

Let's Talk About the Elephant in the Room

by Deirdre Norman

Some clients simply can't or won't pay, and the options for lawyers are terrible. File a lawsuit, and almost certainly the client will file a malpractice counterclaim in return, flagging the lawyer for increased malpractice rates.

Hire a collection agency and lose the relationship — and any potential referrals and future business from that relationship — forever.

Write off the fees and be out of pocket for not only hard costs, but for your time and overhead as well.

There is another option, one that clients regularly avail themselves of, but that can also be beneficial to Virginia lawyers: The Fee Dispute Resolution (FDR) Program, a long-standing VSB service that mediates or arbitrates a fee dispute between a lawyer and his or her client for only \$20.

And that's where we come to the elephant. Many lawyers have concerns that using the Virginia State Bar, their mandatory agency tasked with lawyer discipline, for a dispute with a client is a risk not worth taking. What if the bar asks for my trust account files? What if a simple fee dispute becomes a disciplinary proceeding? What if I put myself on the bar's radar and the outcome of the fee dispute resolution is not only no money, but discipline as well?

For over 25 years, the VSB has been helping lawyers cheaply and expeditiously resolve hundreds of fee disputes using a committee of volunteer lawyers from most circuits in the commonwealth. According to James C. Bodie, VSB Intake Counsel, "Generally, the bar does not handle fee disputes through the disciplinary process unless the bar is presented with evidence of ethical misconduct. We refer callers to the Fee Dispute Resolution program."

So, if you believe your fee dispute may already be escalating to a bar complaint, perhaps suggesting a meeting in a neutral location with your client will lessen your stress, save the relationship, and get you some or all of your fees — all for \$20.

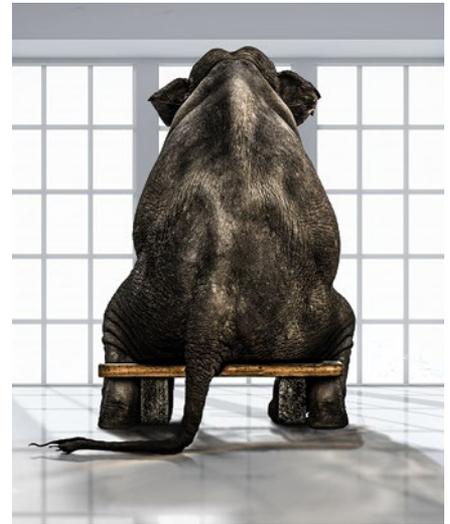
David Rust Clarke of Blankingship & Keith in Fairfax, who has arbitrated cases for the FDR program says, "From the perspective of the arbitrator (and I venture from the litigants as well), I say without reservation that the fee dispute program works. Among other benefits, it provides the unhappy client with a generally informal forum to voice his complaints and dissatisfaction, and provides counsel with an expedient, economical means to resolve the dispute."



Danny Burk, of Resolution Point LLC in Great Falls concurs, adding, "The entire program is a solid example of the bar helping maintain its relationship with clients. Lawyers who participate give their clients a chance to present their views in a safe and comfortable environment. I can say that, at least to date, each case that I've mediated ended with a resolution and closure."



Since 2006, Donita King, of Donita King Law Offices in Richmond, has resolved cases with the FDR program and also currently serves as a board member of the VSB Disciplinary Board. Says King, "Another benefit is what the lawyers learn about the way



they practice and their client communications that may be subjecting themselves to potential liability. These can be discovered in a confidential setting and can be changed going forward, to place the lawyers in a better position."

As for fees and future business, King says, "Mediation does not mean that a lawyer has to compromise on fees. Some resolutions are achieved by modifying the payment plan, misunderstanding on the client's part of the basis of the charges, the manner in which the client was treated in connection with the billing, ambiguous documentation or lack of sufficient documentation, or conflicting communications (actual or client perceived) between the lawyer and client. When the client and the lawyer clear up communications, often the client feels better about the relationship and is not likely to communicate negative feelings about the firm or lawyer to others."

Now, about that elephant. The VSB wants to help lawyers bridge disagreements with their clients when it comes to fees, and numerous volunteer lawyers are willing to donate their time and office space to help make that happen. If you find yourself in a stalemate with a client over fees, consider spending \$20 to air out the issue, get closure on the relationship, and perhaps end up with

FDR *continued on page 39*

a payment plan that will leave open the possibility of future business or referrals from an existing client. The Fee Dispute Resolution Program provides lawyers with a cheap, quick way to have experienced mediators and arbitrators – your peers — bring you to the table with non-paying clients, and potentially leave the door open for future business.

For more information about the Fee Dispute Resolution program, please contact Stephanie Blanton, at (804) 775-0576 or blanton@vsb.org.

Top Ten Best Things about Fee Dispute Resolution

1. It's cheap — \$20.
2. It's quick — mediation is scheduled within 30 days of the mediator's appointment, and arbitration is scheduled within 45 days of the arbitrator's appointment.
3. It's informal.
4. It's conducted by Supreme Court certified mediators and VSB trained arbitrators.
5. It's confidential — mediation is confidential, unless both parties agree otherwise in writing.
6. It's good for you.
7. It's good for the profession.
8. It's good for the client.
9. It's fair and balanced.
10. It's one of the VSB's best kept secrets. Let's change this!