for reconsideration by the Committee if the attorney presents new

and material information relevant to the Committee's recommendations. The Committee will decide whether to reconsider the matter and shall issue a written decision either modifying or confirming its recommendations.

(B) The attorney may appeal any written decision or recommendations of the Committee to the Board within 10 days of service. If the attorney appeals, the Committee shall disclose to the Board, on a confidential basis, all relevant information received by the Committee. The Board, in its discretion, may approve, disapprove or modify the recommendations.

(C) The attorney may seek review of the Board's decision by filing an appeal with the Court. Unless the attorney waives confidentiality in writing, the appeal, the attorney's identity, and all relevant information received by the Committee shall remain confidential. The caption for the appeal should state: In the Matter of Attorney [NAME].

(4) In the event that the attorney does not meet with the Committee or comply with the Committee's recommendations, the Committee shall serve on the attorney notice of the attorney's failure to meet or comply with its recommendations and require the attorney to cure the deficiency within 10 days of service of the notice. If the attorney fails to cure the deficiency as required, the Committee shall make a confidential report to the Court regarding the attorney's failure to meet or comply. The report shall disclose to the Court, on a confidential basis, all relevant information received by the Committee. The Court may order the attorney to show cause why the attorney should not be suspended from the practice of law until the attorney demonstrates to the Court that the deficiency is cured.

(j) **Interim Suspension, General Provisions.** If interim suspension is imposed by the Court, the Court may appoint a trustee in accordance with Rule 31. In any case in which interim suspension has been ordered, the disciplinary proceedings will be diligently prosecuted. Interim suspension will terminate upon the final disposition of disciplinary proceedings, or upon the earlier entry of an order by the Court terminating interim suspension.

(k) **Notification.** An attorney placed on interim suspension must comply with Rule 28 concerning notification of parties.

(l) **Conviction.** Conviction for purposes of this rule occurs upon entry of a plea of guilty or no contest or upon entry of a finding or verdict of guilt.

(Added by SCO 176 dated February 26, 1974; amended by SCO 345 § 18 effective April 1, 1979; and rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 962 effective July 15, 1989; by SCO 1168 effective July 15, 1994; by SCO 1236 effective May 2, 1996; by SCO 1263 effective July 15, 1997; by SCO 1756 effective October 14, 2011; by SCO 1810 effective April 15, 2014; and by SCO 1811 effective April 15, 2014)

### **Rule 27. Reciprocal Discipline.**

(a) **Notice to Disciplined Attorney.** Upon receipt of a certified copy of an order demonstrating that an attorney admitted, specially admitted to practice in this State, or engaged in the practice of law in this State has been disciplined in another jurisdiction, the Court will issue a notice to him or her containing a copy of the order from the other jurisdiction and an order directing that the attorney inform the Court within 30 days from service of any reason why the imposition of the identical discipline in this State would be unwarranted, and the reasons therefor. The Court will cause this notice to be served upon the attorney and Bar Counsel.

(b) **Stay of Discipline.** In the event the discipline imposed in the original jurisdiction has been stayed by that jurisdiction, any reciprocal discipline to be imposed in this State will be deferred until the stay expires.

(c) **Imposition of Identical Discipline.** Upon the expiration of 30 days from service of the notice and order issued pursuant to Section (a) of this Rule, the Court will impose the identical discipline imposed by the original jurisdiction unless Bar Counsel or Respondent files a petition alleging that

(1) the procedure in the original jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(2) an infirmity of proof establishing the misconduct exists which gives rise to the clear conviction that the action of the original jurisdiction should not be accepted;

(3) the imposition of the same discipline would result in grave injustice;

(4) the misconduct established has been held to warrant substantially different discipline in this State; or

(5) the conduct does not violate Rule 15.

The Court will enter an order as it deems appropriate when the Court determines that any of the above exceptions to the discipline imposed by the original jurisdiction exist.

(d) **Conclusive Evidence.** Unless the Court has made an exception under Section (c) of this Rule, the final adjudication of misconduct in another jurisdiction will be conclusive evidence of misconduct for purposes of discipline in this State.

(Added by SCO 176 dated February 26, 1974; amended by SCO 345 § 19 effective April 1, 1979; and rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 962 effective July 15, 1989)

### **Rule 28. Action Necessary When Attorney is Disciplined.**

(a) **Notice.** An attorney who has been disbarred, suspended, placed on probation, or who is under an order of interim suspension, will promptly provide notice of the discipline imposed as required by this Section. Notice will be

sent by certified or registered mail, return receipt requested. Notice to clients need only be sent to clients represented by the disciplined attorney on the entry date of the Court's order. Notice required to attorneys representing opposing parties in pending litigation or administrative proceedings need only be sent if the disciplined attorney is an attorney of record at the time of the entry date of the Court's order. Notice will be provided as follows:

(1) an attorney who has been disbarred, suspended for more than 90 days, or who is under an order of interim suspension, will promptly notify

(A) each of his or her clients who is involved in pending litigation or administrative proceedings, and each attorney representing opposing parties in the proceedings, of his or her disbarment or suspension and his or her inability to practice law in the State after the effective date of the disbarment or suspension; the notice given the client will advise the client of the necessity to promptly seek substitution of another attorney; the notice served upon the attorneys for the opposing parties will state the mailing address of the client of the disbarred or suspended attorney; and

(B) each of his or her clients who is involved in any matters other than litigation or administrative proceedings; the notice will advise the clients of his or her disbarment or suspension, his or her inability to practice law in the State after the effective date of the disbarment or suspension, and the need to seek legal advice from a different attorney;

(2) an attorney who has been suspended for 90 days or less will notify all clients in any matters, and each attorney representing opposing parties in any pending litigation or administrative proceedings, that (s)he will be unavailable for the period of time specified in the Court's order; the disciplined attorney will advise his or her clients that they may seek substitute counsel at their discretion; and

(3) an attorney who has been placed on probation will notify all clients in any matters, and each attorney representing opposing parties in any pending litigation or administrative proceedings, of the terms of his or her probation, unless the Court, in its order placing the attorney on probation, relieves the attorney of this duty.

(b) **Substitute Counsel.** An attorney suspended for 90 days or less will assist his or her clients in arranging for alternate representation where necessary or requested.

Should the client of an attorney who has been disbarred, suspended for more than 90 days, or who is under an order of interim suspension not obtain substitute counsel before the effective date of the disbarment or suspension, the disciplined attorney will move for leave to withdraw in the court or administrative agency in which the proceeding is pending.

(c) **Effective Date of Order; Limitation on Practice.** Orders imposing disbarment, suspension, or probation will be effective 30 days after the entry date, unless otherwise ordered by the Court in the order imposing discipline. After the entry date of a disbarment or suspension order, the disciplined

attorney will not accept any new retainer or accept employment 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, (s)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 of the order.

(d) **Prohibition on Practice.** An attorney who has been disbarred, suspended, or who is under an order of interim suspension will, during the period of his or her disbarment or suspension, cease all practice of law, including the acceptance of any new clients.

(e) **Probation.** Probation may be imposed in accordance with Rule 16(a) (3) only in those cases where there is little likelihood that the attorney on probation will harm clients or the public during the period of probation and where the conditions of probation can be adequately supervised. Probation may be renewed by the Court for an additional period if the Board so recommends and the Court concurs in the recommendation. The Board's recommendation for renewal of probation will be submitted to the Court not more than six months, nor less than 60 days prior to the expiration of the original probation period. The attorney on probation will be advised of the recommendation and be given an opportunity to be heard by the Court. The conditions of probation will be specified in writing.

(f) **Compliance by Disciplined Attorney.** Within 10 days after the effective date of a disbarment or suspension order, the disciplined attorney will file with the Court, and serve upon Bar Counsel, an affidavit showing that

(1) (s)he has fully complied with the provisions of the order and with these Rules; and

(2) (s)he has notified all other state, federal and administrative jurisdictions to which (s)he is admitted to practice of his or her discipline.

The affidavit will also set forth the residence and mailing addresses of the disciplined attorney where communications may thereafter be directed. Pursuant to Rule 9(e), it is the ongoing responsibility of the disciplined attorney to keep the Bar apprised of his or her current address and telephone number.

(g) **Public Notice.** The Board will cause a notice of the disbarment, suspension, interim suspension, probation, public censure, or public reprimand to be published in

(1) a newspaper of general circulation in Anchorage, Fairbanks, and Juneau;

(2) an official Alaska Bar Association publication; and

(3) a newspaper of general circulation serving the community in which the disciplined attorney maintained his or her practice.

(h) **Circulation of Notice; National Lawyer Regulatory Data Bank.** The Board will promptly transmit a

copy of the order of disbarment, suspension, interim suspension, probation, public censure, or public reprimand to the presiding judges of the superior court in each judicial district in Alaska; 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, together with the request that the Attorney General notify the appropriate administrative agencies. The presiding judges will make such orders as they deem necessary to fully protect the rights of the clients of the disbarred, suspended, or probationary attorney.

Bar Counsel will transmit to the National Lawyer Regulatory Data Bank maintained by the American Bar Association, and any jurisdiction to which Respondent has been admitted, notice of all discipline imposed by the Court, all orders granting reinstatement, and all public reprimands.

(i) **Record Keeping.** A disbarred, suspended, or probationary attorney will keep and maintain records of the various steps taken by him or her pursuant to these Rules so that proof of compliance with these Rules and with the disbarment, suspension or probationary order is available. Proof of compliance with the Rules and Court order will be a condition precedent to any petition for reinstatement.

(j) **Surrender of Bar Membership Card.** Any attorney upon whom disbarment, suspension, or interim suspension has been imposed will, within 10 days of the effective date of the order, surrender his or her Alaska Bar Association membership card to the Director by delivery in person, or by certified or registered mail, return receipt requested.

(Added by SCO 176 dated February 26, 1974; amended by SCO 295 effective March 1, 1978; and rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 962 effective July 15, 1989; by SCO 1037 effective January 15, 1991; by SCO 1048 effective nunc pro tunc September 12, 1990; and by SCO 1312 effective July 15, 1998)

## **Rule 29. Reinstatement.**

(a) **Order of Reinstatement.** An attorney who has been disbarred or suspended may not resume practice until reinstated by order of the Court. Interim suspension will end only in accordance with Rule 26.

(b) **Petitions for Reinstatement.** An attorney who seeks reinstatement will file a verified petition for reinstatement with the Court, with a copy served upon the Director. In the petition, the attorney shall:

(1) state that (s)he has met the terms and conditions of the order imposing suspension or disbarment;

(2) state the names and addresses of all his or her employers during the period of suspension or disbarment;

(3) describe the scope and content of the work performed by the attorney for each such employer;

(4) provide the names and addresses of at least three character witnesses who had knowledge concerning the

activities of the suspended or disbarred attorney during the period of his or her suspension or disbarment; and

(5) state the date upon which the suspended or disbarred attorney seeks reinstatement. An attorney who has been disbarred by order of the Court may not be reinstated until the expiration of at least five years from the effective date of the disbarment.

Unless otherwise ordered by the Court, an attorney who has been denied reinstatement by the Court from disbarment or suspension may not file a petition for reinstatement until the expiration of at least two years from the effective date of the Court's most recent order denying reinstatement.

(c) **Reinstatement Proceedings.** Petitioners who have been suspended for two years or less will be automatically reinstated by the Court unless Bar Counsel files an opposition to automatic reinstatement pursuant to Section (d) of this Rule.

Proceedings for attorneys who have been disbarred or suspended for more than two years will be conducted as follows:

(1) upon receipt of the petition for reinstatement, the Director will refer the petition to a Hearing Committee in the jurisdiction in which the Petitioner maintained an office at the time of his or her misconduct; the Hearing Committee will promptly schedule a hearing; at the hearing, the Petitioner will have the burden of demonstrating by clear and convincing evidence that (s)he has the moral qualifications, competency, and knowledge of law required for admission to the practice of law in this State and that his or her resumption of the practice of law in the State will not be detrimental to the integrity and standing of the Bar, or to the administration of justice, or subversive of the public interest; within 30 days of the conclusion of the hearing, the Hearing Committee will issue a report setting forth its findings of fact, conclusions of law, and recommendation; the Committee will serve a copy of the report upon Petitioner and Bar Counsel, and transmit it, together with the record of the hearing, to the Board; any appellate action will be subject to the appellate procedures set forth in Rule 25;

(2) at its next scheduled meeting at least 30 days after receipt of the Hearing Committee's report, the Board will review the report and the record; the Board will file its findings of fact, conclusions of law, and recommendation with the Court, together with the record and the Hearing Committee report; and the matter will be submitted to the court for action. Bar Counsel may petition for hearing and the Petitioner may appeal from the Board's findings of fact, conclusions of law, and recommendation within 10 days after the Board files its recommendations with the Court. If Bar Counsel files a petition for hearing, the time for serving and filing a response shall be 20 days after service of the petition. If Petitioner files a notice of appeal, the time for serving and filing the opening brief shall be 20 days after the record is prepared and transmitted to the Court, the time for serving and filing the opposing brief shall be 20 days, and the time for serving and filing the reply brief shall be 10 days. Briefing shall be in memorandum format and, in the case of an appeal or a granted

petition for hearing, either Bar Counsel or the Petitioner may request oral argument;

(3) in all proceedings concerning a petition for reinstatement, Bar Counsel may cross-examine the Petitioner's witnesses and submit evidence in opposition to the petition; and

(4) the retaking and passing of Alaska's general applicant bar examination will be conclusive evidence that the Petitioner possesses the knowledge of law necessary for reinstatement to the practice of law in Alaska, as required under Section (b) (1) of this Rule.

(d) **Oppositions to Automatic Reinstatement.** Within 10 days after the Respondent files a petition for reinstatement after a period of suspension of one year or less, or within 30 days after the Respondent files a petition for reinstatement after a period of suspension of more than one year, Bar Counsel may file an opposition to automatic reinstatement with the Court and serve a copy upon the Board and the Petitioner. The opposition to automatic reinstatement will state the basis for the original suspension, the ending date of the suspension, and the facts which Bar Counsel believes demonstrate that the petitioner should not be reinstated.

Upon receipt by the Director of a copy of the opposition to automatic reinstatement, reinstatement proceedings will be initiated in accordance with procedures outlined in Section (c)(1)–(4) of this Rule.

(e) **Expenses.** The Court may direct that the necessary expenses incurred in the investigation and processing of any petition for reinstatement be paid by the disbarred or suspended attorney.

(f) **Bar Payment of Membership Fees.** Prior to reinstatement, the disbarred or suspended attorney must pay to the Bar, in cash or by certified check, the full active membership fees due and owing the Association for the year in which reinstated.

(Added by SCO 176 dated February 26, 1974; amended by SCO 207 effective July 15, 1985; and rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 665 effective March 15, 1986; by SCO 962 effective July 15, 1989; by SCO 1449 effective October 15, 2001; by SCO 1478 effective October 15, 2002; and by SCO 1603 effective April 15, 2008)

## B. DISABILITY

### **Rule 30. Procedure: Disabled, Incapacitated or Incompetent Attorney.**

(a) **Immediate Transfer to Interim Disability Inactive Status.** The Court will immediately transfer an attorney to interim disability inactive status upon a showing that

(1) the attorney has been declared incompetent by judicial order;

(2) the attorney has been involuntarily committed to an institution because of incapacity or disability; or

(3) the attorney has alleged during a disciplinary proceeding that he or she is incapable of assisting in his or her defense due to mental or physical incapacity.

The period of interim disability inactive status will continue until further order of the Court. A copy of the order will be served upon the attorney so transferred, his or her guardian, or the director of the institution to which (s)he has been committed or in a manner that the Court may direct. The order of transfer to interim disability inactive status will be in effect pending final disposition of a disability hearing proceeding. The hearing will be commenced upon the transfer to interim disability inactive status, and will be conducted in accordance with Section (b) of this Rule. The transfer to interim disability inactive status will terminate upon the final disposition of the disability proceedings, or upon the earlier entry of an order by the Court terminating interim disability inactive status. An attorney transferred to interim disability inactive status may petition the Court for a return to active status upon the filing of documentation demonstrating that the attorney has been judicially declared competent. The reinstatement will not terminate any formal disability proceeding then pending against the attorney.

(b) **Transfer to Disability Inactive Status Following Hearing.** The Court may transfer an attorney to disability inactive status upon a showing that the attorney is unable to continue the practice of law by reason of mental or physical infirmity or illness, or because of addiction to controlled substances. Hearings will be initiated by Bar Counsel and conducted in the same manner as disciplinary proceedings under Rule 22, except that all proceedings will be confidential. Upon petition of Bar Counsel for good cause shown, the Court may order the Respondent to submit to a medical and/or psychological examination by a Court-appointed expert.

(c) **Stay and Appointment of Counsel.** The Court may appoint counsel to represent the attorney in a disability proceeding if it appears to the Court that the attorney is unable to obtain counsel or represent himself or herself effectively, due to incapacity. Any pending disciplinary proceedings against the attorney may, at the discretion of the Board, be stayed pending the removal or cessation of the disability.

(d) **Hearing Committee and Board Duties and Obligations.** The Hearing Committee will recommend to the Board whether the attorney is unable to continue the practice of law because of the reasons set out in Section (b) of this Rule, and whether the reasons justify the transfer of the attorney to inactive status. The Board will make recommendations to the Court as to whether the alleged incapacity justifies transfer to disability inactive status.

(e) **Notice to Public of Transfer to Disability Inactive Status.** The Board will cause a notice of transfer to disability inactive status, whether imposed after hearing or on an interim basis, to be published in



(1) a newspaper of general circulation in the cities of Anchorage, Fairbanks, and Juneau, Alaska;

(2) an official Alaska Bar Association publication; and

(3) a newspaper of general circulation primarily serving the community in which the disabled attorney maintained his or her practice.

When the disability or incapacity is removed and the attorney has been restored to active status, the Board will cause a notice of transfer to active status to be similarly published.

(f) **Circulation of Notice Transferring to Inactive Status.** The Board will promptly transmit a copy of the order of transfer to interim disability inactive status or disability inactive status to the presiding judge of the superior 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, together with the request that the Attorney General notify the appropriate administrative agencies. The Board will request action under Rule 31, as may be necessary, in order to protect the interests of the disabled attorney and his or her clients.

Bar Counsel will transmit to the National Lawyer Regulatory Data Bank maintained by the American Bar Association, and any jurisdiction to which Respondent has been admitted, notice of all transfers to inactive status due to disability and all orders granting reinstatement.

(g) **Reinstatement.** No attorney transferred to disability inactive status under the provisions of this Rule may resume active or inactive status until reinstated by order of the Court. Any attorney transferred to disability inactive status under the provisions of this Rule will be entitled to apply for reinstatement to active or inactive status once a year, but initially not before one year from the date of the Court order transferring him or her to disability inactive status, or at such shorter intervals as the Court may direct in the order transferring the Respondent to inactive status or any modification thereto.

The attorney seeking transfer from disability inactive status shall file a verified application for reinstatement with the Court, with a copy served upon the Director. In the application, the attorney will

(1) state that (s)he has met the terms and conditions of the order transferring him or her to disability inactive status;

(2) state the names and addresses of all his or her employers during the period of disability inactive status;

(3) describe the scope and content of the work performed by the attorney for each such employer;

(4) provide the names and addresses of at least three character witnesses who have knowledge concerning the activities of the attorney during the period of disability inactive status;

(5) provide the names and addresses of all health care providers, hospitals, and other institutions by whom or in which the attorney has been examined or treated since his or her transfer to disability inactive status;

(6) state that the disability or incapacitating condition has been removed and attach the expert opinion of a physician, psychiatrist or psychologist that the disability or incapacity has been removed;

(7) state whether any of the incidents listed in Rule 2(1)(d)(1)-(10) have occurred during the period of disability inactive status.

Upon receipt of the application for reinstatement, the Director will refer the application to a Hearing Committee in the jurisdiction in which the attorney maintained an office at the time of his or her transfer to disability inactive status; the Hearing Committee will promptly schedule a hearing at the hearing, the attorney will have the burden of demonstrating that the attorney's disability has been removed and (s)he meets the standards of character and fitness contained in Rule 2(1)(d); within 30 days of the conclusion of the hearing, the Hearing Committee will issue a report setting forth its findings of fact, conclusions of law, and recommendation; the Committee will serve a copy of the report upon the attorney and Bar Counsel, and transmit it, together with the record of the hearing, to the Board; any appellate action will be subject to the appellate procedures set forth in Rule 25.

At its next scheduled meeting at least 30 days after receipt of the Hearing Committee's report, the Board will review the report and the record; the Board will file its findings of fact, conclusions of law, and recommendation with the Court, together with the record and the Hearing Committee report; the application will be placed upon the calendar of the Court for acceptance or rejection of the Board's recommendation.

In all proceedings concerning an application for reinstatement from disability inactive status, Bar Counsel may cross-examine the attorney's witnesses and submit evidence in opposition to the application.

The application will be granted by the Court upon a showing that the attorney's disability has been removed and (s)he is fit to resume the practice of law. Upon application, the Court may take or direct any action it deems necessary to determine whether the attorney's disability or incapacity has been removed, including an order for an examination of the attorney by qualified medical and/or psychological experts that the Court may designate. In its discretion, the Court may order that the expense of the examination be paid by the attorney. In addition, the Court may direct that the necessary expenses incurred in the investigation and processing of any application for reinstatement from disability inactive status be paid by the attorney.

Prior to reinstatement, the attorney must pay to the Bar, in cash or by certified check, the full active membership fees due and owing the Association for the year in which (s)he is reinstated.

(h) **Burden of Proof.** In a proceeding seeking transfer of an attorney to disability inactive status under this Rule, Bar Counsel will have the burden of proving, by clear and convincing evidence, that the attorney should be so transferred. In a proceeding seeking an order of reinstatement to active status under this Rule, the same burden of proof will rest with the attorney.

(i) **Waiver of Physician and Psychotherapist–Patient Privilege.** The filing of an application for reinstatement by an attorney transferred to disability inactive status because of disability or incapacity will be deemed to constitute a waiver of any physician and psychotherapist–patient privilege with respect to any treatment of the attorney during the period of his or her disability. The disabled attorney will be required to disclose the name of every health care provider and hospital or other institution by whom or in which the attorney has been examined or treated since his or her transfer to disability inactive status. (S)he will furnish to the Court written consent for each person or organization to divulge information and records as requested by court-appointed medical experts.

(Added by SCO 176 dated February 26, 1974; rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 962 effective July 15, 1989; by SCO 1336 effective January 15, 1999; by SCO 1438 effective October 15, 2001; and by SCO 1519 effective October 15, 2004)

### **Rule 31. Appointment of Trustee Counsel to Protect Client’s Interests.**

(a) **Appointment; Procedure.** Whenever an attorney is deceased, 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 or shareholder in the professional corporation of which the unavailable attorney was an employee is known to exist, Bar 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. Bar 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.

(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 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) render an accounting of office, trust or other bank accounts.

(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 in which the unavailable attorney was counsel of record for a period of time not to exceed 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) **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) **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. In the case of a deceased attorney any monies or assets remaining after the completion of the client matters shall be returned to the personal representative and trustee counsel shall apply for compensation under section (g).

(e) **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.

(f) **Reports to Bar Counsel.** Trustee counsel appointed under this Rule will make written reports to Bar 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 paid from the Lawyers' Fund for Client Protection shall be determined by the Board.

(h) **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 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 year, after which time the Bar may exercise its discretion in maintaining or destroying the files.

(Added by SCO 176 dated February 26, 1974; amended by SCO 298 effective March 1, 1978; and rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 658 effective March 15, 1986; by SCO 809 effective April 1, 1987; by SCO 962 effective July 15, 1989; by SCO 1452 effective October 15, 2001; by SCO 1459 effective April 15, 2002; and by SCO 1832 effective October 15, 2014)

## C. MISCELLANEOUS

### Rule 32. Disposal of Files.

(a) **Disposal of Files Concerning Deceased Attorney.** Any time after the expiration of five years from the death of an attorney, Bar Counsel may destroy all files of any discipline, disability, or reinstatement proceedings in which the deceased attorney was a Respondent unless, prior to destruction, the Board receives a request that the files not be destroyed. If the

Board receives a request, it will grant the requesting party an opportunity to be heard to show cause why the files should not be destroyed. After hearing and review, the Board will enter an order as it deems appropriate.

(b) **Disposal of Dismissals.** Any time after the expiration of five years from the date of dismissal, Bar Counsel may destroy all files of any discipline or disability proceeding terminated by dismissal.

(c) **Administrative Records.** Bar Counsel will not destroy records maintained in accordance with Rule 11(d).

(d) **Compliance with Confidentiality.** All orders entered by the Board under Section (a) of this Rule, and proceedings in connection with the disposal of files under Section (a) of this Rule, will be consistent with the provisions of Rules 21 and 30 with regard to public access.

(Added by SCO 176 dated February 26, 1974; and rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 962 effective July 15, 1989)

### Rule 33. Expenses.

Except as otherwise provided herein, the salaries of Bar Counsel and staff will be paid by the Alaska Bar Association. The expenses and administrative costs incurred by Bar Counsel and staff hereunder, and the expenses and administrative costs of the Board and of Hearing Committees will be paid by the Court.

(Added by SCO 176 dated February 26, 1974; and rescinded and repromulgated by SCO 614 effective January 1, 1985; amended by SCO 962 effective July 15, 1989)

### Rule 33.1. Disciplinary and Disability Matters Take Precedence.

Disciplinary and disability matters take precedence over all other matters before any court or administrative agency in this State, unless otherwise ordered by a justice of the Court for good cause shown. Upon the filing of an affidavit stating the existence of a pending disciplinary or disability matter, any judge of any court in this State, and any hearing officer or other person responsible for the conduct of any administrative proceeding in the State, will take action necessary to effect the requirements of this Rule. The Respondent or his or her attorney, Bar Counsel, any member of an Area Division, and any member of the Board will have authority to file such affidavit.

(Added by SCO 614 effective January 1, 1985; amended by SCO 962 effective July 15, 1989)

### Rule 33.2. Effective Dates.

These Rules will take effect January 1, 1985. Rule 21 will only apply to those formal proceedings filed after the effective date of these Rules.

(Added by SCO 614 effective January 1, 1985)

## PART III. RULES OF ATTORNEY FEE DISPUTE

## RESOLUTION

**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 or costs incurred 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 which occur after April 15, 2003 over fees which were charged more than three (3) 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 Bar Counsel in the efficient and timely arrangement for and disposition of fee arbitrations. This duty to assist Bar 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 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, Bar 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 this rule.

(h) **Complex Arbitration.**

(1) Upon recommendation by bar counsel or a panel chair, the executive committee may determine that a dispute constitutes a complex arbitration based on any of the following factors:

(A) complex legal or factual issues are presented;

(B) the hearing is reasonably expected to or does exceed eight (8) hours; or

(C) the amount in dispute exceeds \$50,000.00.

Such determination may be made at any time after the filing of a petition but before the hearing on the merits of the petition begins, unless the parties otherwise agree.

(2) When a case is determined to be complex, the executive committee may require payment by one or both parties for reasonable costs of administration and arbitration.

(Old Rule 34 [SCO 176] deleted and new Rule 34 added by SCO 780 effective March 15, 1987; amended by SCO 1044 effective January 15, 1991; by SCO 1147 effective July 15, 1994; by SCO 1372 effective April 15, 2000; and by SCO 1497 effective April 15, 2003)

**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.** If a fee will exceed \$1000, the basis or rate of the fee shall be communicated to the client in a written fee agreement before commencing the representation or within a reasonable time thereafter. This written fee agreement shall include the disclosure required under Alaska Rule of Professional Conduct 1.4(c). In a case involving litigation, the attorney shall notify the client in the written fee agreement of any costs, fees or expenses for which the client may be liable if the client is not the prevailing party. 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 include the disclosure required under Alaska Rule of Professional Conduct 1.4(c) and 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.

(Old Rule 35 [SCO 176] deleted and new Rule 35 added by SCO 780 effective March 15, 1987; amended by SCO 1331 effective January 15, 1999; and by SCO 1684 effective April 15, 2009)

### **Rule 36. Bar Counsel of the Alaska Bar Association.**

(a) **Powers and Duties.** The Board of Governors will appoint an attorney admitted to the practice of law in Alaska to be the Bar Counsel for the Alaska Bar Association (hereinafter "Bar Counsel") who will serve at the pleasure of the board. Bar 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 Bar 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.** Bar 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 Bar Counsel will be the subject of a summary prepared by council and submitted to the executive committee. The names of the parties involved will not be provided in the summary. Bar Counsel will promptly communicate disposition of the matter to the client and the attorney.

(d) **Record Keeping.** The Bar 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.** Bar 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.** Bar 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 Bar 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.** Bar Counsel will destroy files of arbitrations five years after they are closed.

(Old Rule 36 [SCO 176] deleted and new Rule 36 added by SCO 780 effective March 15, 1987; amended by SCO 962 effective July 15, 1989; by SCO 1044 effective January 15, 1991; and by SCO 1756 effective October 14, 2011)

### **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 resides 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 twenty-one 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 1st and expire on June 30th 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 \$5000.00.** Bar 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 five thousand dollars. In addition, Bar 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 \$5000.00 or Less.** Bar Counsel will select and assign an attorney member of an area division to sit as a single arbitrator when the amount in dispute is five thousand dollars 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 Bar Counsel. If Bar Counsel finds the challenge well taken a replacement arbitrator, if needed, will be appointed by Bar Counsel from the appropriate area division.

(h) **Peremptory Challenge.** Within ten days of the notice of assignment to arbitration, either party may file one peremptory challenge. Bar 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) approve written requests for prehearing discovery upon a showing of good cause;

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

(6) 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.

(Old Rule 37 [SCOs 176 and 233(5) as amended by SCOs 245, 296, 334, 406 and 470 deleted] and new Rule 37 added by SCO 780 effective March 15, 1987; amended by SCO 962 effective July 15, 1989; by SCO 1147 effective July 15, 1994; by SCO 1264 effective July 15, 1997; and by SCO 1833 effective October 15, 2014)

### **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.

(b) **Quorum.** Three 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 Bar Counsel;

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

(4) in accordance with Rule 37(i)(6), hear and determine questions regarding the interpretation and application of these rules;

(5) approve forms developed by Bar Counsel to implement the procedures described in these rules; and

(6) refer apparent violations of Bar Rule 35 to Bar Counsel for disciplinary investigation, including instances in which attorneys have had substantial numbers of fee arbitrations filed against them even if no individual arbitration panel has recommended referral to Bar Counsel pursuant to Bar Rule 40(q)(4).

(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 Bar 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.

(Old Rule 38 [SCO 176 as amended by SCO 470] deleted and new Rule 38 added by SCO 780 effective March 15, 1987; amended by SCO 888 effective July 15, 1988; by SCO 962 effective July 15, 1989; by SCO 970 effective July 15, 1989; by SCO 1498 effective April 15, 2003; and by SCO 1705 effective October 15, 2009)

**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 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, P.O. Box 100279, Anchorage, AK 99510-0279, or contact (907) 272-7469 for the Alaska Bar Association’s street address. 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.

(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 the fee dispute by the Bar within twenty (20) 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. If a civil action has been filed, the Alaska Bar Association must receive an order of stay prior to commencing arbitration.

(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 twenty (20) days of receiving the “client’s notice of right to arbitrate” pursuant to paragraph (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:

(i) seeking judicial resolution of the fee dispute, except an action to compel fee arbitration, or

(ii) seeking affirmative relief against the attorney for damages based upon alleged malpractice or professional misconduct.

(Old Rule 39, [SCO 176 as amended by SCOs 233(6), 299, 349 and 470] deleted and new Rule 39 added by SCO 780 effective March 15, 1987; amended by SCO 1038 effective January 15, 1991; by SCO 1147 effective July 15, 1994; by SCO 1156 effective July 15, 1994; by SCO 1314 effective July 15, 1998; by SCO 1669 effective April 15, 2008; and by SCO 1756 effective October 14, 2011)

**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 Bar 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 or AS 09.43.500 through AS 09.43.595; 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.** Bar 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.

Bar 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 Bar Counsel determines that the petition should be denied, (s)he will promptly notify the petitioner.



(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.

(d) **Respondent Answer to Petition Required.** Respondent shall respond to each of the allegations in the petition within 20 days of receipt of the notification that the petition has been accepted by Bar Counsel. Supporting documents may be submitted at that time.

(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.

(f) **Notice of Arbitration Hearing.** Bar Counsel will, at the time the arbitrator or arbitration panel is assigned, and at least twenty 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) upon written request to the arbitrator or chair of the panel, and for good cause shown, request prehearing discovery;

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

(11) have the hearing recorded electronically.

(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 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, Bar 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 Bar Counsel at least ten days prior to the date set for hearing. The other party may, within three 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 Bar Counsel, and served upon the party whose presence is required within five 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 Bar Counsel and served on the other party at least ten 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 Bar Counsel and served on the party on whose behalf the witness would appear, within five 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 ensure 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 and Discovery; Costs.** In accordance with Rule 37(i)(3) and subparagraph (f)(8) of this rule, an arbitrator will, for good cause shown, issue subpoenas and/or subpoenas duces tecum (hereinafter “subpoenas”) or authorize prehearing discovery 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 or respond to discovery who refuses to appear, give testimony, or produce the matter(s) subpoenaed or requested 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 issue its decision within thirty (30) days of the close of the arbitration hearing. If the matter is determined to be a “complex arbitration” under Alaska Bar Rule 34(h), the decision will be issued within ninety (90) days. If a delay is expected, the panel chair or single arbitrator will submit to bar counsel a written explanation of the delay, before expiration of the time allowed for the decision. Bar counsel will forward the explanation to the parties. The decision will be based upon the standards set forth in these rules and the Alaska Rules of Professional Conduct. The decision will be in writing and need not be in any particular form, unless a form is approved by the executive committee; 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 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 award may provide for payment in installments. Pre-judgment interest may be awarded. Attorney’s fees for arbitration may not be awarded. The arbitrator or the panel chair will forward the decision, together with the file and the record, to bar 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 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. Bar Counsel may utilize arbitration records and decisions for statistical and enforcement purposes and for disciplinary purposes following acceptance of a grievance under Rule 22(a) or referral by the arbitrator or arbitration panel under Rule 40(q)(4).

(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.

(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 or AS 09.43.490 and AS 09.43.520, the court will confirm an award, reducing it to a judgment, unless within ninety 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 or AS 09.43.500 through 520.

(u) **Appeal.** Should either party appeal the decision of the court concerning an arbitration award under the provisions of AS 09.43.160 or 09.43.550, the party must serve a copy of the notice of appeal upon bar counsel. If a matter on appeal is remanded to the arbitrator or panel, a decision on remand will be issued within thirty (30) days after remand or further hearing.

(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).

(Old Rule 40 [SCO 176 as amended by SCO 470] deleted and new Rule 40 added by SCO 780 effective March 15, 1987; amended by SCO 888 effective July 15, 1988; by SCO 962 effective July 15, 1989; by SCO 1045 effective January 15, 1991; by SCO 1052 effective January 15, 1991; by SCO 1147 effective July 15, 1994; by SCO 1249 effective July 15, 1996; by SCO 1314 effective July 15, 1998; by SCO 1373 effective April 15, 2000; by SCO 1547 effective October 15, 2004; by SCO 1669 effective April 15, 2008; by SCO 1705 effective

October 15, 2009; and by SCO 1756 effective October 14, 2011)

#### **Rule 41. Service.**

Service of the petition by the Bar shall be by personal delivery or by certified mail, postage paid, to the respondent. Unless otherwise specifically stated in these rules, all other service shall be by personal delivery or by first class 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 and shall include a certificate of service showing the date copies of the documents were served, to whom they were served, and the name or initials of the Bar Association employee who served them. Service by mail is complete five business days after mailing. The time for performing any act shall commence on the date after service is complete.

(Old Rule 41 [SCO 176 as amended by SCOs 470 and 610] deleted and new Rule 41 added by SCO 780 effective March 15, 1987; amended by SCO 1315 effective July 15, 1998)

#### **Rule 42. Informing the Public.**

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

(Added by SCO 176 dated February 26, 1974; amended by SCO 780 effective March 15, 1987; and by SCO 962 effective July 15, 1989)

### **PART IV.**

#### **Rule 43. Waivers to Practice Law for Alaska Legal Services Corporation.**

**Section 1. Eligibility.** A person not admitted to the practice of law in this state may receive permission to practice law in the state if such person meets all of the following conditions:

(a) The person is a graduate of a law school which was accredited or approved by the Council of Legal Education of the American Bar Association or the Association of American Law Schools when the person entered or graduated and is an attorney in good standing, licensed to practice before the courts of another state, territory or the District of Columbia, or is eligible to be admitted to practice upon taking the oath of that state, territory or the District of Columbia;

(b) The person will practice law exclusively for Alaska Legal Services Corporation on a full-time or part-time basis;

(c) The person has not failed the bar exam of this state.

**Section 2. Application.** Application for such permission shall be made as follows:

(a) The executive director of the Alaska Legal Services Corporation shall apply to the Board of Governors on behalf of a person eligible under Section 1;

(b) Application shall be made on forms approved by the Board of Governors;

(c) Proof shall be submitted with the application that the applicant is an attorney in good standing, licensed to practice before the courts of another state, territory or the District of Columbia, or is eligible to be admitted to practice upon taking the oath of the state, territory or the District of Columbia.

**Section 3. Approval.** The Board of Governors shall consider the application as soon as practicable after it has been submitted. If the board finds that the applicant meets the requirements of Section 1 above, it shall grant the application and issue a waiver to allow the applicant to practice law before all courts of the state of Alaska. The Board of Governors may delegate the power to the executive director of the Bar Association to approve such applications and issue waivers, but the Board shall review all waivers so issued at its regularly scheduled meetings.

**Section 4. Conditions.** A person granted such permission may practice law only as required in the course of representing clients of Alaska Legal Services Corporation, and shall be subject to the provisions of Part II of these rules to the same extent as a member of the Alaska Bar Association. Such permission shall cease to be effective upon the failure of the person to pass the Alaska Bar examination.

(Added by Amendment No. 1 to SCO 176 effective July 1, 1974; amended by SCO 232 effective December 12, 1975; by SCO 484 effective November 2, 1981; by SCO 1153 effective July 15, 1994; by SCO 1282 effective January 15, 1998; and by SCO 1604 effective October 15, 2006)

**Rule 43.1. Waivers to Practice Law Under a United States Armed Forces Expanded Legal Assistance Program.**

**Section 1. Eligibility.** A person not admitted to the practice of law in this state may receive permission to practice law in the state for a period of not more than two years if such person meets all of the following conditions:

(a) The person is a graduate of a law school which was accredited or approved by the Council of Legal Education of the American Bar Association or the Association of American Law Schools when he entered or graduated and is an attorney in good standing, licensed to practice before the courts of another state, territory or the District of Columbia, or is eligible to be admitted to practice upon taking the oath of that state, territory or the District of Columbia;

(b) The person is an active duty member of the United States Armed Forces assigned to the Judge Advocate General's Corps or the United States Coast Guard; and

(c) The person has not failed the bar exam of this state.

**Section 2. Application.** Application for such permission shall be made as follows:

(a) The Staff Judge Advocate of the Military Installation to which the applicant is assigned shall apply to the Board of Governors on behalf of a person eligible under Section 1;

(b) Application shall be made on forms approved by the Board of Governors; and

(c) Proof shall be submitted with the application that the applicant is a graduate of an accredited Law School as provided in Section 1 of this rule and is an attorney in good standing, licensed to practice before the courts of another state, territory or the District of Columbia, or is eligible to practice upon taking the oath of the state, territory or the District of Columbia.

**Section 3. Approval.** The Board of Governors shall consider the application as soon as practicable after it has been submitted. If the Board finds that the applicant meets the requirements of Section 1 above, it shall grant the application and issue a waiver to allow the applicant to practice law before all courts of the State of Alaska. The Board of Governors may delegate the power to the Executive Director of the Bar Association to approve such applications and issue waivers, but the Board shall review all waivers so issued at its regularly scheduled meetings.

**Section 4. Conditions.** A person granted such permission may practice law only as required in the course of representing military clients or their dependents, or when accepting a case under the auspices of a qualified legal services provider as provided in Bar Rule 43.2(c)(2), and shall be subject to the provisions of Part II of these rules to the same extent as a member of the Alaska Bar Association. Such permission shall cease to be effective upon the failure of the person to pass the Alaska Bar examination.

(Added by SCO 345 effective December 18, 1978; amended by SCO 1333 effective January 15, 1999; and by SCO 1901 effective April 15, 2017)

**Rule 43.2. Emeritus Attorney.**

(a) **Purpose.** The purpose of this rule is to encourage attorneys who do not otherwise engage in the active practice of law in Alaska to provide pro bono legal representation to persons who cannot afford private legal services.

(b) **Bar Dues.** An attorney who serves as an emeritus attorney at any time during a year shall have bar dues for the following year waived.

(c) **Definitions.**

(1) An "emeritus attorney" is an inactive or retired member of the Alaska Bar Association who is not otherwise engaged in the practice of law in Alaska and who:

(A) provides free civil legal services in Alaska under the supervision of a qualified legal services provider as defined in this rule;

(B) is a member in good standing of the Alaska Bar Association and has no record of public discipline for

professional misconduct imposed at any time within the past fifteen (15) years in any jurisdiction; and

(C) neither asks for nor receives personal compensation of any kind for the legal services rendered under this rule.

(2) A “qualified legal services provider” is a not-for-profit legal assistance organization that is approved by the Board of Governors. A legal assistance organization seeking approval from the Board to use an emeritus attorney shall file a petition with the Board of Governors certifying that it is a not-for-profit organization and explaining with specificity:

(A) the structure of the organization and whether it accepts funds from its clients;

(B) the major sources of funds used by the organization;

(C) the criteria used to determine eligibility for legal services performed by the organization;

(D) the types of legal and nonlegal services provided by the organization;

(E) the names of all members of the Alaska Bar Association who are employed by the organization and who regularly perform legal work for the organization; and

(F) the extent of malpractice insurance that will cover the emeritus attorney.

(d) **Authority.**

(1) An emeritus attorney is authorized to practice law to the extent permitted an active member of the Alaska Bar Association, but only for services performed in association with a qualified legal services provider.

(2) An emeritus attorney shall not be paid by the qualified legal services provider, but the qualified legal services provider may reimburse the emeritus attorney for actual expenses incurred while rendering services. If allowed by law, the emeritus attorney may seek attorney’s fees on behalf of the client, but may not personally retain them. The emeritus attorney and the client shall enter into a written fee agreement under Rule of Professional Conduct 1.5 for the disposition of such fees. Collection of any money from the client, including but not limited to reimbursements for expenses incurred, shall be handled exclusively by the qualified legal services provider.

(e) **Duties of An Emeritus Attorney.** A member who wishes to perform pro bono work as an emeritus attorney on behalf of a qualified legal services provider shall file a sworn statement with the Alaska Bar Association that states:

(1) the name of the emeritus attorney and the name of the qualified legal services provider for whom the emeritus attorney will provide pro bono services;

(2) that the emeritus attorney will not be paid compensation;

(3) that the emeritus attorney will be covered by the legal services provider’s malpractice insurance;

(4) that the emeritus attorney has read and is familiar with the Alaska Rules of Professional Conduct; and

(5) that the emeritus attorney has not been publicly disciplined within the last fifteen (15) years in any jurisdiction.

(Added by SCO 1641 effective October 15, 2007)

### **Rule 43.3. Waivers to Practice Law Before Alaska National Guard Courts-Martial and All Subsequent Appeals.**

**Section 1. Eligibility.** A person not admitted to the practice of law in this state may receive permission to practice law before Alaska National Guard courts-martial and all subsequent appeals if such person meets all of the following conditions:

(a) The person is a graduate of a law school accredited or approved by the Council of Legal Education of the American Bar Association or the Association of American Law Schools when the person entered or graduated and is an attorney in good standing, licensed to practice before the courts of another state, territory, or the District of Columbia, or is eligible to be admitted to practice upon taking the oath of that state, territory, or the District of Columbia;

(b) The person has been certified to practice before courts-martial under Title 27 of the Uniform Code of Military Justice; and

(c) The person has not failed the bar exam of this state.

**Section 2. Application.** Application for such permission shall be made as follows:

(a) The Staff Judge Advocate of the Alaska National Guard shall apply to the Board of Governors on behalf of a person eligible under Section 1;

(b) Application shall be made on forms approved by the Board of Governors; and

(c) Proof shall be submitted with the application that the applicant is a graduate of an accredited law school as provided in Section 1 of this rule and is an attorney in good standing, licensed to practice before the courts of another state, territory, or the District of Columbia, or is eligible to practice upon taking the oath of the state, territory, or the District of Columbia.

**Section 3. Approval.** The Board of Governors shall consider the application as soon as practicable after it has been submitted. If the Board finds that the applicant meets the requirements of Section 1 above, it shall grant the application and issue a waiver to allow the applicant to practice law before Alaska National Guard courts-martial and all subsequent appeals. The Board of Governors may delegate the power to the Executive Director of the Bar Association to approve such applications and issue waivers, but the Board shall review all waivers so issued at its regularly scheduled meetings.

**Section 4. Conditions.** A person granted such permission may practice law only as allowed in Alaska National Guard courts-martial and all subsequent appeals and

shall be subject to the provision of Part II of these rules to the same extent as a member of the Alaska Bar Association. Such permission shall cease to be effective upon the failure of the person to pass the Alaska Bar examination.

(Added by SCO 1880 effective June 1, 2016)

#### **Rule 44. Legal Interns.**

**Section 1. Practice Authorized When.** The Integrated Bar Act prohibits the practice of law by anyone not admitted to practice in Alaska. This rule does not authorize an intern to perform any function prohibited by that Act other than those specifically set forth herein.

**Section 2. Definition of Legal Intern.** A “legal intern” is any person who has on file with the Alaska Bar Association an effective permit issued by the Bar Association through its Executive Director.

**Section 3. Eligibility for Intern Permit.** Every applicant for an intern permit shall:

(a) File a written request for an intern permit, a letter from an attorney authorized to practice law in Alaska agreeing to supervise the intern, and the documents required by this rule as proof of eligibility for the permit;

(b) Be a student who:

(1) Is duly enrolled in a law school which was accredited or approved by the Council of Legal Education of the American Bar Association or the Association of American Law Schools when the applicant entered, or is enrolled in a law school in which the principles of English common law are taught but which is located outside the United States and beyond the jurisdiction of the American Bar Association and the Association of American Law Schools, provided that the foreign law school in which he or she is enrolled meets the American Bar Association Council of Legal Education Standards for approval;

(2) Has successfully completed at least one-half of the course work required for a law degree;

(3) Has filed with the application a certificate from the dean or other chief administrative officer of his or her law school, stating that he or she meets the requirements as set forth in subsections (b) (1) and (b) (2); or

(c) Be a law school graduate who:

(1) Has graduated from a law school which was accredited or approved by the Council of Legal Education of the American Bar Association or the Association of American Law Schools when the applicant entered or graduated, or has graduated from a law school in which the principles of English common law are taught but which is located outside the United States and beyond the jurisdiction of the American Bar Association and the Association of American Law Schools, provided that the foreign law school from which he or she has graduated meets the American Bar Association Council of Legal Education Standards for approval;

(2) Has never failed the Alaska bar examination;

(3) Has never failed a bar examination administered by any other state of the United States, or the District of Columbia, or, despite failure, has passed a bar examination administered by any state of the United States or the District of Columbia; and

(4) Has filed with the executive director a certificate from the dean or other chief administrative officer of his or her law school which states that the legal intern applicant meets the requirements set forth in subsection (c) (1), and a personal affidavit stating that he or she (i) has never failed the Alaska bar examination, and (ii) has never failed another bar examination or, despite failure, has passed a bar examination administered by any state of the United States or the District of Columbia, as set forth in subsection (c)(3).

**Section 4. Prior Admission.** Any applicant who has been admitted to practice in another jurisdiction must file a certificate of good standing from each jurisdiction in which the applicant is admitted. If not in good standing, the applicant shall submit satisfactory proof that the applicant has never been disbarred, suspended or otherwise disciplined.

#### **Section 5. Act Authorized by Permit.**

(a) A legal intern may appear and participate in all trial court proceedings before any district or superior court of this state, and in proceedings in the court of appeals, to the extent permitted by the judge or the presiding officer if the attorney representing the client is personally present and able to supervise the intern and has filed an entry of appearance with the court; a legal intern may also sign a brief or motion filed in the supreme court if the supervising attorney also signs that document;

(b) A legal intern may also appear and participate before any district court in small claims matters, arraignments, pleas, bail hearings, sentencings and recorded in-chambers conferences without an attorney being personally present to supervise the intern under the following conditions:

(1) If the supervising attorney has filed an affidavit with the judge before whom the legal intern will be appearing stating that the intern (i) has an effective legal intern permit on file with the Alaska Bar Association, and (ii) has previously been present and supervised in similar proceedings and that the attorney believes the intern is competent to conduct such proceedings without the personal presence of the attorney;

(2) If the client gives consent to the appearance. A governmental body may grant approval through its attorney; and

(3) If the judge or magistrate judge agrees to permit the legal intern to participate in the proceedings.

**Section 6. Termination of Permit.** A permit shall cease to be effective as follows:

(a) For a law student who obtains a permit under Section 3(b) of this rule, upon the expiration of a period of twelve

months in cumulative time that the intern participates in any acts authorized by the permit in any Alaska court; this cumulative time limit may be divided into two or three separate time periods if appropriate for the law student's schedule;

(b) For a law school graduate who obtains a permit under Section 3(c) of this rule, upon the expiration of a period of ten months from the date of issuance, or upon the failure of the intern to pass any bar examination administered by Alaska or any other state of the United States or the District of Columbia.

**Section 7. Revocation of Permit.** A permit may be revoked by the Executive Director on a showing that the intern has failed to comply with the requirements of this rule or violated the Alaska Bar Rules or the Alaska Rules of Professional Conduct.

**Section 8. Practice of Law Under Statutory Authority.** To be eligible to practice law without a license under the provisions of AS 08.08.210(d), a person must meet the eligibility requirements for obtaining a legal permit listed in Section 3(c)(1), (2), and (3) of this rule. Persons practicing under AS 08.08.210(d) must obtain a license to practice law in Alaska no later than 10 months following commencement of their employment. The authority for those persons to practice law terminates upon the failure of that person to pass any bar examination administered by Alaska or any other state of the United States or the District of Columbia.

(Added by Amendment No. 2 to SCO 176 dated June 28, 1974; and amended by Amendment No. 3 to SCO 176 dated September 17, 1974; by Amendment No. 4 to SCO 176; by SCO 342 effective December 18, 1978; by SCO 433 effective November 1, 1980; by SCO 1153 effective July 15, 1994; by SCO 1708 effective April 1, 2011; by SCO 1829 effective October 15, 2014; by SCO 1849 effective April 15, 2015; by SCO 1902 effective May 1, 2017; and by SCO 1909 effective June 21, 2017)

#### **Rule 44.1. Foreign Law Consultants.**

(a) **Introduction.** A person who is admitted to practice in a foreign country as an attorney or counselor at law or the equivalent, and who complies with the provisions of this rule for licensing of foreign law consultants, may provide legal services in the State of Alaska to the extent allowed by this rule.

(b) **Eligibility.** In its discretion, the court may license to practice as a foreign law consultant, without examination, an applicant who:

(1) for a period of not less than 5 of the 7 years immediately preceding the date of application:

(A) has been admitted to practice and has been in good standing as an attorney or counselor at law or the equivalent in a foreign country, and

(B) has engaged either (i) in the practice of law in that country or (ii) in a profession or occupation that requires

admission to practice and good standing as an attorney or counselor at law or the equivalent in that country;

(2) be of good moral character, which will be found unless prior or present conduct of the applicant would cause a reasonable person to believe that the applicant, if admitted to practice as a foreign legal consultant, would be unable or unwilling to act honestly, fairly and with integrity; and

(3) intends to practice as a foreign law consultant in the State of Alaska.

#### **(c) Applications.**

(1) An applicant for a license as a foreign law consultant shall file with the Executive Director at the office of the Alaska Bar Association an application, in duplicate, in the form provided by the Board. The application must be made under oath and must contain information relating to the applicant's age, residence, addresses, citizenship, occupations, general education, legal education, moral character and other matters as may be required by the Board. Any notice required or permitted to be given an applicant under these rules, if not personally delivered, will be delivered to the mailing address declared on the application unless notice in writing is actually received by the Board declaring a different mailing address. An applicant shall submit two duplicate 2-inch by 3-inch photographs of the applicant showing a front view of the person's head and shoulders. The application is deemed filed only upon receipt of a substantially completed form with payment of all required fees. Applications received without payment of all fees or which are not substantially complete will be promptly returned to the applicant with a notice stating the reasons for rejection and requiring payment of such additional fees as may be fixed by the Board as a condition of reapplication.

(2) The application must be accompanied by the following documents, together with duly authenticated English translations if the documents are not in English:

(A) a certificate from the authority having final jurisdiction over professional discipline in the foreign country or jurisdiction in which the applicant was admitted to practice, which must be signed by a responsible official, or one of the members of the executive body of such authority, and which must be accompanied by the official seal, if any, of the authority, and which must certify:

(i) as to the authority's jurisdiction in such matters,

(ii) as to the applicant's admission to practice in the foreign country, the date of admission and the applicant's good standing as an attorney or counselor at law or the equivalent, and

(iii) as to whether any charge or complaint has ever been filed against the applicant with the authority, and, if so, the substance of each charge or complaint and the adjudication or resolution thereof;

(B) a letter or recommendation from one of the members of the executive body of the authority or from one of the

judges of the highest law court or court of general original jurisdiction of the foreign country, certifying the applicant's professional qualifications, together with a certificate from the clerk of the authority, or of the court, attesting to the genuineness of the person's signature;

(C) a letter of recommendation of at least two attorneys or counselors at law or the equivalent admitted in and practicing in the foreign country, stating the length of time, when, and under what circumstances they have known the applicant, and their appraisal of the applicant's moral character; and

(D) other relevant documents or information as may be required by the Court or by the Board.

(3) The statements contained in the application and the supporting documents will be reviewed by the Board who shall report the results of their review with recommendations to the court. Prior to the grant of any license, the court must be satisfied of the good moral character of the applicant.

(4) In considering whether to license the applicant as a foreign law consultant under this rule, the court has discretion to consider whether an attorney in Alaska would be allowed a reasonable and practical opportunity to establish an office to give legal advice to clients in the applicant's country of admission. In order to exercise its discretion, the court must require a reasonable showing that:

(A) an attorney in Alaska actively sought to establish an office in the applicant's country of admission;

(B) the authority in the foreign country having final jurisdiction over the application process in subsection (A) denied the attorney in Alaska an opportunity to establish an office in that foreign country; and

(C) the denial in subsection (B) raises serious questions as to the adequacy of the opportunity for an attorney in Alaska to establish an office in the foreign country.

(d) **Hardship Waiver.** Upon a showing that strict compliance with the provisions of subparagraph (b)(1) or (c)(2) of this rule would cause the applicant unnecessary hardship, or upon a showing of exceptional professional qualifications to practice as a foreign law consultant, the court may waive or vary the application of such provisions and permit the applicant to make any other showing as is satisfactory to the court.

(e) **Scope of Practice.** A person licensed as a foreign law consultant under this rule may provide legal services in the State of Alaska, subject to the limitations that the person shall not:

(1) appear for another person as attorney in any court or before any magistrate judge or other judicial officer in the State of Alaska, or prepare pleadings or any other papers in any action or proceeding brought in any such court or before any such judicial officer, except as authorized by Civil Rule 81(a)(2);

(2) prepare any deed, mortgage, assignment, discharge, lease, agreement, sale or any other instruction affecting title to real estate located in the United States of America;

(3) prepare:

(A) any will or trust instrument affecting the disposition of any property located in the United States of America and owned by a resident of the United States of America, or

(B) any instrument relating to the administration of a decedent's estate in the United States of America;

(4) prepare any instrument concerning the marital relations, rights or duties of a resident of the United States of America, or the custody or care of the children of a resident;

(5) provide professional legal advice on the law of the State of Alaska, any other state or territory of the United States of America, the District of Columbia, the United States or any foreign country other than the country where the consultant is admitted as an attorney or counselor at law or the equivalent, whether provided incident to the preparation of legal instruments or otherwise. If a particular matter requires legal advice from a person admitted to practice law as an attorney in a jurisdiction other than where the consultant is admitted as an attorney or counselor at law or equivalent, the foreign law consultant shall consult an attorney, counselor of law or the equivalent in the other jurisdiction on the particular matter, obtain written legal advice and transmit the written legal advice to the client;

(6) in any way represent that the person is licensed as an attorney or counselor at law in the State of Alaska, or the equivalent in any jurisdiction, unless so licensed; or

(7) use any title other than "foreign law consultant"; provided that the person's authorized title and firm name in the foreign country in which the person is admitted to practice as an attorney or counsel at law or the equivalent may be used if the title, firm name, and the name of the foreign country are stated together with the title "foreign law consultant."

(f) **Disciplinary Provisions.**

(1) A person licensed to practice as a foreign law consultant under this rule is subject to the jurisdiction of the Alaska Supreme Court, the Disciplinary Board of the Alaska Bar Association, the Rules of Disciplinary Enforcement, and Ethics Opinions adopted by the Board of Governors of the Alaska Bar Association.

(2) A person licensed to practice as a foreign law consultant shall execute and file with the clerk, in the form and manner as the court may prescribe:

(A) a statement that the foreign law consultant has read and will observe the Rules of Disciplinary Enforcement, Ethics Opinions adopted by the Board of Governors of the Alaska Bar Association, and the Alaska Rules of Professional Conduct;

(B) an undertaking or appropriate evidence of professional liability insurance, in an amount as the Court may



prescribe, to ensure the foreign law consultant's proper professional conduct and responsibility;

(C) a signed document stating the foreign law consultant's address within the State of Alaska and designating the clerk of this court as the consultant's agent upon whom process may be served, with the effect as if served personally upon the consultant, in any action or proceeding brought against the consultant arising out of or based upon any legal services rendered or offered to be rendered by the consultant within or to residents of the State of Alaska, if due diligent service cannot be made upon the consultant at the consultant's address; and

(D) a commitment to notify the Court of any resignation or revocation of the foreign law consultant's admission to practice in the foreign country of admission, or of any censure, suspension, or expulsion respecting admission.

(SCO 946 effective January 15, 1989; amended by SCO 1669 effective April 15, 2008; and by SCO 1829 effective October 15, 2014)

#### **PART V. LAWYERS' FUND FOR CLIENT PROTECTION**

#### **Rule 45. Definitions.**

(a) The "Board" is the Board of Governors of the Alaska Bar Association.

(b) The "Fund" is the Lawyers' Fund for Client Protection of the Alaska Bar Association.

(c) The "Committee" is the Lawyers' Fund for Client Protection Committee.

(d) The term "lawyer" as used in this part and the rules contained therein means an active member of the Alaska Bar Association domiciled in Alaska at the time of the act or omission which is the basis of the application of the fund. The act or omission complained of need not have taken place within the State of Alaska in order for an application to the fund to be made or granted.

(e) The words "dishonest conduct" or "dishonest act" as used herein means wrongful acts committed by a lawyer in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property or other things of value.

(f) "Reimbursable losses" are only those losses of money, property or other things of value which meet all of the following tests:

(1) The loss was caused by the dishonest conduct of a lawyer when

(i) acting as a lawyer, or

(ii) acting in a fiduciary capacity customary to the practice of law, such as administrator, executor, trustee of an express trust, guardian or conservator; or

(iii) acting as an escrow holder or other fiduciary, having been designated as such by a client in the matter in which the loss arose or having been so appointed or selected as a result of the client-attorney relationship.

(2) The loss was that of money, property, or other things of value which came into the hands of the lawyer by reason of having acted in the capacity described in paragraph (f)(1) of this rule.

(3) The dishonest conduct occurred on or after the effective date of this part.

(4) The claim shall have been filed no later than three years after the claimant knew or should have known of the dishonest conduct of the lawyer.

(5) The following shall not be an applicant:

(i) The spouse or other close relative, partner, associate or employee of the lawyer, or

(ii) An insurer, surety or bonding agency or company, or

(iii) Any business entity controlled by (1) the lawyer, (2) any person described in paragraph (i) hereof, or (3) any entity described either in paragraph (ii) hereof or in turn controlled by the lawyer or a person or entity described in paragraphs (i) or (ii) hereof, or

(iv) A governmental entity or agency, or

(v) A collection agency.

(6) The loss, or reimbursable portion thereof was not covered by any insurance or by any fidelity or surety bond fund, whether of the lawyer or the applicant or otherwise.

(7) Either

(i) the lawyer

(aa) has died or has been adjudicated mentally incompetent;

(bb) has been disciplined, or has voluntarily resigned from the practice of law in Alaska;

(cc) has become a judgment debtor of the applicant or has been adjudicated guilty of a crime which judgment or judgments shall have been predicated upon dishonest conduct while acting as specified in paragraph (f) (1) of this rule and which judgment or judgments remain unsatisfied in whole or in part; or

(ii) the Board has determined it to be an appropriate case for consideration under these rules.

(8) Reimbursable losses do not include interest on such losses or attorney fees incurred in attempts to recover them.

(g) "Notice" means the delivery of a written notice personally to the addressee or by mail to the most recent address which the addressee has provided to the Alaska Bar

Association. Written notice shall be presumed to be received by the addressee five (5) days after the postmark date of certified or registered mail sent to the most current address which the addressee has provided to the Alaska Bar Association.

(Added by SCO 214 effective January 1, 1976; amended by SCO 722 effective December 15, 1986; and by SCO 1029 effective July 15, 1990)

**Rule 46. Applications for Reimbursement.**

(a) The Board shall prepare a form of application for reimbursement; in its discretion the Board may waive the requirement that a claim be filed on such form.

(b) The form shall be executed under penalty of perjury and shall require, as minimum information:

(1) The name and address of the lawyer.

(2) The amount of the alleged loss.

(3) The date or period of time during which the alleged loss was incurred.

(4) The date upon which the alleged loss was discovered.

(5) Name and address of the applicant.

(6) The general statement of facts relative to the application.

(7) A statement that the applicant has read these rules and agrees to be bound by them.

(8) A statement that the loss was not covered by any insurance, indemnity or bond, or if so covered, the name and address of the insurance or bonding company, if known, and the extent of such coverage and the amount of payment, if any made.

(c) The form or application shall contain the following statement in bold type:

**“THE ALASKA BAR ASSOCIATION HAS NO LEGAL RESPONSIBILITY FOR THE ACTS OF INDIVIDUAL LAWYERS. PAYMENTS FROM THE LAWYERS’ FUND FOR CLIENT PROTECTION SHALL BE MADE IN THE SOLE DISCRETION OF THE ALASKA BAR ASSOCIATION.”**

(d) The form shall include in its body the pro tanto assignment from the applicant to the Alaska Bar Association of the applicant’s right against the named lawyer, or the lawyer’s personal representative, estate or assigns, as required by Alaska Bar Rule 55.

(Added by SCO 214 effective January 1, 1976; amended by SCO 466 effective June 1, 1981; by SCO 1029 effective July 15, 1990; and by SCO 1153 effective July 15, 1994)

**Rule 47. Filing Applications and Preliminary Consideration.**

(a) An application for reimbursement shall be filed with the Anchorage office of the Alaska Bar Association and shall forthwith be transmitted by such office to the Chair of the Committee. The Executive Director of the Alaska Bar Association shall designate a State Bar staff attorney or attorneys or a member of the Committee to assist the Committee and the Board in their consideration thereof.

(b) Whenever the attorney designated pursuant to Rule 47(a) reports that in his or her opinion a prima facie case for reimbursement loss is not shown, such report shall be transmitted to the Committee and if approved by a majority of the Committee, constitutes rejection of the application. Any such report shall state the reasons for the opinion and may rely on information outside the application, including further information from the applicant, provided that such information is identified in the report.

(c) In all other cases the attorney designated pursuant to Rule 47(a) shall refer the application to the Committee.

(Added by SCO 214 effective January 1, 1976; amended by SCO 407 effective, nunc pro tunc, January 1, 1980; and by SCO 1217 effective July 15, 1995)

**Rule 48. The Committee.**

(a) The Committee shall consist of at least six members of the Alaska Bar Association, appointed by the President, subject to ratification by the Board. Each appointment shall be for a three year term.

(b) A quorum at any meeting of the Committee shall be a majority of the members of the committee. A member participating in Committee proceedings by telephone is present for all purposes, including purposes of a quorum. In the absence of a quorum a matter may be considered by the members present, but no action may be taken with respect thereto. The vote of a majority of the members present and voting at a meeting at which a quorum is present shall constitute the action of the Committee.

(c) The Chairperson of the Committee shall be appointed by the President for a term of one year commencing July 1 and thereafter may serve in that office until his or her successor is appointed. The Chairperson may be reappointed as Chairperson. Should a vacancy occur in the office of the Chairperson, the President shall appoint a new Chairperson.

(d) A member of the Committee who has or has had a lawyer-client relationship or financial relationship with a claimant or lawyer who is the subject of a claim shall not participate in the investigation or adjudication of a claim involving that claimant or lawyer.

(Added by SCO 214 effective January 1, 1976; amended by SCO 408 effective, nunc pro tunc, January 1, 1980; by SCO 722 effective December 15, 1986; by SCO 1073 effective January 15, 1992; and by SCO 1311 effective July 15, 1998)

**Rule 49. Authority of Committee and Board.**

Upon consideration of applications for reimbursement the Board, or the Committee may:

- (a) Take and hear evidence pertaining to the application.
- (b) Administer oaths and affirmations.
- (c) Compel, by subpoena, the attendance of witnesses and the production of books, papers and documents pertaining to the application.

(d) Upon application to and approval by the Executive Director, the Committee may engage the services of an investigator, accountant or other expert necessary to investigate and process the application.

(Added by SCO 214 effective January 1, 1976)

**Rule 50. Evidence and Burden of Proof.**

The proceedings had upon the applications need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions; provided, however, that certified or duly authenticated copies of the record, including a transcript of testimony therein, of

(a) any disciplinary proceeding against the lawyer of which the lawyer had notice conducted by the Alaska Bar Association or any body authorized to conduct disciplinary proceedings against attorneys in any state or the District of Columbia.

(b) any proceeding conducted pursuant to Rules 16, 28, 29, Alaska Bar Rules.

(c) any proceeding resulting in the conviction of the lawyer of a crime, or

(d) any contested civil action or special proceeding to which a lawyer is a party or in whose behalf the action is prosecuted or defended, may constitute sufficient evidence to support a finding. The applicant bears the burden of proof upon the issues of reimbursable loss and the extent thereof and all facts shall be established by a preponderance of the evidence.

(Added by SCO 214 effective January 1, 1976; amended by SCO 1153 effective July 15, 1994)

**Rule 51. When Testimony is to be Reported and Transcribed.**

The testimony of all witnesses appearing before the Committee or the Board shall be recorded; but a transcript of said testimony shall not be prepared unless the Committee or the Board or its President orders its preparation. Either party may request a transcript at their own expense.

(Added by SCO 214 effective January 1, 1976; amended by SCO 722, effective December 15, 1986; and by SCO 867 effective July 15, 1988)

**Rule 52. Consideration by Committee.**

(a) Upon receipt of an application the Committee shall conduct such investigations and hold such hearings as it determines necessary to establish whether the application should be granted. Hearings will be conducted informally. Both the applicant and the lawyer shall be afforded opportunities to present argument and evidence, and to cross-examine opposing witnesses. The Committee may request the attorney selected pursuant to Rule 47(a) to present argument and evidence, if the Committee believes this will assist it in reaching its decision.

The Committee shall provide a copy of the application to the lawyer complained of and shall notify the lawyer and the applicant of the date and time for a hearing on the application.

(b) The Committee may delegate responsibility for holding a hearing to a subcommittee of one or more of its members. The subcommittee shall prepare a proposed report containing the information required by Rule 52(c), which shall be promptly considered by the Committee. The Committee shall (1) approve and adopt the proposed report, or (2) remand the proposed report to the same or a different subcommittee for the taking of further evidence or for preparation of a new proposed report, or (3) consider the matter de novo on the basis of the record made at hearing.

(c) At the conclusion of the Committee's consideration of an application pursuant to this Rule, it shall promptly make and transmit to the office of the Alaska Bar Association a report consisting of a brief statement of the proceedings had, clear and concise findings of fact adopted by the Committee a brief statement of its conclusions and a recommendation to the Board.

(d) Upon receipt of the report, the Executive Director shall provide copies of it to the attorney or the attorney's representative and the claimant.

(e) Within twenty (20) days of receiving notice of the filing of the report with the Board, any party may file written objections to the report.

(Added by SCO 214 effective January 1, 1976; amended by SCO 409 effective, nunc pro tunc, January 1, 1980; by SCO 722 effective December 15, 1986; by SCO 867 effective July 15, 1988; by SCO 1029 effective July 15, 1990; by SCO 1064 effective July 15, 1991; and by SCO 1153 effective July 15, 1994)

**Rule 53. Consideration by the Board.**

(a) All reports filed by the Committee pursuant to Rule 52(d) are advisory only and shall be placed upon the calendar of the Board for consideration.

(b) The Board has the sole and final authority to determine whether and to what extent any application for reimbursement shall be granted and shall determine the order, manner (which may be in installments), and amount of payment of each application. The Board may postpone consideration of any application until after any disciplinary action or any court proceeding pending or contemplated has been completed.

(c) Before the Board directs that payment from the Fund be made it must find that a reimbursable loss as defined in these rules has been established and the extent of the said loss.

(d) The loss to be paid to any individual claimant as the result of any dishonest act or omission in any one transaction, matter or proceeding involving any one lawyer shall not exceed the lesser of the following sums: (a) \$50,000, or (b) 10% of the Fund at the time the award is made. The aggregate maximum amount which all claimants may recover arising from an instance or course of dishonest conduct of any one lawyer is \$200,000. The total amount to be paid to all claimants in any one year shall not exceed 50% of the total amount of the Fund as of January 1 of the calendar year in which the awards are made.

(Added by SCO 214 effective January 1, 1976; amended by SCO 722 effective December 15, 1986; and by SCO 1029 effective July 15, 1990)

**Rule 54. Payments at Discretion of State Bar.**

All payments from the Fund, including the payment of trustee counsel compensation by the Board under Rule 31(g)(3), shall be a matter of grace and not of right and shall be in the sole discretion of the Alaska Bar Association. No client or member of the public shall have any right in the Fund as a third party beneficiary or otherwise.

(Added by SCO 214 effective January 1, 1976; amended by SCO 1459 effective April 15, 2002)

**Rule 55. Assignment of Applicant's Rights and Subrogation.**

Payments on approved applications shall be made from the Fund only upon condition that the Alaska Bar Association receives, in consideration for any payment from the Fund, a pro tanto assignment from the applicant of the applicant's right against the lawyer involved, or the lawyer's personal representative, estate or assigns. The collection of the aforementioned assignments shall be handled by the Executive Director of the Alaska Bar Association or a staff attorney thereof, under the supervision of the Board of Governors or in such other manner as may from time to time be directed by the Board of Governors. In order to effect collection of said assignment, the Executive Director or other attorney

prosecuting the collection, may disclose such information concerning the application and the consideration thereof by the Alaska Bar Association as in the Executive Director's discretion is necessary; provided, however, that without prior approval of the Board of Governors, the Executive Director shall not disclose information which refers to the existence of any non-public disciplinary matter or proceeding. Upon commencement of an action by the Alaska Bar Association, pursuant to its subrogation rights, it shall give written notice thereof to the reimbursed applicant at the applicant's last known address. The reimbursed applicant may then join in such action to press a claim for the applicant's loss in excess of the amount of the above reimbursement, but any recovery shall first be applied to offset the reimbursement.

(Added by SCO 214 effective January 1, 1976; amended by SCO 1153 effective July 15, 1994)

**Rule 56. Applicant May Be Advised.**

The applicant may be advised of the status of the Alaska Bar Association's consideration of the applicant's application and shall be advised of the final determination of the Alaska Bar Association upon the same.

(Added by SCO 214 effective January 1, 1976; amended by SCO 1153 effective July 15, 1994; and by SCO 1395 effective October 15, 2000)

**Rule 57. Rejection of the Application; Finality.**

The applicant may apply to the Board for further consideration of the application within one month after the mailing of the notice of rejection by the Committee; otherwise such rejection is final and no further consideration shall be given by the Alaska Bar Association to said application or another based upon the same alleged facts.

(Added by SCO 214 effective January 1, 1976)

**Rule 58. Confidential Nature of Proceeding and Records.**

(a) The Committee and the Board, during consideration of an application, may have access to Alaska Bar Association disciplinary files and records, if any, pertaining to the alleged loss notwithstanding the provisions of Rule 22(b), Alaska Bar Rules. Any information or documents obtained by the Board or the Committee from said files or records shall be used solely for the purpose of determining the validity of the application, but otherwise shall constitute confidential information as provided in Rule 22(b).

(b) The files and records pertaining to all applications for reimbursement from the Fund and all investigations or proceedings conducted in connection therewith are the property of the Alaska Bar Association and are confidential and no information concerning them and the matters to which they relate shall be given to any persons except upon order of the Board of Governors or as in these rules provided.

(c) Unless otherwise ordered by the Board, the proceeding conducted before the Committee and the Board shall not be public.

(Added by SCO 214 effective January 1, 1976; amended by SCO 722 effective December 15, 1986)

### **Rule 59. Other Rules.**

Except where otherwise specifically provided in this part, Rules 14 and 17 shall be applicable to this part; and in such cases the reference to “disciplinary proceedings” shall encompass Lawyers’ Fund for Client Protection proceedings, and the reference to “members of hearing committees” shall apply to the Lawyers’ Fund for Client Protection Committee.

(Added by SCO 214 effective January 1, 1976; amended by SCO 466 effective June 1, 1981; by SCO 722 effective December 15, 1986; and by SCO 1029 effective July 15, 1990)

### **Rule 60. General Provisions.**

(a) Bar Counsel shall refer potential claimants to the Lawyers’ Fund for Client Protection at the completion of discipline proceedings when appropriate. Copies of the Lawyers’ Fund for Client Protection Rules and any pamphlet which describes the Fund and procedures involved in filing a claim may be made available to the public.

(b) These rules may be changed at any time by a majority vote of the Committee at a duly held meeting at which a quorum is present, subject, however, to the approval of a majority vote of the Board of Governors of the Alaska Bar Association and the adoption of the change by the Supreme Court of the State of Alaska.

#### **(c) Immunity.**

(1) *General Immunity.* Members of the Board, members of the Committee, the Executive Director, Bar Counsel, and all Bar staff are immune from suit for conduct in the course and scope of their official duties as set forth in these rules.

(2) *Witness Immunity.* The Court or its designee may, in its discretion, grant immunity from criminal prosecution to witnesses in Lawyers’ Fund for Client Protection proceedings upon application of the Board, Bar Counsel, the lawyer, or counsel for the lawyer, and after receiving the consent of the appropriate prosecuting authority.

(Added by SCO 214 effective January 1, 1976; amended by SCO 722 effective December 15, 1986; by SCO 962 effective July 15, 1989; by SCO 1029 effective July 15, 1990; by SCO 1176 effective July 15, 1995)

## **Part VI.**

### **Rule 61. Suspension for Nonpayment of Alaska Bar Membership Fees, Fee Arbitration Awards, and Child Support Obligation; and for Failure to Respond to a Grievance.**

(a) Any member failing to pay any fees within 30 days after they become due shall be notified in writing by certified or registered mail that the Executive Director shall petition a the Supreme Court of Alaska for an order suspending such member for nonpayment of fees.

(b) The Executive Director shall annually notify the clerks of court of the names and date of suspension of all members who have been then or previously suspended and not reinstated.

(1) Any member who has been suspended for less than one year, upon payment of all accrued dues, in addition to a penalty of \$10.00 per week of delinquency (each portion of a week to be considered a whole week) but not exceeding a total of \$160.00 in penalties shall be reinstated upon certification by the Executive Director to the Supreme Court and the clerks of court that the dues and penalties have been paid.

(2) Any member who has been suspended for a year or more, upon determination of character and fitness as set forth in Rule 2(1)(d) by the Board, upon payment of all accrued dues, in addition to a penalty of \$160.00, shall be reinstated upon certification by the Executive Director to the Supreme Court and the clerks of court that the member meets the standard of character and fitness set forth in Rule 2(1)(d) and that dues and penalties have been paid.

(c) Any member who without good cause fails to pay a final and binding fee arbitration award within 15 days after it is final and binding shall be notified in writing by certified or registered mail that the Executive Director shall, after 15 days, petition the Supreme Court of Alaska for an order suspending such member for nonpayment of a fee arbitration award. Upon suspension of the member for nonpayment of a fee arbitration award, the member shall not be reinstated until the award is paid or otherwise satisfied and the Executive Director has certified to the Supreme Court and the clerks of court that the award has been paid.

#### **(d) Suspension for Nonpayment of Child Support Obligation.**

(1) If notified by the Child Support Services Division that any member is not in substantial compliance with his or her child support order or a payment schedule negotiated with the Child Support Services Division, the Executive Director shall serve such notice on the member.

(2) If the Executive Director has not received a release from the Child Support Services Division, or notice of a court order staying suspension, within 150 days of the mailing or personal service of the notice described in (1) of this paragraph, the Executive Director shall petition the Supreme Court of Alaska for an order suspending such member for substantial noncompliance with his or her child support order

or payment agreement negotiated with the Child Support Services Division. Upon suspension of the member for this reason, the member shall not be reinstated until the Child Support Services Division issues a release to the Executive Director and the Executive Director has certified to the Supreme Court and the clerks of court that a release has been issued by the Child Support Services Division.

(e) **Suspension for Failure to Respond to a Grievance Accepted for Investigation.** If a member fails to respond to a grievance accepted for investigation within the time required by Rule 22(a), or within any further time granted in writing by Bar Counsel, Bar Counsel shall petition the Supreme Court of Alaska for an order immediately suspending the member for failure to respond to a grievance accepted for investigation. Upon suspension of the member for failure to respond to a grievance accepted for investigation, the member shall not be reinstated until Bar Counsel has certified to the Supreme Court that a response to the grievance has been filed as required by Rule 22(a).

(Added by SCO 233(7) effective April 1, 1976; amended by SCO 343 effective December 18, 1978; by SCO 466 effective June 1, 1981; by SCO 611 effective January 1, 1985; by SCO 971 effective July 15, 1989; by SCO 1232 effective July 15, 1996; by SCO 1310 effective July 15, 1998; by SCO 1376 effective April 15, 2000; by SCO 1652 effective October 15, 2007; and by SCO 1707 effective October 15, 2013)

## **Rule 62. Adoption of Recommended Rules, Bylaws, and Regulations.**

**Section 1. Purpose:** This rule provides a procedure whereby the Board of Governors of the Alaska Bar and the Alaska Bar may:

- (a) Recommend for adoption to the Supreme Court of Alaska proposed Alaska Bar Rules;
- (b) Adopt bylaws and regulations for governance of the Alaska Bar.

**Section 2.** The Board, on its own initiative may, in accordance with this Rule, recommend for adoption proposed Alaska Bar Rules and adopt bylaws and regulations.

**Section 3.** Any member of either the Alaska Bar or the Board of Governors may petition the Board of Governors or the annual convention of the Alaska Bar for consideration of the adoption, amendment or repeal of an Alaska Bar Rule, bylaw or regulation. The petition shall clearly and concisely state:

- (a) The substance or nature of the rule, amendment or repeal requested; and
- (b) The reasons for the request.

**Section 4.** (a) Petitions referred to in Section 3 hereof shall be in writing and shall be directed to the Executive Director of the Bar or to any member of the Board of Governors.

(b) If such a petition is to be introduced by resolution at the annual convention of the Alaska Bar, it must be received at least (45) days prior to the commencement of the convention.

(c) Upon receipt of such a petition addressed to it, the Board of Governors shall, at its next regular meeting, deny the petition in writing or schedule the matter for hearing under Section 6, of this Rule.

(d) Petitions addressed to the annual convention of the Alaska Bar may not be denied by the Board of Governors prior to such submission, or, if the petition is approved at the annual convention of the Alaska Bar, after such convention.

**Section 5.** At least 30 days before either the Board of Governors or the members in attendance at the annual convention recommend for adoption an Alaska Bar Rule or adopt a bylaw or regulation, notice of the proposed action shall be:

- (a) Published in the Alaska Bar Brief, or such other publication as may then be regularly published by the Bar Association;
- (b) Mailed to every person, not a subscriber to the Alaska Bar Brief, who has filed a request for notice of proposed action with the Bar Association;

(c) When appropriate in the judgement of the Executive Director, or any member of the Board of Governors, mailed to a person or group of persons whom the Executive Director or any member of the Board of Governors believes is interested in the proposed action.

**Section 6.** The notice of proposed approval of the adoption, amendment, or repeal of an Alaska Bar Rule, by-law or regulation shall include:

- (a) A statement of the time, nature and place of the proceeding; and
- (b) Either the express terms or informative summary of the proposed action. If in summary form, a copy of the proposal shall be available for inspection at the office of the Executive Director.

**Section 7.** (a) With respect to petitions addressed to the Board of Governors, on the day and at the time and place designated in the notice referred to in Sections 5 and 6 hereof, the Board of Governors -shall give interested persons or their authorized representatives, or both, the opportunity to present statements, arguments, or contentions in writing or orally as the Board of Governors shall determine.

(b) With respect to petitions addressed to the annual convention of the Alaska Bar, the Board of Governors shall, at the time and place designated in the notice referred to in Sections 5 and 6 hereof, present the petition for consideration by the members in attendance at the convention, and shall give interested persons or their authorized representatives, or both, the opportunity to present statements, arguments, or contentions in writing or orally, as the Board of Governors shall determine.

(c) With respect to hearings on petitions addressed to the Board of Governors, the Board of Governors may administer oaths or affirmations, and may continue or postpone the hearing to such time and place as it may deem appropriate. Hearings on petitions addressed to the annual convention of the Alaska Bar shall not be subject to continuance or postponement under this provision.

(d) After approval of any recommendation with respect to any Alaska Bar Rule, the proposal shall be submitted to the Supreme Court of the State of Alaska for its consideration.

(e) When the proposed rule has been forwarded to the Court, it shall either approve the proposal or shall set a date on which a meeting shall be held with the Board of Governors to discuss the proposal. Any such meeting may be waived by the mutual consent of the Court and the Board.

**Section 8.** In the event that the Board makes a finding that an emergency exists and that the notice provisions of this Rule would work an injustice, such notice as the Board deems practicable shall be given prior to action upon a proposed Rule, bylaw or regulations.

(Added by SCO 297 effective April 1, 1978; amended by SCO 1153 effective July 15, 1994)

**Rule 63. Unauthorized Practice of Law—  
AS 08.08.230.**

For purposes of AS 08.08.230 (making unauthorized practice of law a misdemeanor). “practice of law” is defined as:

(a) representing oneself by words or conduct to be an attorney, and, if the person is authorized to practice law in another jurisdiction but is not a member of the Alaska Bar Association, representing oneself to be a member of the Alaska Bar Association; and

(b) either (i) representing another before a court or governmental body which is operating in its adjudicative capacity, including the submission of pleadings, or (ii), for compensation, providing advice or preparing documents for another which affect legal rights or duties.

(SCO 924 effective January 15, 1989)

**Rule 64. Mandatory Affidavit of Review of Alaska Rules of Professional Conduct; Suspension for Noncompliance.**

(a) Every active member of the Alaska Bar Association as of July 15, 1995 shall execute, on a form printed by the Bar Association, an affidavit of review stating that the member has read and is familiar with the Alaska Rules of Professional Conduct. The affidavit of review shall be filed with the Bar Association on or before July 15, 1996.

(b) Persons who become active members of the Alaska Bar Association after July 15, 1995 shall execute, on a form printed by the Bar Association, an affidavit of review stating that the member has read and is familiar with the Alaska Rules

of Professional Conduct. The affidavit of review shall be filed with the Bar Association on or before the date on which they become active members.

(c) Any member who without good cause fails to comply with the requirements of this rule shall be notified in writing by certified or registered mail that the Executive Director shall, after 30 days, petition the Supreme Court of Alaska for an order suspending the member for noncompliance. Upon suspension of the member for noncompliance, the member shall not be reinstated until the member has complied with this rule and the Executive Director has certified to the Supreme Court that the member is in compliance.

(SCO 1173 effective July 15, 1995)

**Rule 65. Continuing Legal Education.**

(a) *Mandatory Continuing Legal Education.* In order to promote competence and professionalism in members of the Association, the Alaska Supreme Court and the Association require all members to engage in Mandatory Ethics Continuing Legal Education (MECLE). Every active member of the Alaska Bar Association shall complete at least three credit hours per year of approved MECLE. Qualifying educational topics may include professional responsibility, workplace ethics, law office management, attention to cases and clients, time management, malpractice prevention, collegiality, general attorney wellness, and professionalism.

(b) *Voluntary Continuing Legal Education.* In addition to MECLE, the Alaska Supreme Court and the Association encourage all members to engage in Voluntary Continuing Legal Education (VCLE). Every active member of the Alaska Bar Association should complete at least nine credit hours per year of approved VCLE .

*Commentary.—The Alaska Supreme Court and the Association are convinced that CLE contributes to lawyer competence and benefits the public and the profession by assuring that attorneys remain current regarding the law, the obligations and standards of the profession, and the management of their practices. To protect the public, ensure that lawyers remain mindful of their obligations to their clients, and to address the area about which the Association receives the majority of questions from and complaints about lawyers, the Supreme Court is imposing a mandatory requirement for ethics CLE on all active Bar members. The ethics topics that qualify for MECLE are intended to be comprehensive, as conveyed by the examples in subsection (a) of this rule. Moreover, to help ensure that lawyers can easily and readily meet the MECLE requirements, the Association has agreed to provide at least three hours per year of approved MECLE at no cost to members. The Supreme Court has also concluded that Voluntary Continuing Education on additional subject areas is valuable to lawyers and should be encouraged. This rule uses incentives to encourage lawyers to participate in VCLE.*

*The Supreme Court’s goal in imposing MECLE and mandatory reporting of all CLE is to encourage a substantial increase in attendance at CLE courses and participation in*

activities that earn MECLE and VCLE credit, with resulting enhancement of lawyer services to clients. This rule refines the former VCLE rule, and continues the pilot project begun in 1999. At the end of three years, the Supreme Court will again assess the project's results, including recommendations and statistics provided by the Association, and will determine whether an expanded mandatory CLE program is necessary.

(c) *Carryforward of Credit Hours.* An active Bar member may carry forward from the previous reporting period a maximum of 12 credits (3 MECLE credits and 9 VCLE credits). To be carried forward, the credit hours must have been earned during the calendar year immediately preceding the current reporting period.

(d) *Mandatory Reporting.* By February 1 of each year, each member must certify on a form prescribed by the Association whether the member has completed the required minimum of three hours of approved MECLE during the preceding year or carried over from the prior year as provided in subsection (c) of this rule. The member must also certify whether the member has completed nine hours of approved VCLE during the preceding year or carried over from the prior year as provided in subsection (c). If the member has completed fewer than nine hours of VCLE, the member must also estimate and report the estimated number of VCLE hours completed. A member shall maintain records of approved MECLE hours for the two most recent reporting periods, and these records shall be subject to audit by the Association on request.

**Commentary.**—*The Supreme Court has adopted this mandatory reporting requirement to ensure that Bar members report CLE activities to the Association. This will ensure that the Association and the Court can assess the effectiveness of the rule by determining what percentage of lawyers are earning CLE credit hours in excess of the minimum, and what percentage are earning VCLE credit hours, even if the hours are less than the nine hours that this rule encourages.*

*The record of approved MECLE hours that members are required to maintain under subsection (d) may be any documentation, including contemporaneous journal entries or timekeeping entries, whether paper or electronic, that serves to establish that the member earned the credit hours.*

(e) *Incentives for VCLE.* Only members who complete at least nine hours of VCLE are eligible to participate in the Alaska Bar Association's Lawyer Referral Service. If a member does not complete at least nine hours of VCLE, that fact may be taken into account in any Bar disciplinary matter relating to the requirements of Alaska Rule of Professional Conduct 1.1. The Association shall make a member's record of compliance with VCLE available to the Alaska Judicial Council for its consideration in connection with a member's candidacy for any judicial office or other position for which the Council screens and nominates candidates. The Association shall publish annually, and make available to members of the public, a list of attorneys who have complied with this rule's MECLE requirements and satisfied this rule's minimum recommendations for VCLE. The Association may adopt other incentives to encourage compliance with the VCLE

recommendations.

(f) *Time Extensions.* A member may file a written request for an extension of time for compliance with this rule. A request for extension shall be reviewed and determined by the Association.

(g) *CLE Activities.* The MECLE and VCLE standards of this rule may be met either by attending approved courses or completing any other continuing legal education activity approved for credit under these rules. If the approved course or activity or any portion of it relates to ethics as described in (a) of this rule, the member may claim MECLE credit for the course or activity or for the ethics-related portion of it. Any course or continuing legal education activity approved for credit by a jurisdiction, other than Alaska, that requires continuing legal education is approved for credit in Alaska under this rule. The following activities are for credit when they meet the conditions set forth in this rule:

(1) preparing for and teaching approved MECLE and VCLE courses and participating in public service broadcasts on legal topics; credit will be granted for up to two hours of preparation time for every one hour of time spent teaching;

(2) studying audio or video tapes or other technology-delivered approved MECLE and VCLE courses;

(3) writing published legal articles in any publication or articles in law reviews or specialized professional journals;

(4) attending substantive Section or Inn of Court meetings;

(5) participating as a faculty member in Youth Court;

(6) attending approved in-house continuing legal education courses;

(7) attending approved continuing judicial education courses;

(8) attending approved continuing legal education courses including local bar association programs and meetings of professional legal associations;

(9) participating as a mentor in a relationship with another member of the Alaska Bar Association for the purpose of training that other member in providing effective pro bono legal services;

(10) participating as a member of the Alaska Bar Association Law Examiners Committee, the Alaska Bar Association Ethics Committee, the Alaska Rules of Professional Conduct Committee, or any standing rules committees appointed by the Alaska Bar Association or the Alaska Supreme Court; and

(11) participating as a member of an Area Discipline Division or an Area Fee Resolution Division.

(h) *Approval of CLE Programs.* The Association shall approve or disapprove all education activities for credit. CLE



activities sponsored by the Association are deemed approved. Forms for approval may be submitted electronically.

(1) An entity or association must apply to the Board for accreditation as a CLE provider. Accreditation shall constitute prior approval of MECLE and VCLE courses offered by the provider, subject to amendment, suspension, or revocation of such accreditation by the Board.

(2) The Board shall establish by regulation the procedures, minimum standards, and any fees for accreditation of providers, in-house continuing legal education courses, and publication of legal texts or journal articles, and for revocation of accreditation when necessary.

(i) *Effective Date; Reporting Period; Inapplicability to New Admittees.*

(1) This rule will be effective January 1, 2008. The reporting period will be the calendar year, from January 1st to December 31st, and the first calendar year to be reported will be the year 2008. Any ethics or other CLE credits earned from January 1, 2007 to December 31, 2007 may be held over and applied to the reporting period for the year 2008.

(2) This rule does not apply to a new member of the Alaska Bar Association during the calendar year in which the member is first admitted to the practice of law in Alaska.

(Added by SCO 1366 effective September 2, 1999; by SCO 1640 Effective January 1, 2008; and by SCO 1756 effective October 14, 2011)

**Rule 66. Noncompliance with Continuing Legal Education Requirements; Suspension**

(a) *Notice of Noncompliance.* Within 30 days after the

deadline for filing the certification form described in Rule 65(d), the Association shall send a notice of noncompliance to each member whose certificate shows that the MECLE requirement has not been met, or who has failed to file the completed certification form. Within 30 days after receiving a notice of noncompliance, the member shall either remedy the noncompliance, demonstrate that the notice of non-compliance was issued erroneously, or submit an affidavit of compliance, if the member asserts that the information on the certification form contained an error.

(b) *Suspension for Noncompliance with Mandatory Ethics Continuing Legal Education Requirement or Noncompliance with Requirement to Report MECLE and VCLE.*

(1) Any member who has not complied with the MECLE requirement in Rule 65(a) or with the mandatory reporting of MECLE and VCLE requirement in Rule 65(d), and who has not remedied the noncompliance as provided in subsection (a) of this rule, shall be notified in writing by certified or registered mail that the Executive Director shall, after 15 days from the date of the notice, petition the Supreme Court of Alaska for an order suspending the member for noncompliance.

(2) A member suspended under this subsection shall not be reinstated until (A) the member has complied with the MECLE requirement and the mandatory reporting requirement; (B) the member has paid a reinstatement fee in an amount set by the Board; (C) the member has paid any dues accruing during suspension; and (D) the Executive Director has certified the member's compliance to the Alaska Supreme Court.

(Added by SCO 1640 effective January 1, 2008)

