

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 614

Rescinding All Current Rules of Disciplinary Enforcement (Part II of the Alaska Bar Rules) and Promulgating New Rules of Disciplinary Enforcement.

IT IS ORDERED:

1. All current Rules of Disciplinary Enforcement, incorporated as Part II of the Alaska Bar Rules, Rules 9 through 33 inclusive, are hereby rescinded.

2. The attached new rules, numbered 9 through 33.2, are adopted as the Rules of Disciplinary Enforcement, Part II, Alaska Bar Rules.

DATED: December 6, 1984

EFFECTIVE DATE: January 1, 1985

Jay A. Rabinowitz
Chief Justice Jay A. Rabinowitz

Edmond W. Burke
Justice Edmond W. Burke

Warren W. Matthews
Justice Warren W. Matthews

Allen T. Compton
Justice Allen T. Compton

Daniel A. Moore Jr.
Justice Daniel A. Moore Jr.

COMPTON, Justice, with whom BURKE, Justice joins, dissenting in part.

I disagree with the increased standard of proof made applicable by our adoption of Rule 22. We now know that the "clear and convincing evidence" standard or proof is not required by federal constitutional law. In re Walton, 676 P.2d 1078 (Alaska 1983), appeal dismissed sub nom. Walton v. Alaska Bar Association, ___ U.S. ___, 83 L. Ed. 2d 6 (1984).¹ Further, we have held that it is not required as a matter of state constitutional law, 676 P.2d at 1085. I would thus retain the "preponderance of the evidence" standard of proof. In my view, this lower standard reflects the appropriate policy. Id.

MOORE, Justice, dissenting in part.

I dissent from the portion of the order adopting Rule 26(b) and would instead adopt the change originally proposed by the Alaska Bar Association that deleted felonies not involving moral turpitude, dishonesty, or conduct as an attorney from the list that requires automatic interim suspension.

1. Dismissal for want of a substantial federal question is a disposition on the merits. Hicks v. Miranda, 422 U.S. 332, 334, 45 L. Ed. 2d 223, 236 (1975). See generally 16 C.Wright, A.Miller, E.Cooper, & E.Gressman, Federal Practice and Procedure: § 4014 (1977).

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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 Code of Professional Responsibility and the Code of Judicial Conduct that have been or may hereafter be adopted or recognized by the Court.

(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 Discipline Counsel of the Alaska Bar Association (hereinafter "Discipline Counsel"). Each member of the Bar has the duty to assist Discipline Counsel in the investigation, prosecution, and disposition of complaints filed with or by Discipline 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.

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 Discipline Counsel and his or her staff;

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

(3) retain legal counsel and appoint Special Discipline 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 private reprimand as a Board upon a Respondent attorney (hereinafter "Respondent") upon referral by Discipline 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 Discipline 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; and

(11) adopt regulations not inconsistent with these Rules.

(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 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.

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

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

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

(3) 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; Discipline Counsel 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 Conciliator, for proceedings under Rule 13, if the grievance concerns matters other than a fee dispute or conduct referred to in Rule 15;

(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. Discipline Counsel 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 Discipline Counsel will be the subject of a summary prepared by Discipline Counsel and filed with the Board. Discipline Counsel will communicate disposition of the matter promptly to the Complainant and Respondent.

(d) Record Keeping. The Discipline Counsel 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 Discipline Counsel 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 Discipline Counsel. Discipline Counsel may delegate such tasks as (s)he deems appropriate to Assistant Discipline Counsel (hereinafter "Assistant's"). Any reference in these Rules to Discipline Counsel will include the Assistants.

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

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

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 President, subject to ratification by the Board. 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 maintains an office for the practice of law 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 three year term, with each term to commence on July 1 and expire on June 30th of the third 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.

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

(1) sit on Hearing Committees;

(2) review requests from Discipline 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 Discipline Counsel's decision to file a formal petition pursuant to Rule 25(d) or (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 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.

(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 Discipline 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 Discipline 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 Discipline 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 facts, 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.

Rule 13. CONCILIATION PANELS.

(a) Definition. Conciliation panels will be established for the purpose of settling disputes between attorneys and their clients not concerning fee disputes or misconduct as set out in Rule 15. At least one conciliation panel will be established in each area defined in Rule 9(d).

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

(c) Powers and Duties. A member of a conciliation panel will be known as a Conciliator. Only one Conciliator need act on any single matter. Conciliators will have the power and duty to mediate disputes referred to them by Discipline Counsel pursuant to Rule 11(a)(11).

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

(e) Written Agreement. If proceedings before a Conciliator produce resolution of the dispute in whole or in part, the Conciliator will prepare a written agreement containing the resolution which will be signed by the parties to the dispute.

(f) Report to Discipline Counsel. When the dispute has been resolved, or when in the judgment of the Conciliator further efforts at conciliation would be unwarranted, the Conciliator will submit a written report to the Discipline 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;
- (4) any matters upon which agreement was not reached;
- (5) the opinion of the Conciliator on the merits of the dispute; and
- (6) the opinion of the Conciliator on the good faith or lack of good faith of the efforts made by any attorney to resolve the dispute.

(g) Failure of Attorney to Participate in Good Faith. Any attorney involved in a dispute referred to a Conciliator has the obligation to confer expeditiously with the Conciliator and with all other parties to the dispute and to cooperate in good faith with the Conciliator in an effort to resolve the dispute. Failure by any attorney to participate in good faith in an effort to resolve a dispute submitted to a Conciliator may be grounds for disciplinary action under these Rules.

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 Discipline Counsel;

(B) appeals from or review of Discipline 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.

Rule 15. GROUNDS FOR DISCIPLINE.

In addition to those standards of conduct prescribed by the Alaska Code of Professional Responsibility 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, Discipline Counsel, an Area Division member, or a Hearing Committee in conformity with any of these Rules;

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

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

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

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

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

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 for a period not to exceed two years; or
- (4) public censure by the Court; or
- (5) public reprimand by the Disciplinary Board.

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

- (1) private reprimand in person by the Board, pursuant to Rule 10(c)(8); or
- (2) written private admonition by Discipline 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 Client Security Fund; or
- (3) payment of the costs, including attorney's fees, of the proceedings or investigation or any parts thereof.

Rule 17. IMMUNITY.

(a) General Immunity. Members of the Board, members of Area Divisions, Discipline Counsel, Special Discipline Counsel, the Executive Director, 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, Discipline Counsel, or counsel for Respondent, and after receiving the consent of the appropriate prosecuting authority.

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.

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.

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.

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

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

(2) preclude Discipline 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; or

(4) deny the public facts regarding the stage of any proceeding or investigation concerning a Respondent's conviction of a crime; or

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

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

Rule 22. PROCEDURE.

(a) Grievances. Grievances will be in writing, signed 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 Discipline Counsel. Discipline Counsel will review the grievance filed to determine whether it is properly completed and contains allegations which, if true, would constitute grounds for discipline as set forth in Rule 15. Discipline Counsel may require the Complainant to provide additional information prior to accepting a grievance. If Discipline Counsel determines that the allegations contained in the grievance are inadequate or insufficient to warrant an investigation, (s)he will so notify the Complainant and Respondent.

If Discipline Counsel accepts a grievance for investigation, s(he) will serve a copy of the grievance upon the Respondent for a response. Discipline Counsel may require the Respondent to provide, within 20 days of service, full and fair disclosure in writing of all facts and circumstances pertaining to the alleged misconduct. Misrepresentation in a response to Discipline 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 Discipline Counsel, will be deemed an admission to the allegations in the grievance.

(b) Confidentiality. Prior to the initiation of formal proceedings, Complainants and all persons contacted during the course of an investigation have a duty to maintain the confidentiality of discipline and disability proceedings. 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.

(c) Dismissal before Formal Proceedings. If after investigation it appears that there is no probable cause to believe that misconduct has occurred, Discipline 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, Discipline Counsel may impose a written private admonition upon a Respondent. A Respondent will not be entitled to appeal a private admonition by Discipline 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 Discipline Counsel will proceed under Section (e) of this Rule.

In the discretion of Discipline Counsel, (s)he may refer a matter to the Board for approval and imposition of a private 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), Discipline 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 of his answer with the Director, and serve a copy upon Discipline 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 Discipline Counsel.

Charges before a Hearing Committee will be presented by Discipline Counsel. Discipline 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.

Discipline Counsel may amend a petition for formal hearing at any time before an answer is filed. Discipline 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 peremptorily 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 matters, identification of preliminary 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 Discipline Counsel for his or her approval. If accepted by Discipline 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 Discipline 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, Discipline 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 Discipline Counsel or Respondent requests argument as provided in Section (l) 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. Discipline 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. Part II of the Rules of Appellate Procedure will govern appeals filed under this Rule.

(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.

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.

Rule 24. DISCOVERY; SUBPOENA POWER; WITNESS COMPENSATION.

(a) Subpoenas during Investigation. At any stage of an investigation, only the Discipline 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 Discipline 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 Discipline 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 Discipline 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 Discipline 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 Discipline 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.

Rule 25. APPEALS; REVIEW OF DISCIPLINE 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 Discipline Counsel's Decision to Dismiss. A Complainant may appeal the decision of the Discipline 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 Discipline 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. The Complainant may appeal a decision of the Area Division member to the Court only on the grounds that the Area Division member acted arbitrarily or capriciously.

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

(e) Appeal by Discipline Counsel. Discipline Counsel may appeal the decision made under Section (d) of this Rule within 10 days following receipt of the Area Division member's decision. The Director will designate a second Area Division member to hear this appeal. The decision of the second 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(l), the Respondent or Discipline 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 Discipline 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) Discipline Counsel Petition for Hearing of a Board Recommendation or Order. Discipline 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.

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 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 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."

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. A certificate of conviction may be filed with the Court by any clerk of courts, Discipline Counsel, the Board, or any District Attorney. Within 10 days of the judgment of conviction, the certificate of conviction will be transmitted to the Court by any clerk of courts within the state in which the attorney is convicted. Should Discipline Counsel or a District Attorney learn of a criminal conviction of an attorney where there is no certificate of conviction, it will be the responsibility of Discipline Counsel or the District Attorney to obtain the certificate and transmit it to the Court.

(d) Interim Suspension for Threat of Irreparable Harm. Interim suspension will be imposed by the Court on a showing by Discipline 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.

(e) 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. 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.

(f) 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 Discipline 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.

(g) 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 Discipline Counsel for whatever action (s)he deems warranted, including the possible initiation of a formal proceeding.

(h) 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.

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

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 Discipline 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 Discipline 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.

Rule 28. ACTION NECESSARY WHEN DISBARRED, SUSPENDED, OR PLACED ON PROBATION.

(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 his 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, not to exceed two years, 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 Discipline 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, or interim suspension 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 serving the community in which the disciplined attorney maintained his or her practice.

(h) Circulation of Notice; National Discipline 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 and district 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.

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

(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.

Rule 29. REINSTATEMENT.

(a) Reinstatement Proceedings. An attorney who has been disbarred or suspended for more than six months may not resume practice until reinstated by order of the Court. An attorney who has been suspended for six months or less may resume practice without order of the Court upon the expiration date of the suspension. Interim suspension will end only in accordance with Rule 26.

(b) Disbarred Attorneys. Petitions for reinstatement by disbarred attorneys will be filed with the Court with a copy served upon the Director for initiation of reinstatement proceedings. 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. A disbarred attorney may petition for reinstatement no earlier than 90 days prior to the expiration of the five year period following the effective date of disbarment. Proceedings 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 disbarment; the Hearing Committee will promptly schedule a hearing to take place within 30 days of the filing of the petition; at the hearing, the Petitioner will have the burden of demonstrating 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 within 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 Discipline 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) within 45 days of its 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 petition will be placed upon the calendar of the Court for oral argument within 60 days after receipt by the Court of the Board's recommendation;

(3) in all proceedings concerning a petition for reinstatement, Discipline 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.

(c) Suspended Attorneys. An attorney who has been suspended for more than six months and who seeks reinstatement will, 90 days prior to the ending date of the suspension, or 90 days prior to the date on which (s)he seeks reinstatement, whichever comes later, file a verified petition for reinstatement with the Court, with a copy served upon the Director for initiation of reinstatement proceedings. In the petition, the attorney will

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

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

(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 attorney during the period of his or her suspension; and

(5) state the date upon which the suspended attorney seeks reinstatement.

(d) Suspendend Attorney Proceedings. Reinstatement proceedings for suspended attorneys will be conducted as follows:

(1) the Petitioner will be automatically reinstated by the Court unless a motion to deny reinstatement is filed by Discipline Counsel with the Court and served upon the Board and the Petitioner at least 60 days prior to the ending date of suspension, or the date upon which reinstatement is sought, whichever occurs later; the motion to deny reinstatement will state the basis for the original suspension, the ending date of the suspension, and the facts which Discipline Counsel believes demonstrate that the petitioner should not be reinstated; and

(2) upon receipt by the Director of a copy of the petition to deny reinstatement, reinstatement proceedings will be initiated in accordance with procedures outlined in Section (b) of this Rule.

(e) 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.

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 Discipline Counsel and conducted in the same manner as disciplinary proceedings under Rule 22, except that all proceedings will be confidential. Upon petition of Discipline 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 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.

Discipline Counsel will transmit to the National Discipline 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 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 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 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.

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, Discipline 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 psychiatrist, psychologist, physician, 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.

Rule 31. APPOINTMENT OF TRUSTEE COUNSEL TO PROTECT CLIENTS' INTERESTS.

(a) Appointment; Procedure. Whenever an attorney is deceased, or has disappeared, abandoned the practice of law leaving a client matter unattended, or been transferred to disability inactive status because of incapacity or disability (hereinafter "unavailable attorney"), and no partner of the attorney nor shareholder in the professional corporation of which the unavailable attorney was an employee is known to exist, Discipline Counsel will petition the superior court in the judicial district in which the unavailable attorney maintained an office for the appointment of trustee counsel to represent the interests of the unavailable attorney and his or her clients. This petition will be made ex parte, will state the basis for its filing, and will state that the appointment of trustee counsel is necessary for the protection of the unavailable attorney and his or her clients. The petition will be heard ex parte at the earliest available time. The trustee counsel will be bound by the attorney-client privilege with respect to client confidences contained in the records of the unavailable attorney, except to the extent necessary to effect the order appointing him or her trustee counsel.

(b) Powers and Duties. The order granting the petition will grant the trustee counsel all the powers of a personal representative of a deceased under the laws of the State of Alaska insofar as the unavailable attorney's practice is concerned. It will further direct the trustee counsel to

(1) notify promptly, by certified or registered mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of the basis for the entry of the order and of the need to seek legal advice from another attorney;

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

(3) promptly inventory all of the files of the unavailable attorney and, with respect to each file, prepare a brief summary of the status of the matters involved and an accounting of the costs and fees involved; and

(4) render an overall accounting of the practice of the unavailable attorney.

The order will further provide for reasonable compensation to be paid to the trustee counsel by the estate of the unavailable attorney or by the Court in the event that the estate of the unavailable attorney is insufficient to cover the costs of compensation.

(c) Lien on Files. The notices required in Section (b) of this Rule will inform the clients

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

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

(3) that transfer will require the approval of the superior court.

Trustee counsel will take all reasonable steps to arrange payment of the costs and fees by the clients of the unavailable attorney before any transfer of the files to substitute counsel.

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

(e) Disposition of Assets. Any monies or assets remaining after the completion of the client matters will be returned to the unavailable attorney or to his or her guardian or personal representative.

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

(g) Waiting Period. Neither a trustee counsel nor a partner or employee of the professional corporation to which the trustee counsel belongs may, for a period of six months from the completion of the administration of the unavailable attorney's estate under this Rule, represent clients of the unavailable attorney unless the client was previously represented by the trustee counsel, by a partner, or by another employee of the professional corporation to which the trustee counsel belongs.

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

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, Discipline 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, Discipline Counsel may destroy all files of any discipline or disability proceeding terminated by dismissal.

(c) Administrative Records. Discipline 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.

Rule 33. EXPENSES.

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

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, Discipline Counsel, any member of an Area Division, and any member of the Board will have authority to file such affidavit.

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.