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IN THE SUPREME COURT OF THE STATE OF UTAH

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IN RE:	)	
	)	
UTAH STATE BAR	)	PETITION TO AMEND THE
	)	BAR'S FEE DISPUTE RULES
Petitioner.	)	GOVERNING MEDIATION
	)	

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The UTAH STATE BAR (the "Bar") by and through its General Counsel files this Petition to amend the Bar's Fee Dispute Rules ("Rules") Governing Mediation. The changes are sought to clarify the mediation process by which the Bar's Fee Dispute Committee ("Committee") members can better address attorney/client fee disputes in light of the Committee's purpose which is to "resolve fee disputes between attorneys and their clients by means of arbitration, mediation or other alternative dispute resolution mechanisms." (See Rule 14-1102 - Purpose and composition of the Committee.) The Committee seeks to incorporate additional rules to more fully govern the alternative dispute resolution process of mediation.

On May 14, 2007, shortly after the Board of Bar Commissioners ("Commission") gave its approval, the Bar filed a Petition to Amend Fee Arbitration Rules for a Name Change and to Raise Amount in Controversy to

\$3,000 for Sole Arbitrator Cases.<sup>1</sup> The name change was sought not only to acknowledge, but to embrace the changing legal landscape in dispute resolution mechanisms. A redlined copy of the previously approved Rules revisions is attached as **Exhibit “A”**. The Rules were initially modified to expressly provide for a mediation mechanism in addition to arbitration.

Thereafter during a period of further evaluation, the Committee drafted additional rules to more fully detail the procedures governing mediation. Such things as how a client (or lawyer) can initiate a request for mediation, how mediators are selected, the applicability of confidentiality to mediation proceedings and the like are addressed in the proposed Rules. These revisions essentially comprise the “nuts and bolts” of the alternative dispute resolution process and largely track current Rule provisions governing arbitration with some obvious differences.<sup>2</sup> The Commission approved the requested modifications on April 25, 2008, at a regularly scheduled board meeting.

As noted above, the proposed changes augment revisions previously approved by the Court. A redlined copy of the newly proposed amendments is attached as **Exhibit “B”**. The new amendments are two-fold: first, a minor change to current Rule 14-1103 (a)(3) (Exclusions) to recognize the exclusion of claims more than four years old under the applicable statute of limitations; and second, the remaining amendments – Rule 14-1112 through 14-1120 – are all new. They address such things as how to file a request for mediation, the

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<sup>1</sup> In 2007, the Court approved a small number of minor amendments to the Rules. One change was the name of the former Fee Arbitration Committee to the current Fee Dispute Committee in order to more fully emphasize means other than arbitration to resolve fee disputes between Utah lawyers and their clients.

<sup>2</sup> For instance, fee mediation is not binding and there is no need for a panel of arbitrators to issue a decision.

selection of a mediator, and how the mediation will be conducted. For context and comparison purposes, a copy of the current Fee Dispute Rules is attached as **Exhibit “C”**. The new Rules recognize both the similarities as well as the differences between the two processes of arbitration and mediation and expressly provide guidelines to clients and lawyers as to how their dispute can be resolved. A copy of “clean” Rules reflect how the proposed amendments would appear if the Court approves the changes (**Exhibit “D”**).

### **CONCLUSION**

For the reasons set forth above, the Bar respectfully requests that the Court approve the requested amendments to become effective at the earliest time permitted under applicable notice and publishing requirements.

Dated this \_\_\_\_ day of June, 2008.

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Katherine A. Fox  
Utah State Bar General Counsel