

## **RULE 1:20A. District Fee Arbitration Committees**

### **1:20A-1.Appointment and Organization**

**(a) Fee Arbitration Districts.** The Supreme Court shall establish, and may from time to time alter, fee arbitration districts consisting of defined geographical areas and shall appoint in each district a District Fee Arbitration Committee which shall consist of such number of members, not fewer than 8, as the Court may determine, at least 4 of whom shall be attorneys of this state and at least 2 of whom shall not be attorneys. Any person appointed shall either reside or work in the district or county in which the district is located.

**(b) Appointments.** Members of Fee Committees shall be appointed by and shall serve a term of 4 years. A member who has served a full term shall not be eligible for reappointment to a successive term but a member appointed to fill an unexpired term shall be eligible for reappointment to a full successive term. A member serving in connection with a proceeding in which testimony has begun at the time the member's term expires shall continue in such matter until its conclusion and the filing of an arbitration determination or stipulation of settlement unless relieved by the Supreme Court. In order that, as nearly as possible, the terms of one-quarter of the members shall expire each year, the Supreme Court may, when establishing a new fee committee, appoint members for terms of less than 4 years and members so appointed shall be eligible for reappointment to a full successive term.

**(c) Officers; Organization.** The Supreme Court shall annually designate a member of each Fee Committee to serve as chair and another member to serve as vice chair. When the chair is absent or unable to act or is disqualified from acting due to a conflict, the vice chair shall perform the duties of the chair. Each Fee Committee shall hold an organization meeting in September of each year and shall meet regularly, except when there is no business to be conducted. The Fee Committee shall also meet at the call of the Supreme Court, the Chair, the Board or the Director.

The Director shall, after consultation with the chair, appoint a secretary who shall not be a member of the Fee Committee but who shall be a member of the bar maintaining an office in the district or county in which the district is located. The secretary shall serve at the pleasure of the Director and be paid an amount annually set by the Supreme Court to reimburse the secretary for costs and expenses. The secretary shall keep full and complete records of all Fee Committee proceedings, shall maintain files with respect to all fee disputes received, shall transmit copies of all documents filed immediately on receipt thereof to the Director, and shall promptly notify the Director of each final disposition. Reports with respect to the work of the Fee Committee shall be filed by the secretary with the Director, as instructed by the Director.

**(d) Office.** Each Fee Committee shall receive fee dispute inquiries at the office of its secretary and at such additional places as shall be designated by the Director.

**(e) Filing; Transfer.** Unless specifically directed to the contrary by the Board or by the Director, a fee committee shall not act on fee arbitration requests involving an attorney who does not maintain an office within the district but shall refer that information to the Director for appropriate referral. A fee committee shall not render advisory opinions. On request of a fee committee or sua sponte, the Director may transfer any matter to another fee committee and may, on direction of the Supreme Court or sua sponte, supersede the functions of a fee committee.

Note: Adopted February 23, 1978 to be effective April 1, 1978; amended January 31, 1984 to be effective February 15, 1984; text of R. 1:20A-1 amended and incorporated into 1:20A-1(e), new paragraphs (a)(b)(c) and (d) adopted January 31, 1995 to be effective March 1, 1995; paragraph (c) amended July 28, 2004 to be effective September 1, 2004.

## **1:20A-2.Jurisdiction**

**(a) Generally.** Each Fee Committee shall, pursuant to these rules, have jurisdiction to arbitrate fee disputes between clients and attorneys, including pro hac vice attorneys, multijurisdictional practitioners, and Foreign Legal Consultants. Fee Committees shall also have jurisdiction to arbitrate disputes in which a person other than the client is legally bound to pay for the legal services, except that Fee Committees shall not have jurisdiction of such cases if the obligation arises out of the settlement of a legal action. A fee arbitration determination is final and binding upon the parties except as provided by R. 1:20A-3(c).

**(b) Discretionary Jurisdiction.** A Fee Committee may, in its discretion, decline to arbitrate fee disputes:

- (1)** in which persons who are not parties to the arbitration have an interest that would be substantially affected by the arbitration;
- (2)** in which the primary issues in dispute raise substantial legal questions in addition to the basic fee dispute;
- (3)** in which the total fee charged exceeds \$100,000, excluding out-of-pocket costs and disbursements;
- (4)** involving multijurisdictional practitioners where it appears that substantial services involving the practice of law in New Jersey have not been rendered in the matter.

**(c) Absence of Jurisdiction.** A Fee Committee shall not have jurisdiction to decide:

- (1)** a fee which is allowed or allowable as of right by a court or agency pursuant to any applicable rule or statute.
- (2)** claims for monetary damages resulting from legal malpractice, although a fee committee may consider the quality of services rendered in assessing the reasonableness of the fee pursuant to RPC 1.5.
  - (A)** Submission of a matter to fee arbitration shall not bar the client from filing an action in a court of competent jurisdiction for legal malpractice.
  - (B)** No submission, testimony, decision or settlement made in connection with a fee arbitration proceeding shall be admissible evidence in a legal malpractice action.
- (3)** a fee for legal services rendered by the Office of the Public Defender, pursuant to N.J.S.A. 2A:158A-1 et seq.; and
- (4)** a fee in which no attorney's services have been rendered for more than six years from the last date services were rendered.

**(d)** Procedure for Determining Jurisdiction. All questions of jurisdiction shall be resolved initially by the secretary or, if a hearing panel has already been appointed, by the panel chair.

Note: Adopted February 23, 1978 to be effective April 1, 1978; amended January 31, 1984 to be effective February 15, 1984; amended June 29, 1990 to be effective September 4, 1990; text deleted, new paragraphs (a)(b)(c) and (d) adopted January 31, 1995 to be effective March 1, 1995; new paragraph (c)(3) added July 12, 2002 to be effective September 3, 2002; paragraphs (a) and (b) amended July 28, 2004 to be effective September 1, 2004; paragraph (b)(1) deleted, paragraphs (b)(2) through (b)(5) renumbered as paragraphs (b)(1) through (b)(4), paragraph (c)(3) amended, and new paragraph (c)(4) adopted July 9, 2008 to be effective September 1, 2008.

## **1:20A-3.Arbitration**

### **(a) Submission.**

**(1) Request Form.** A fee dispute shall be arbitrated only on the written request of a client or a third party defined by Rule 1:20A-2. Fee committees shall have authority to consider such a request whether or not the attorney has already received the fee in dispute and regardless of whether the attorney has been suspended, resigned, disbarred or transferred to disability inactive status since the fee was incurred. All requests for fee arbitration shall be made on forms approved by the Director, and a copy of each request so filed shall be promptly transmitted to the Office of Attorney Ethics. The filing of a Fee Arbitration Request Form with the secretary shall constitute a stay of all pending court actions for the collection of the fee. The secretary shall notify the appropriate court clerk when any pending proceeding is stayed by this rule.

**(2) Administrative Filing Fee.** All requests for arbitration and all attorney responses must be accompanied by a non-refundable administrative filing fee of \$50. Filing fees shall be paid only by check or money order payable to "Disciplinary Oversight Committee."

**(i) Non-payment.** If the party making the fee arbitration request fails to submit the filing fee, the secretary shall not docket the matter and shall so inform the parties, who shall have no more than twenty days from the date of notification in writing to correct the deficiency. If the attorney fails to submit the fee, the secretary shall inform the attorney that unless payment is made within twenty days from the date the attorney is notified in writing, the attorney shall be barred from further participation, and the matter will proceed uncontested.

**(ii) Dishonored Instruments.** If a negotiable instrument submitted by a party is returned unpaid for any reason, the matter shall be stayed pending the resubmission of a certified or cashier's check in double the amount of the original filing fee within twenty days of the date the party is notified in writing by the secretary of the return. Failure of the party filing the fee request to make a timely resubmission shall result in dismissal of the matter with prejudice. If a resubmitted instrument is returned unpaid for any reason, the matter shall be dismissed with prejudice. Failure of a responding attorney to make a timely resubmission shall be a bar to the attorney's further participation, and the fee arbitration shall proceed uncontested.

### **(b) Procedure.**

**(1) Hearing Panel; Burden of Proof.** All arbitration proceedings shall be heard before a hearing panel of at least three (3) members of the fee committee, a majority of whom shall be attorneys, except that in all cases in which the amount of the total fee charged is less than \$3,000, the hearing may be held before a single attorney member at the direction of the chair. A quorum for the hearing of any matter in which the fee charged is \$3,000 or more shall consist of at least three (3) members of the fee committee. The determination of a matter shall be made by a majority of the membership sitting on the hearing panel, provided a quorum is present. When by reason of absence, disability, or disqualification the number of members of the panel able to act is fewer than a quorum, with the consent of the client and the attorney the hearing may proceed before two members of the panel. The secretary of the Fee Committee shall not be eligible to sit on any hearing panel. The determination of a matter shall be made in accordance with R.P.C. 1.5. The burden of proof shall be on the attorney to prove the reasonableness of the fee in accordance with R.P.C. 1.5 by a preponderance of the evidence. Within thirty (30) days after the docketing of a request for fee arbitration a client may, in writing, notify the secretary of a withdrawal from the proceeding; thereafter a client shall have no right of withdrawal. After a matter has been withdrawn by the client, the client shall not be permitted to resubmit it to fee arbitration.

**(2) Notice; Attorney Response.** The Fee Committee shall notify the parties at least 10 days in advance, in writing, of the time and place of hearing, and shall have the power, at a party's request and for good cause shown, or on its own motion, to compel the attendance of witnesses and the production of documents by the issuance of subpoenas in accordance with R. 1:20-7(i). All parties shall promptly report changes of address to the secretary of the Fee Committee, the hearing panel chair or single member arbitrator, and other parties. All service on attorneys required by fee arbitration rules shall be made in accordance with Rule 1:20-7(h), except that service by mail may be made by regular mail, unless the letter will result in barring an attorney from further participation or unless the attorney updates an address as stated above in which event service will be made at that address. Service on non-attorney parties shall be made at their last known address by regular mail, unless the address has been updated as stated above, in which event it shall be sent to the updated address.

The secretary of the Fee Committee shall serve on the attorney a copy of the client's written request for fee arbitration, and any supplemental documentation supplied to the panel; the secretary shall also forward to the attorney for completion an Attorney Fee Response form in a form approved by the Director. The secretary shall also serve a copy of the client's request for fee arbitration and an Attorney Fee Response on the law firm, if any, of which the original attorney is a member. The attorney shall specifically set forth in the Attorney Fee Response the name of any other third party attorney or law firm which the original attorney claims is liable for all or a part of the client's claim. The attorney shall file with the secretary the completed Attorney Fee Response, together with any supplemental documentation, within 20 days of receipt of the client's written request for fee arbitration; the attorney shall certify that a true copy of the Attorney Fee Response has been served on the client. Failure to file the Attorney Fee Response shall not delay the scheduling of a hearing. If the attorney fails to timely file an attorney fee response, the secretary shall inform the attorney that unless an attorney fee response is filed, and the filing fee paid, within 20 days of the date that the attorney is notified in writing, the attorney shall be barred from further participation, and the matter will proceed uncontested. Nothing in this section shall preclude the panel or arbitrator in its discretion from refusing to consider

evidence offered by the attorney which would reasonably be expected to have been disclosed on the Attorney Fee Response.

**(3) Third Party Practice.** In the event that the attorney has named a third party attorney or law firm as potentially liable in whole or part for the fee, the original attorney shall, within the time for filing the Attorney Fee Response with the secretary, serve a copy of the client's Request For Fee Arbitration and a copy of the Attorney Fee Response on the third party attorney or law firm, stating clearly in a cover letter that a third party fee dispute claim is being made against them. A copy of such letter shall be filed with the secretary, who shall forward to the third party attorney or law firm for completion an Attorney Fee Response form, which shall be filed with the secretary and served by the third party attorney on the client and the original attorney as provided for in the case of the original attorney. A third party attorney or law firm so noticed shall be deemed a party with all of the rights of and obligations of the original attorney.

**(4) Conduct of Hearing; Determination.** All arbitration hearings shall be conducted formally and in private, but the strict rules of evidence need not be observed. All witnesses including all parties to the proceeding shall be duly sworn, and no stenographic or other similar record shall be made except in exceptional circumstances at the direction of the Board or the Director. Both the client and the attorney whose fee is questioned shall have the right to be present at all times during the hearing with their attorneys, if any. If special circumstances dictate, the trier of fact may accept testimony of a witness by telephone or video conference. The written determination of the hearing panel or the single member arbitrator shall be in the form approved by the Director and shall have annexed a brief statement of reasons therefor. If a stay of a proceeding pending in court has been entered prior to the Fee Committee's determination, when the determination is rendered the secretary of the Fee Committee shall, if requested by either party, send a copy of the determination to the Clerk of the Court who is to vacate the stay and relist the matter. Where a third party attorney or law firm has been properly joined the arbitration determination shall clearly state the individuals or entities liable for the fee, or to whom the fee is due and owing. It shall be served on the parties and filed with the Director by ordinary mail within thirty (30) days following the conclusion of the hearing or from the end of any time period permitted for the supplemental briefs or other materials. Both the attorney and the client shall have 30 days from receipt to comply with the determination of the Fee Committee. Enforcement of arbitration determinations and stipulations of settlement shall be governed by paragraph (e).

**(c) Appeal.** No appeal from the determination of a Fee Committee may be taken by the client or the attorney to the Disciplinary Review Board except where facts are alleged that:

**(1)** any member of the Fee Committee hearing the fee dispute failed to be disqualified in accordance with the standards set forth in R. 1:12-1; or

**(2)** the Fee Committee failed substantially to comply with the procedural requirements of R. 1:20A, or there was substantial procedural unfairness that led to an unjust result; or

**(3)** there was actual fraud on the part of any member of the Fee Committee; or

**(4)** there was a palpable mistake of law by the fee committee which on its face was gross, unmistakable, or in manifest disregard of the applicable law, which mistake has led to an unjust result.

**(d) Procedure on Appeal.** The party taking an appeal shall file a notice of appeal in the form prescribed by the Board within twenty-one days after the parties' receipt of the Fee Committee's written arbitration determination. The notice of appeal shall be filed with the Board and shall include a statement of the ground for appeal and an affidavit or certification stating the factual basis therefor. Copies of the notice of appeal shall be served on the other parties, the secretary of the Fee Committee, and the hearing panel chair by the party appealing who shall certify such service in the notice of appeal. The filing of a notice of appeal from a Fee Committee determination shall act as a stay of execution of any judgment obtained as a result of a fee arbitration process. That stay shall not be lifted until final conclusion of the fee arbitration proceedings. The hearing panel chair of the Fee Committee shall, within twenty-one days of receipt of the notice of appeal, furnish to the Board a specific reply to the facts in the notice of appeal, setting forth the alleged grounds for appeal and shall serve a copy of the reply on all other parties. The Board may, in its discretion, decide an appeal without a response from the hearing panel chair. Within the same twenty-one day time period, the secretary of the Fee Committee or the Office of Attorney Ethics shall file with the Board the record of proceedings before the Fee Committee and any briefs or other papers filed with the Fee Committee. Subject to the same time limitations, any other party to the fee proceedings may file a response with the Board and shall certify service on all other parties, the secretary, and the hearing panel chair.

The Board shall dismiss the appeal on notice to the parties if it determines that the notice of appeal fails to state a ground for appeal specified in paragraph (c) of the rule or that the affidavit or certification fails to state a factual basis for such ground. If the notice of appeal and supporting affidavit or certification comply with these rules, the Board shall review the challenge to the arbitration. If it finds that there has been a violation of Rule 1:20A-3(c), the Board shall remand the fee dispute to a Fee Committee for a new arbitration hearing, or determine the matter itself if it deems such action appropriate.

**(e) Enforcement.** Whenever a Fee Committee determines, or the parties by signed stipulation of settlement agree, that a refund of all or part of the fee paid by a client should be made and the attorney fails to appeal or to comply with such determination or stipulation within thirty (30) days of receipt thereof, the matter shall be referred to the Director for such action as may be appropriate, in accordance with R. 1:20-15(k). In the event of an appeal, no enforcement of the Fee Committee's determination will occur while that appeal is pending before the Board.

If an action for collection of the fee is pending when the client's written request for arbitration is filed under Rule 1:20A-3(a) and is stayed thereby pending a determination by the Fee Committee, the amount of the fee or refund as so determined may be entered as a judgment in the action unless the full balance due is paid within 30 days of receipt of the arbitration determination. If no such action is pending, the attorney or client may, by summary action brought pursuant to Rule 4:67, obtain judgment in the amount of the fee or refund as determined by the Fee Committee. In any application for the entry of a judgment in accordance with this rule, no court shall have jurisdiction to review a fee arbitration committee determination. Said review is reserved exclusively to the Disciplinary Review Board under R. 1:20-15(l).

On payment and collection of any balance due from a client or third party under an arbitration determination or stipulation of settlement, the attorney shall promptly prepare, execute and provide the client or third party with a warrant for satisfaction of

any judgment entered, if requested or, if a civil action for the fee is pending, shall cause it to be dismissed. The client or third party shall bear the cost of filing any warrant for satisfaction.

**Note:** Adopted February 23, 1978 to be effective April 1, 1978; paragraph (c) amended, new paragraph (d) adopted and paragraph (d) redesignated (e) July 15, 1982 to be effective September 13, 1982; paragraphs (a) through (e) amended January 31, 1984 to be effective February 15, 1984; paragraph (b) amended November 1, 1985 to be effective January 2, 1986; paragraphs (a) and (b) amended November 5, 1986 to be effective January 1, 1987; paragraphs (d) and (e) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a) and (b) amended and subheadings (1), (2), (3) and (4) added June 29, 1990 to be effective September 4, 1990; paragraph (a)(1) amended and subparagraph (a)(2) added February 8, 1993 to be effective March 1, 1993; paragraphs (a)(b)(c)(d) and (e) amended, new paragraph (c)(4) adopted January 31, 1995 to be effective March 1, 1995; paragraph (e) amended June 28, 1996 to be effective September 1, 1996; paragraph (d) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a)(1), (a)(2), (b)(2), (b)(3), (d), and (e) amended July 5, 2000 to be effective September 5, 2000; paragraph (c) amended July 28, 2004 to be effective September 1, 2004; subparagraphs (b)(2) and (b)(4) amended July 9, 2008 to be effective September 1, 2008.

#### **1:20A-4. Referral to Office of Attorney Ethics**

When a grievance involves aspects of both a fee dispute and a charge of ethical misconduct, the Fee Committee shall first determine the propriety of the fee charged unless it clearly appears to the Fee Committee, or to the Director, that there is presented an ethical question of a serious or emergent nature, in which event the Fee Committee shall administratively dismiss the matter and transmit the file to the Director for processing. In all cases it shall be the duty of each Fee Committee, after hearing and determination of the fee, to refer any matter that it concludes may involve ethical misconduct that raises a substantial question as to the attorney's honesty, trustworthiness or fitness as a lawyer in other respects (including overreaching) to the Director for investigation. Such referrals shall be made in letter form detailing the facts known to the Fee Committee and shall include a complete copy of the Fee Committee's file. Nothing in this rule shall preclude a client from filing an independent grievance with an Ethics Committee at the conclusion of a fee dispute proceeding.

**Note:** Adopted February 23, 1978 to be effective April 1, 1978; amended January 31, 1984 to be effective February 15, 1984; amended November 5, 1986 to be effective January 1, 1987; caption and text amended January 31, 1995 to be effective March 1, 1995.

#### **1:20A-5. Records; Confidentiality; Immunity**

Each Fee Committee shall maintain such records and file such reports as shall be required by the Director. Except as may be otherwise necessary for compliance with these rules or to take ancillary legal action in respect thereof, all records, documents, files, hearings, transcripts or recordings of hearings, if any, and proceedings made and conducted in accordance with these rules shall be confidential. They shall not be disclosed to or attended by anyone unless (1) the Board so directs following written application to the Board with notice to the Director and the attorney whose fee was questioned; or (2) on order of the Supreme Court. Fee Committee members, secretaries and their lawfully appointed designees and staff shall be entitled to the immunity as provided by Rule 1:20-7(e).

**Note:** Adopted February 23, 1978 to be effective April 1, 1978; amended January 31, 1984 to be effective February 15, 1984; caption and text amended January 31, 1995 to be effective March 1, 1995.

#### **1:20A-6. Pre-action Notice to Client**

No lawsuit to recover a fee may be filed until the expiration of the 30 day period herein giving Pre-action Notice to a client; however, this shall not prevent a lawyer from instituting any ancillary legal action. Pre-action Notice shall be given in writing, which shall be sent by certified mail and regular mail to the last known address of the client, or, alternatively, hand delivered to the client, and which shall contain the name, address and telephone number of the current

secretary of the Fee Committee in a district where the lawyer maintains an office. If unknown, the appropriate Fee Committee secretary listed in the most current New Jersey Lawyers Diary and Manual shall be sufficient. The notice shall specifically advise the client of the right to request fee arbitration and that the client should immediately call the secretary to request appropriate forms; the notice shall also state that if the client does not promptly communicate with the Fee Committee secretary and file the approved form of request for fee arbitration within 30 days after receiving pre-action notice by the lawyer, the client shall lose the right to initiate fee arbitration. The attorney's complaint shall allege the giving of the notice required by this rule or it shall be dismissed.

**Note: Adopted November 1, 1985 to be effective January 2, 1986; amended June 29, 1990 to be effective September 4, 1990; amended January 31, 1995 to be effective March 1, 1995.**