

LEGAL ETHICS OPINION 1586

CONFLICT OF INTEREST — BUSINESS
TRANSACTION WITH CLIENT: LAW
FIRM RETAINER AGREEMENT
REQUIRING MANDATORY
ARBITRATION OF FEE DISPUTES IN
NEIGHBORING JURISDICTION WHERE
FIRM OFFICE IS LOCATED.

You have presented a hypothetical situation in which a firm has lawyers licensed in Virginia, Maryland, and in the District of Columbia and has its only offices in the District of Columbia. The firm wishes to include in its engagement agreement a requirement that any fee disputes between the client and the firm be resolved in binding arbitration. You indicate that the requirement for arbitration would apply only to fee disputes and would not only apply to disputes involving malpractice.

You further indicate that the engagement agreement would also require that the arbitration take place before the District of Columbia Attorney-Client Arbitration Board (ACAB) which imposes a filing fee for a fee arbitration of \$25.00 with no other fees or costs imposed on either party. Further, either the lawyer or the client can file a request for arbitration and, unless the parties agree to a single arbitrator, the arbitration panel will consist of three members, one of whom must be a nonlawyer.

You have asked the committee to opine under the facts of the inquiry, (1) whether an engagement agreement providing for mandatory arbitration of fee disputes violates any provision of the Virginia Code of Professional Responsibility; and (2) whether the requirement that the arbitration take place before the District of Columbia Attorney-Client Arbitration Board violates any provision of the Virginia Code of Professional Responsibility.

The appropriate and controlling Disciplinary Rule related to your inquiry is DR:5-104(A) which provides that a lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full and adequate disclosure under the circumstances and provided that the transaction was not unconscionable, unfair or inequitable when made.

The committee is of the opinion that a provision requiring mandatory arbitration of fee disputes and designating the situs of the arbitration is not *per se* violative of the Code of Professional Responsibility, provided that there is compliance with the mandates of DR:5-104(A) before entering into the engagement agreement. Specifically, the committee believes that there must be full and adequate disclosure as to all possible consequences of such a transaction and the transaction must not be unconscionable, unfair, or inequitable when made.

As to what constitutes “full and adequate disclosure”, the committee has previously opined that disclosure is adequate if it is such that the client is able to make an informed decision as to whether or not to give consent. Furthermore, the committee has also opined

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that all doubts as to the sufficiency of disclosure must be resolved in favor of the client and against the attorney's proceeding. *See* LE Op. 1507, LE Op. 1489, LE Op. 1459, LE Op. 1198.