

There are few more valuable services to the profession than the service offered by the Fee Dispute Resolution program. Misunderstandings over fees are increasingly common in the practice of law. They can be a source of low regard and ill will towards the profession and often result in unnecessary complaints to the bar by clients against their lawyers. This program affords the lawyer and client involved in a fee dispute a means of resolving it that is discreet and effective. With the participation of non-lawyers as well as experienced members of the bar, it assures fairness, balance and a result in which both sides of the dispute may have confidence. On behalf of both the bar and the public we serve, I thank the members of this group for the dedication of their time and talent to this very worthwhile program, and I encourage all members of the bar to consider participating in the program whenever a dispute arises with a client over fees.

—Joseph A. Condo

Don't Sue Your Clients

by Richard C. (Rip) Sullivan, Jr.

In this era of emphasis on pro bono work, all of us have made or heard that tongue-in-cheek comment: “I’ve got lots of clients who stiff me on my bill. Does that count as pro bono work?” Many of us know the frustration of doing good work for a client—sometimes even winning work—and then not getting paid. What many of us don’t know, or perhaps have forgotten, is that there is a system in place for resolving fee disputes with clients without having to sue those clients: The Virginia State Bar Fee Dispute Resolution Program.

In the early 1990s, the Virginia State Bar studied the arbitration programs of several other states and ultimately, in 1994, approved the creation of a circuit-by-circuit voluntary fee dispute program. The bar’s conclusion that the program would be beneficial was based on numerous factors, including some clear national statistics showing the regularity with which a lawyer’s suit for fees is met with a malpractice counterclaim. Since 1994, twelve Circuit Committees for the Resolution of Fee Disputes (CCRFD) have been established throughout the Commonwealth. There are 15 lawyers on the local committee, representing a variety of different practice areas, and five lay members of the committee, who are local bankers and business people.

The State Bar Special Committee on the Resolution of Fee Disputes, which I chair, has promulgated uniform rules that govern this process throughout the Commonwealth. When a fee dispute develops, the local chair will first attempt to facilitate a resolution or explore with the parties the option of mediating their disagreement. If they want to arbitrate, the chair will appoint a panel of three arbitrators (for disputes involving less than \$1,500, a single arbitrator can be used), including at least one lay member. The only fee is a \$10 administrative fee, and a binding decision is issued within 10 days of the hearing.

The track record of the relatively new program is impressive. Around the Commonwealth, disputes—ranging from \$1,000 to over \$400,000—have been arbitrated. Unfortunately, we have not seen as much use of the system by lawyers as we would like. Most of our inquiries come from clients. Our committee believes that there are many more fee disputes that could benefit from this system. But lawyers are reflexively going to court. We are trying to change that.

Lawyers, of course, are most comfortable in court, but there is something just a bit unseemly about standing up in court in

front of a packed room of potential clients, and announcing that you are suing your former client. If nothing else, in the face of our profession’s ever-declining reputation, such lawsuits do little to enhance our public image.

Arbitration is fast, inexpensive, and private. The uniform rules, once both parties voluntarily agree to them, result in a binding resolution. And with the wide-ranging practices of our panel members, the local chair will be able to appoint panel members with experience in the area involved in the dispute.

With your next fee dispute—and you *will* have a next fee dispute—consider the arbitration program. As I talk about the program with lawyers around the state, I get the impression that many either never knew of its existence, or feel as though it is somehow stacked in a client’s favor. That is not our experience. If you are going to be right in court, you are going to be just as right before the arbitration panel. Moreover, you are much less likely to find yourself embroiled in a malpractice counterclaim. Give it a try.

For more information on the fee dispute program contact Barbara Allen at the VSB at (804) 775-0590, or see the Web site at www.vsb.org/feedisputes.html. 🌐

As an avid believer in using alternative means to resolve legal disputes, I am convinced that the work of the Circuit Committees on the Resolution of Fee Disputes could effectively enable attorneys and clients to avoid the unpleasantness associated with litigation of such matters. In my experience as chair of the Twenty-Third Judicial Circuit Committee, I have sensed a reluctance on the part of attorneys to submit fee dispute claims to the committee. I also believe that the vast majority of lawyers are totally unfamiliar with the work of the committee. In appropriate situations, I would encourage every lawyer to at least consider submission of his or her claim to the committee as an alternative to bringing a case against a client in court. The committee provides an extremely affordable, efficient and final method for the resolution of fee disputes. It seems a shame to me that more attorneys have not considered this alternative to date.

—Frank W. Rogers, III, chair of the 23rd Circuit Committee

Arbitration is preferable to suing. It is a gentler way to proceed, for both parties—if they each want to do it. And it is a great deal, at \$10. Sometimes neither the lawyer nor the client is satisfied with the result, but nobody ends up in court and the parties don't feel so alienated. This is an important service for the bar to provide.

—James Asa Watson, chair of the 19th Circuit Committee

As word spreads about the Fee Dispute Resolution Program, there are more inquiries each month from clients throughout the Richmond metropolitan area who are generally unfamiliar with the Virginia Court system, and are anxious to use the program. They know that our panel includes not only lawyers but laymen, as well. Too few members of the bar, however, are using this program.

Based on but one recent example, I urge members of the bar to always take advantage of this great, quick and inexpensive manner of resolving fee disputes. The recent example involved clients who completely misunderstood the fee arrangement that they had entered into with a member of the bar. The buildup of frustrations on both sides—those of the client frustrated and somewhat suspect of our profession, and those of the attorney frustrated that clients did not understand what he thought was clearly communicated—are much better resolved in the quiet and confidentiality of a conference room, rather than in a court room. A substantial number of malpractice cases are brought in the form of a counterclaim—when an attorney institutes suit for the collection of a fee. This is yet another reason to overcome any hesitation that a member of the bar might have about the use of this service offered to citizens and members of the bar.

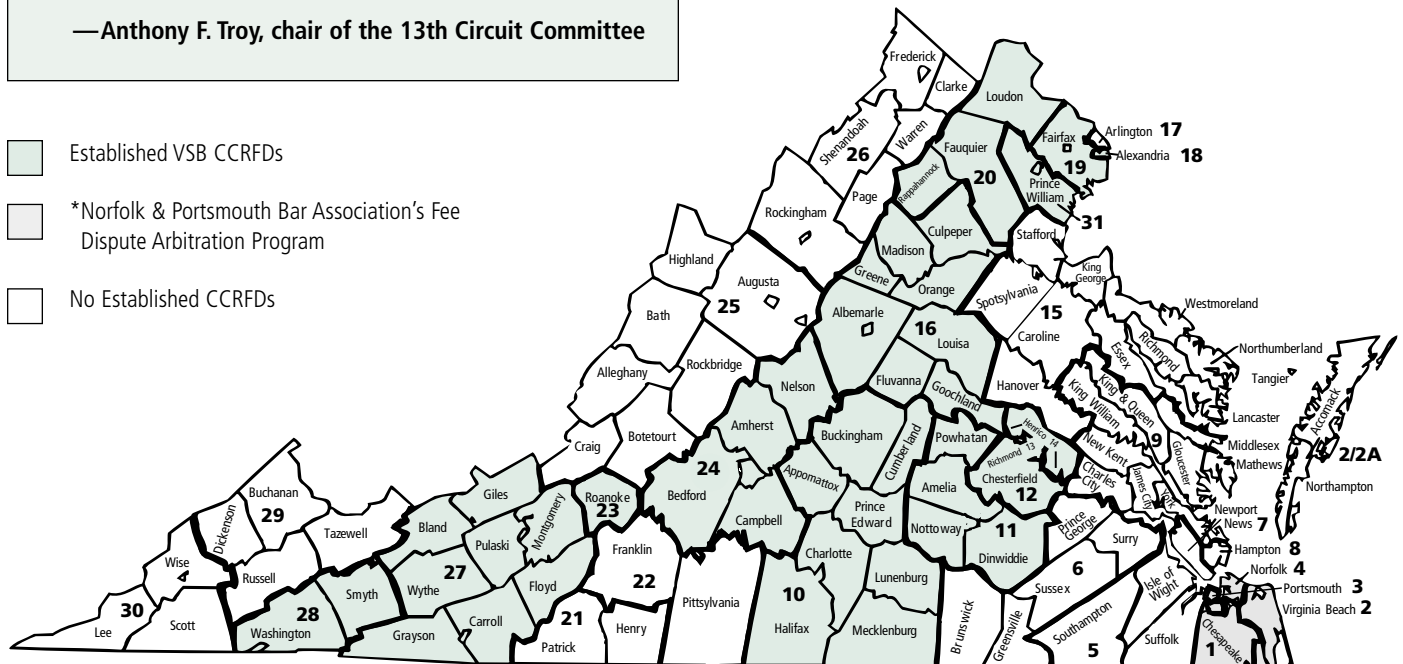
—Anthony F. Troy, chair of the 13th Circuit Committee

Participation in the fee dispute program is voluntary for local bar associations. At this time, there are 12 CCRFDs operating in 14 circuits (as shown on the map below). The Norfolk & Portsmouth Bar Association* appointed its own committee for a local CCRFD. If a dispute arises in a circuit with no CCRFD, the case is referred to the nearest CCRFD chair.

Circuit Committees on the Resolution of Disputes are appointed by the VSB President. If your bar association would like to help establish a CCRFD in your circuit, the bar is invited to send the names of individuals who would like to serve on a local fee dispute resolution committee to Barbara Allen at the Virginia State Bar. Where there is more than one bar association within a judicial circuit, there would need to be collaboration and cooperation among neighboring bar associations in making recommendations of names for a CCRFD. A circuit committee's minimum size is three. There is no maximum prescribed by rule, and the size will vary in direct proportion to the size of the circuit and the number of fee complaints generated within it. At least one-third of all members of circuit committees must be nonlawyers. All lawyer members of a circuit committee must have been members of the Virginia State Bar for at least five years at the time of their appointment. Members of circuit committees are appointed by the VSB President for three-year terms and are eligible for reappointment for one consecutive term. All members, lawyers and nonlawyers, are volunteers who serve in the public interest without any expectation of compensation.

Once recommendations from the local bar and those of Bar Council members from that area are received, the VSB President appoints the members of a circuit committee. The state bar offers training/retraining programs each year for all circuit committee members and chairs.

If you are interested in serving on an existing CCRFD, please contact your local bar. The local bar should then send the request for appointment to Barbara Allen at the Virginia State Bar. [↗](#)



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