

24th Judicial District

FEE DISPUTE RESOLUTION COMMITTEE BYLAWS

I. APPOINTMENT OF COMMITTEE MEMBERS

1. There shall be two committees on fee dispute resolution (each herein called the "Committee"). Each Committee shall consist of not fewer than 10 nor more than 12 members to be appointed, by the President of the 24th Judicial District Bar, for three year terms. Initially, one-third of the members of each Committee shall be appointed for a period of one year, one-third for a period of two years, and one-third for a period of three years. As each member's term of office on the Committee expires, his or her successor shall be appointed for a period of three years. The term of a member which expires while an arbitration or mediation is pending before him or her or before a panel of which he or she is a member shall be extended until such arbitration or mediation is concluded, but such extension shall not interfere with the President's power to appoint a successor to the Committee. The President shall appoint the Chair of each Committee each year from among the members of that Committee.

2. The members of one Committee (the "High Point Committee") shall consist solely of lawyers and laypersons who reside in Guilford County in High Point township, Jamestown township or Deep River township. The members of the other Committee (the "Greensboro Committee") shall consist solely of lawyers and laypersons who reside in Guilford County other than in High Point township, Jamestown township or Deep River township. Lay members and lawyers, to the extent reasonably possible, should reflect the ethnic and cultural diversity of the community. Lawyers should be selected to provide representation from a broad spectrum of the Bar. Lawyer members and laypersons shall be qualified as mediators, either by certification or training and experience. Lawyer members should have practiced for at least five (5) years. The president shall make every effort to appoint qualified Committee members such that the ratio laypersons to lawyers is one-third to two-thirds.

II. CHAIR

3. The Chair shall be charged with the responsibility of overseeing the work of the Committee, reviewing recommendations for dismissal of complaints, developing forms to implement the procedure prescribed herein and may formulate rules of procedure not inconsistent with these by-laws. The Chair shall review recommendations for dismissal of cases within 30 days after any such recommendations are made.

III. JURISDICTION

4. The High Point Committee shall have jurisdiction of any disagreement concerning the fee paid or charged or claimed for legal services rendered by an attorney licensed to practice in this State and having his principal practice in High Point township, Jamestown township or Deep River township where there exists an expressed or implied contract establishing an attorney-client relationship. The Greensboro Committee shall have jurisdiction of any disagreement concerning the fee paid or charged or claimed for legal services rendered by an attorney licensed to practice in this State and having his principal practice in Guilford County other than in High Point township, Jamestown township or Deep River township where there exists an expressed or implied contract establishing an attorney-client relationship. Disputes over which, in the first instance, a court or federal or state administrative agency or official has jurisdiction to fix the fee, or which involve services which constitute a violation of the Code of Professional Responsibility, are specifically excluded from the Committee's jurisdiction. Also excluded are disputes between lawyers and other service providers such as court reporters and expert

witnesses, and disputes between lawyers and other persons in regard to the provision of nonlegal services. It shall be the duty of the Committee to encourage the amicable resolution of fee disputes falling within its jurisdiction and, in the event such resolution is not achieved, to mediate and determine such disputes.

IV. PROCESSING REQUESTS FOR MEDIATION AND CONSENSUAL BINDING ARBITRATION

5. Requests for Committee consideration of fee disputes shall be addressed to the President of the District Bar. The request should state with clarity and brevity the facts of the fee dispute and the names, addresses and telephone numbers of the parties. A request which is initially filed with the North Carolina State Bar involving an attorney subject to these bylaws shall be referred to the High Point Committee, if the attorney's principal practice is in High Point township, Jamestown township or Deep River township, or to the Greensboro Committee, if the attorney's principal practice is in Guilford County other than in High Point township, Jamestown township or Deep River township, for formal mediation and consensual binding arbitration after the North Carolina State Bar has had an opportunity to informally resolve the dispute and has been unable to do so.

6. A request for fee dispute resolution prepared by an attorney involved in a fee dispute which is consented to by the client involved in that fee dispute shall be treated the same as a client-filed petition. A petition prepared by an attorney which is not consented to by the client involved within 30 days after filing shall be ineffective and shall not be the basis of any further fee dispute resolution or arbitration activities. The client shall receive an additional 30 days within which to make his/her decision if the request for additional time is made within 30 days from the time the complaint is filed. The request shall be made of the Chairman of the Fee Dispute Resolution Committee.

7. Before an attorney files suit against a client for payment of a fee, that attorney must send the client a notice complying with this section. A client has 30 days after the date of mailing of such notice to request that the dispute be submitted to the Fee Dispute Resolution Committee. If the client makes such a request, the attorney may not file suit during the pendency of the fee dispute resolution procedure. The notice required by this section may be sent by regular mail or certified mail and shall contain the following information: (i) notice of the existence of the dispute resolution program operating under these Bylaws, (ii) notice of the name and address of the current chair of the High Point Committee or the Greensboro Committee, whichever will have jurisdiction hereunder of a fee dispute involving that attorney, (iii) notice that the client has 30 days to request submission of the dispute to the Committee having such jurisdiction, which request shall be addressed to the chair of that Committee, and (iv) that, during the same 30 days and the pendency of any dispute resolution procedure under these Bylaws, no suit will be filed by the attorney to collect the fee in dispute.

8. A copy of the request for fee dispute resolution, if filed locally, shall be forwarded to the respondent attorney by certified mail. The attorney will be asked to provide a written response within fifteen (15) days of receipt. A copy of the petition shall also be forwarded to the State Bar coordinator of the fee dispute resolution program.

9. As soon as possible after receiving the request for fee dispute resolution, a Committee member will be assigned. Upon the completion of any further investigation deemed appropriate, the assigned member shall determine whether the matter is suitable for fee dispute resolution. If the assigned member determines that a matter is not suitable for fee dispute resolution, because it appears to be frivolous or moot, there is a lack of jurisdiction, or the undisputed facts support the conclusion that the fee was earned and is not excessive, he or she

shall prepare a brief written report and a recommendation for dismissal for the Chair's signature setting forth the facts and a recommendation of dismissal for submission to the Chair.

10. If the assigned member determines that the matter is suitable for fee dispute resolution, the assigned member shall notify the Chair and shall contact both parties, explain the fee dispute resolution procedure and shall informally mediate the dispute. This part of the mediation may be by telephone conference or written communication with the parties. In the event the assigned member cannot resolve the matter through informal mediation, the assigned member or other Committee member shall conduct a formal, face to face mediation at a time and place to be determined by the Committee member. If the Committee member cannot mediate the dispute to settlement, informally or formally, the option of binding arbitration shall be given to the parties.

11. The assigned member shall notify the Chair that mediation did not result in settlement and the Chair shall request the parties to execute a consent to binding arbitration. If either party desires not to execute such consent, the parties may resolve the matter in court.

V. BINDING ARBITRATION PROCEEDINGS

12. Upon receipt of the parties' consent to binding arbitration (hereinafter "arbitration"), the matter shall be assigned to a three (3) member panel selected by the Chair of which at least one member must be a layperson. The member assigned to do the preliminary investigation shall be disqualified from participating in any manner in the arbitration proceedings. The hearing shall be held within thirty (30) days after receipt of the assignment.

13. It shall be the obligation of any member so designated to serve as arbitrator to disclose to the Chair of the Committee any reasons why he or she cannot ethically or conscientiously serve. In the event that a member so designated to serve declines or is unable to serve, the Chair shall strive to rotate selection of panel members in an equitable manner.

14. The arbitrator(s) shall endeavor to afford all parties a fair and reasonable informal opportunity to be fully heard and shall disregard procedural and evidentiary rules or technicalities tending to frustrate that purpose.

15. If at the time set for a hearing before a three (3) member panel, all three (3) members are not present, the Chair of the panel, or in the event of his or her unavailability, the Chair of the Committee, in his or her sole discretion, shall decide either to postpone the hearing, or, with the consent of the parties, to proceed with the hearing with one (1) member of the panel as the sole arbitrator, in which case he or she shall also designate the member of the panel who will hear the case as sole arbitrator. In no event will a hearing be conducted by or proceed with two (2) arbitrators.

16. If any member of a three (3) member panel becomes unable to continue to act while the matter is pending and before a decision has been made, the proceedings to that point shall be declared null and void and the matter assigned to a new panel for rehearing unless the parties, with the consent of the panel Chair, or in the event of his/her unavailability, the Chair of the Committee, consent to proceed with the hearing with one (1) of the remaining members of the panel as the sole arbitrator.

17. If parties to a controversy agree, they may waive oral hearings and submit their contentions in writing to the arbitrator(s) assigned, who may then determine the controversy. However, the arbitrators may require oral testimony of any party or witness, after due notice to all parties.

18. The members of the Committee selected as arbitrators of any dispute shall be vested with all the powers and shall assume all the duties granted and imposed upon neutral arbitrators by the Uniform Arbitration Act as adopted in North Carolina (G.S. 1-561.1 et seq.), not in conflict with these bylaws.

19. The panel assigned shall hold a hearing within thirty (30) days or as soon thereafter as possible after the receipt of the assignment and shall render their decision within ten (10) days after the close of the hearing. The decision of the panel shall be made by a majority of the panel where heard by three (3) members.

20. The Chair of the panel shall fix a time and place for the hearing and shall cause written notice thereof to be served personally or by registered or certified mail on the parties to the arbitration and on the other members of the panel not less than seven (7) days before the hearing. A party's appearance at a scheduled hearing shall constitute a waiver on his or her part of any deficiency in respect to the giving of notice of the hearing.

21. The term "party" as used in these bylaws refers to a party to an arbitration and shall include the person(s) or entity requesting arbitration and any lawyer with whom that person(s) or entity is in disagreement regarding a legal fee.

22. The parties to the arbitration are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing. Any party to an arbitration has the right to be represented by an attorney at the hearing or at any stage of the arbitration proceeding. The Chair of the Committee shall have the discretion to appoint an attorney member of the Committee to represent the non-lawyer party. Any party may also have the hearing before a panel reported by a court reporter at his/her expense by written request presented to the Chair of the Committee at least three (3) days prior to the date of the hearing. In the event of such request, any other party to the arbitration shall be entitled to acquire at his/her own expense a copy of the reporter's transcript of the testimony by arrangements made directly with the reporter.

23. All parties shall have an absolute right to attend all hearings. The exclusion of other persons or witnesses waiting to be heard shall rest in the discretion of the arbitrators.

24. Adjourned dates for the continuation of any hearing which cannot be completed on the first day shall be fixed for such times and places as the arbitrators may select with due regard to the circumstances of all the parties and the desirability of a speedy determination. Upon request of a party for good cause, or upon its own determination, the panel may postpone the hearing from time to time.

25. The Chair of the panel shall preside at the hearing. The panel shall rule on the admission and exclusion of evidence and on questions of procedure, and shall exercise all powers relating to the conduct of the hearing.

26. The arbitrators may request opening statements and may prescribe the order of proof. In any event, all parties shall be afforded full opportunity for the presentation of any material evidence.

27. On request of any party to the arbitration or of any member of the panel, the testimony of witnesses shall be given under oath. When so requested, the Chair of the panel shall administer oaths to witnesses testifying at the hearing.

28. If either party, having agreed to arbitration and having been duly notified of a hearing, fails to appear, the arbitrator(s) may hear and determine the controversy upon the evidence produced, notwithstanding such failure to appear, and enter a binding decision.

29. Before closing the hearing, the arbitrators shall specifically inquire of all parties whether they have further evidence to submit in whatever form. If the answer is negative, the hearing shall be declared closed and a notation to the effect made by the arbitrators as well as the date for submission of memoranda or briefs, if requested by the arbitrators.

30. The hearing may be reopened by the arbitrators on their own motion or on application of a party at any time before the decision is signed and filed.

31. In the event of the death or incompetency of a party to the arbitration proceeding, prior to the close of the hearing, the proceeding shall abate without prejudice to either party to proceed in a court of proper jurisdiction to seek such relief as may be warranted. In the event of death or incompetency of a party after the close of the hearing but prior to a decision, a decision shall nevertheless be rendered. Such decision shall be binding upon the heirs, administrators or executors of the deceased and on the estate or guardian of the incompetent.

VI. THE DECISION

32. The purpose of arbitration under these bylaws is to resolve the underlying dispute by determining the proper charge for the legal services rendered. In making that determination the arbitrators may consider all factors they deem relevant, but should give special consideration to the intentions and understandings of the parties at the time the representation was undertaken, as well as the provisions of Rule 1.5 of the North Carolina Revised Rules of Professional Conduct. Of particular significance should be any written fee agreement executed by the parties.

33. The result of the arbitration shall be expressed in a written decision signed by either the Chair of the panel on behalf of the arbitrators or by a majority of the arbitrators. A dissent shall be signed separately. A decision may also be entered on consent of all the parties. Once a decision is signed and filed, the hearing may not be reopened except upon consent of all parties.

34. While it is not required that the decision be in any particular form, it should in general consist of a preliminary statement reciting the jurisdictional facts (i.e., that the hearing was held upon notice pursuant to a written agreement to arbitrate, that the parties were given an opportunity to testify and to cross-examine, etc.) a brief statement of the dispute, the findings and the decision. It shall include a determination of all the questions submitted to the arbitrators, the decision of which is necessary in order to determine the controversy.

35. The original and four copies of the award shall be signed by the members of the panel concurring therein. The Chair of the panel shall forward the decision together with the entire file, to the Chair of the Committee, who shall thereupon, for and on behalf of said panel,

serve a signed copy of the decision on each party to the arbitration, personally or by registered or certified mail.

36. The chairman shall send a copy of the panel's decision to the State Bar coordinator.

VII. ENFORCEMENT OF THE DECISION

37. Any award rendered may be enforced by any court of competent jurisdiction.

VIII. RECORD KEEPING

38. The Chair of the Committee shall keep a log of each request for fee dispute resolution filed, which log shall contain the following information:

- (a) The client's name,
- (b) Date of the request,
- (c) The lawyer's name,
- (d) The district in which the lawyer resides or maintains a place of business,
- (e) How the dispute was resolved (heard by panel, no merit, fee justified, attorney/client agreement, etc.), and,
- (f) The time necessary to resolve the dispute.

IX. CONFIDENTIALITY

39. With the exception of the decision itself, all records, documents, files, proceedings, and hearings pertaining to fee dispute resolution under these bylaws shall not be opened to the public or any person not involved in the dispute.

Approved by Board of Directors, 24th Judicial District Bar, October 12, 2000.

Approved by the Client Assistance Committee, North Carolina State Bar,