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OFFICE OF
APPELLATE COURTS

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Office of Appellate Courts
25 Constitution Avenue
Room 305
St. Paul, MN 55155

Re: C1-84-2140

Dear Clerk:

On October 23, 1996, by letter sent to Justice Page, this Office submitted to the Court the enclosed interim report on the Mandatory Fee Arbitration Pilot Program. Apparently, a copy of the report was not filed with your office. Enclosed for filing at this time is a copy of the interim report which was submitted directly to the Court in October.

Very truly yours,

Office of Lawyers Professional
Responsibility

By Betty Shaw
Betty M. Shaw
Senior Assistant Director

jmc
Enclosure

FILE NO. C1-84-2140

STATE OF MINNESOTA

IN SUPREME COURT

In Re Amendment of the Rules on
Lawyers Professional Responsibility.

**INTERIM REPORT ON PILOT
MANDATORY FEE ARBITRATION
RULE 6Y, RLPR**

INTRODUCTION

On December 12, 1994, in response to the petition of the Minnesota State Bar Association, the Court issued an order establishing a pilot mandatory fee arbitration program. Three district bar associations were chosen to become sites for the pilot program -- Ramsey County (second district), a large metropolitan district; Blue Earth and Watonwan counties (sixth district), a medium size non-metro district; and Kittson, Mahnomen, Marshall, Norman, Pennington, Polk, Red Lake and Roseau counties (fourteenth district), a small greater Minnesota district. The Rules on Lawyers Professional Responsibility were amended to add Rule 6Y which provides:

RULE 6Y. PILOT MANDATORY ARBITRATION PROGRAM FOR
ATTORNEY-CLIENT FEE DISPUTES INVOLVING LAWYERS IN THE
SECOND, SIXTH AND FOURTEENTH BAR ASSOCIATION DISTRICTS

- (a) Scope of the Program. This rule shall apply from July 1, 1995, through July 1, 1997, to any fee dispute between a client and a lawyer whose principal office is located in Blue Earth, Kittson, Mahnomen, Marshall, Norman, Pennington, Polk, Ramsey, Red Lake, Roseau or Watanwan county.
- (b) District Fee Arbitration. If a complaint involves a fee dispute subject to this rule, the Director shall advise the complainant and the respondent of the availability of fee arbitration and may refer the fee dispute to a participating district fee arbitration committee in the district where the lawyer maintains an office. Upon receipt of a referral from the Director or upon the request of a client or a lawyer located in that district the district fee arbitration committee shall contact the client and determine if the client consents to arbitration of the dispute. If the client consents to

arbitration of a fee dispute involving a lawyer who maintains an office in the district, the dispute shall be heard by the participating district fee arbitration committee and its results shall be binding. If the amount of the fee claims by the lawyer is greater than the jurisdictional limit of the conciliation courts under Minnesota Statutes Chapter 491A, then the lawyer may decline to arbitrate by notifying the committee in writing. Each district fee arbitration committee shall adopt rules of procedure to implement this rule.

(c) Report on the Pilot Program. No later than October 1, 1996, the Director shall report to the Court on the operation of the pilot program and shall make recommendations.

This is the interim report on the operation of the pilot project requested by the Court.

PILOT PROJECT OPERATION IN THE SECOND
MINNESOTA STATE BAR ASSOCIATION DISTRICT

Jane Harens, Executive Director of the Ramsey County Bar Association, reports in general a positive experience with mandatory fee arbitration. Unlike the other two pilot districts, the second district has experienced a substantial increase in the number of requests for fee arbitration. This increase has taxed both the staff and volunteer resources of the second district bar association. As a result, the district was not able to conduct arbitration hearings until the second quarter of the pilot. For that reason, the average time to complete fee arbitrations held in the fourth quarter of the pilot program was 6.5 months. Despite this relatively slow start, the district has now been able to recruit and train sufficient volunteers to sustain the program.

Between July 1995 and July 1996, the second district received 101 requests for fee arbitration petitions. About one-third (31) were returned. This was double the number of petitions received in previous years. By the end of July 1996, the district had acted on eleven of these petitions. One matter was dismissed for lack of jurisdiction. In six cases, fees were reduced by amounts ranging from 8 percent to 100 percent. In the remaining four cases, the entire fee was upheld. The amount in dispute ranged widely. Four arbitrations involved amounts of \$1,000 or less; one involved \$1,000-2,500; three

involved \$2,500-5,000; and two involved \$5,000- 7,500. One involved a voluntary submission of a dispute in excess of \$7,500. Disputed fees came from the following areas of practice: five in criminal law; six in plaintiff's employment law, nineteen in family law; and one each in personal injury, immigration and estate/probate.

In January 1997 the second district will begin charging a \$25 filing fee. This filing fee will provide resources for sustaining the program and may reduce the relatively small number of clients who have consumed a disproportionate amount of staff and volunteer time. Other jurisdictions with mandatory fee arbitration indicate that imposing or increasing a fee arbitration filing fee eliminates most problem clients. During the second year of the project the district plans to survey the parties regarding their satisfaction with the process and to decrease the time between receipt of petitions and the arbitration hearings.

PILOT PROJECT OPERATION IN THE SIXTH AND FOURTEENTH
MINNESOTA STATE BAR ASSOCIATION DISTRICTS

The fee arbitration chair for the sixth district bar association, Charles Ingman, reports that since the adoption of the pilot project their district has not had any fee arbitrations. During the period from July 1995 through July 1996, there were two requests for fee arbitration petitions but neither client returned the petitions requesting arbitration. Because the pilot has not yet been tested, Mr. Ingman has no changes to recommend in the program.

The fee arbitration chair for the fourteenth district bar association, Charles Reynolds, reported that there has been little change in the operation of their fee arbitration committee since implementation of the pilot program. The number of arbitrations requested has not increased. In fact, there have been fewer requests than in the past. Between July 1995 and July 1996, there were only two requests for fee arbitration. In one case, the committee declined jurisdiction because the attorney practiced in Anoka County and in the other case, the parties resolved their dispute

before a hearing could be scheduled. The fourteenth district has had a history of attorney cooperation with fee arbitration. In the five years before implementation of mandatory fee arbitration only one attorney had refused to arbitrate.

RECOMMENDATIONS

One weakness of the pilot program has been the general lack of awareness by both attorneys and clients of its existence. All three fee arbitration chairs felt that attorneys and clients generally are not aware of the project. During this next year a greater effort should be made by bar associations, conciliation courts and the media to publicize the availability of fee arbitration. Both the second and fourteenth district fee arbitration chairs recommend that mandatory fee arbitration be expanded and that attorneys be required to inform clients about the availability of mandatory fee arbitration 30 days before filing suit to collect fees. The sixth district fee arbitration chair had no recommendations.

Dated: October 23, 1996.

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