

Resolving Fee Disputes *without* Litigation

by Kathryn N. Byler

The Virginia State Bar offers a means for attorneys and clients to resolve fee disputes without litigation. Although the Special Committee on the Resolution of Fee Disputes (RFD) was founded in 1994, many attorneys and clients are unfamiliar with this great resource.

Mediation and uniform arbitration proceedings are provided free of charge except for a nominal \$20 administrative cost with the filing of the petition. Either the client or attorney can file a petition requesting a mediation or arbitration. The responding party will then receive a copy of the petition and will have the opportunity to accept or decline participation. Although participation is not mandatory, members of the Bar are encouraged to participate for the good of the profession as well as for their own interests.

Arbitrations are conducted by a trained arbitrator or a panel of three. On the typical three-member panel, at least one member

will be a lay person and at least one will be an attorney. This gives assurance to the clients and attorneys that their concerns will be received and understood. The VSB offers arbitration training that carries CLE credit. The next training will be in various locations throughout the commonwealth in September or October. Arbitration training is an excellent way to add credentials to a resume, earn CLE credits, and position yourself to be of service to the bar and the community.

Mediations are conducted by certified mediators and do not guarantee that the dispute will be resolved. Jeffrey Brooke, chair of the Norfolk & Portsmouth Area Circuit Committee RFD and an attorney with Poole, Brooke, Plumlee PC, recently noted that, “The best-selling points are that the mediation is: 1) free, 2) voluntary, and 3) cannot be held against you in a court of law.”

Consistent with the goal of encouraging clients to use the program, hearings are informal and are conducted without strict observance of either the Rules of Civil Procedure or the Rules of Evidence. There are twelve active Circuit Committees chaired by mem-

bers of the VSB ready to receive petitions directly from the interested parties or, as frequently occurs, from the VSB staff. Whenever the VSB gets a complaint about fees alone and has no element of an ethics violation, the caller is given information on RFD and referred to a Circuit Committee chair. In fiscal year 2015, the VSB sent information to 228 callers who had a complaint regarding a lawyer's fee. Sixty-five petitions were then received and forwarded to the appropriate Circuit Chair. These numbers are consistent with the past six or more years.

All lawyers know the importance of written fee agreements yet misunderstandings still arise. Myron Glassman, lay member of the 2nd Circuit Committee RFD, who is a marketing professor and expert witness, observed, "Some clients lack the education to understand the services they are buying. I think sometimes attorneys forget the law and 'common sense' aren't always the same. Fee arrangements should always be written so even a third-grader can understand them."

Malpractice carriers warn law firms that suing clients for fees often results in a bar complaint. Some malpractice carriers exclude coverage for malpractice claims following the filing of a suit for collection of fees. Recognizing that litigation is an unsatisfactory means of collecting fees, some firms include a mandatory arbitration provision in their letters of engagement.

"As a committee member and circuit chair for many years, I know first-hand the substantial benefits lawyers and clients can realize from participation in the Fee Dispute Resolution Program. I have now included in my standard Fee Agreement a provision for arbitration through the FDR Program. I encourage all law firms to do likewise," said Stephen K. Lewellyn, chair of the 16th Circuit Committee and an attorney with Davies, Barrell, Will, Lewellyn & Edwards PLC.

Approaching the bench on a complaint for unpaid or overcharged legal fees is undesirable from many perspectives. According to Donald Coulter, chair of the 31st Circuit

Committee and an attorney with Manassas Law Firm, "Arbitration is a far better method of justifying fees than a suit in district court or a bar complaint. More attorneys should suggest it to potentially disgruntled clients. A resolution by a third party may actually help both sides in the long run. If a client better understands the process, and the attorney also explains the process in greater detail in the arbitration, the attorney client-relationship may not be totally severed and the parties may continue their business relationship. It is almost 100 percent certain that a bar complaint or suit will end the relationship and inspire more bad feelings."

Finally, in the words of VSB Past-president Joseph A. Condo, "There are few more valuable services to the profession than the service offered by the Fee Dispute Resolution program."

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The RFD Committee welcomes participation by both attorneys and non-lawyers at all levels — as mediators, arbitrators, committee members, petitioners, and respondents. For more information on the program, go to the VSB website at: <http://www.vsb.org/site/about/resolution-of-fee-disputes>



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