DISTRICT FEE ARBITRATION COMMITTEE MANUAL

for
Committees Appointed by the
Supreme Court of New Jersey

Prepared by

OFFICE OF ATTORNEY ETHICS

of the

SUPREME COURT OF NEW JERSEY
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Section 1 Overview

The New Jersey Attorney Fee Arbitration System is one of the simplest, and also one of the strongest, in the nation. Formerly a part of the county ethics committees, current attorney fee arbitration proceedings have been in existence since 1978. At that time, the Supreme Court of New Jersey created separate ethics committees and fee arbitration committees ("Fee Committees") throughout the state. This separation of the ethics and fee function was based in large measure upon the recognition that fee disputes were not disciplinary matters and therefore should be treated separately. The Supreme Court of New Jersey recognizes that, while the number of cases handled by these Fee Committees may be relatively small, their contribution to public confidence in the judicial system is significant:

> The overwhelming proportion of lawyers are able to maintain satisfactory relationships with clients concerning fees. Where the relationship disintegrates over fee disputes, many lawyers will take the loss rather than sue. Fee arbitration is for the very few; it is used only in those few instances when either a lawyer is dissatisfied with the amount received and is willing to sue for satisfaction, or the client claims he is called upon to pay or has already paid too much and wants to reduce the lawyer's claim or get some money back. Though the matters which come to fee arbitration represent a very small proportion of the total number of fee relationships, they are among the most visible matters to a public greatly concerned about how the judicial system deals with attorney-client disputes. Our success in establishing a fair fee arbitration system will do much to assure the public of the fairness of the judicial system as a whole, and thereby increase the public confidence that is so necessary for that system to operate effectively. ***In re LiVolsi, 85 N.J. 576, 604 (1981).***

The system has been designed to be fair, fast and inexpensive. Any client of a New Jersey attorney who believes that he or she has been overcharged by a member of the bar may have the lawyer's fee reviewed without incurring the expense of formal litigation.

The Process

The fee arbitration process is a model of simplicity. It is a two-tiered system that operates statewide. The two levels on which fee arbitration is conducted are:

a. Regionalized District Fee Arbitration Committees (Fee Committees), supervised and assisted by the Office of Attorney Ethics (OAE), and

b. A statewide Disciplinary Review Board (Board).

Fee Committees are organized along geographic lines (usually counties) that are identical to ethics committee districts. (See Figure 1, Section 2). Fee arbitration in New Jersey is initiated by a client's filing of a request form with the Secretary of the Fee Committee in the district where the lawyer maintains an office for the practice of law.

Effective March 1, 1993 non-refundable filing fees are required to be paid by both the client and the attorney at the time of filing of the Fee Request Form and Attorney Fee Response as follows:

No Fee - where the total fee charged (excluding costs) is less than $1,000

$25.00 - where the total fee charged (excluding costs) is from $1,000 to $2,999

$50.00 - where the total fee charged (excluding costs) is $3,000 or more.

Since New Jersey's program is mandatory on the part of lawyers, the request form requires the client's consent to be bound by the results of the fee arbitration process. Attorneys are required to file an Attorney Fee Response in which they provide the Fee Committee with needed factual information in response to the client's request. Fee Committees do not render advisory opinions but, rather, adjudicate fee controversies between lawyers and clients.

Since April 1, 1979 Fee Committees have been composed of both lawyers and public members. Fee arbitration cases are usually heard before panels of three members, composed of two lawyers and one public member.

Hearings are scheduled upon ten days written notice. There is no discovery. However, all parties have the power of subpoena, subject to rules of relevancy and materiality. No stenographic or other transcript of the proceedings is maintained, unless ordered by the Board or the Director. All proceedings are conducted formally and in private, but the strict rules of evidence need not be observed. If the total amount of the fee charged is less than $3,000, the hearing may be held before a single attorney member of the Fee Committee. A written Arbitration Determination, including a monetary synopsis of the findings together with a brief statement of reasons, is required to be mailed to the parties notifying them of the arbitration decision within 30 days after the conclusion of the hearing.

A **limited** right of appeal from a determination of a Fee Committee to the statewide Disciplinary Review Board is provided. The grounds for such an appeal are as follows:

a. Failure of a member to be disqualified in accordance with *R.1:12-1*;

b. Failure of the Fee Committee to substantially comply with mandatory procedural requirements;

c. Actual fraud on the part of any member of the Fee Committee, or

d. Obvious mistake of law by the Fee Committee which has led to an unjust result.

An appeal may be taken within 21 days after receipt of the Fee Committee's written determination by filing a notice of appeal in the form prescribed by the Board. The timely filing of a notice of appeal acts as an automatic stay of the execution of any judgment obtained based upon the Fee Committee's Arbitration Determination. All appeals are heard by the Board on the written record. The Board's decision is final.

In addition to hearing appeals, the Board also hears motions made by the OAE to enforce payment of refunds which have been ordered to be made by attorneys to clients. If the Board determines that a refund has improperly been withheld, it may recommend to the Supreme Court that the attorney be suspended from the practice of law until compliance is achieved. The Board can also impose additional monetary sanctions on the delinquent attorney for failing to abide by the Fee Committee's ruling.

Substantive Fee Rules

In recent years the Supreme Court has adopted several rules designed to encourage early communication about legal charges between lawyer and client. New Jersey has been a leader nationally in this area. One such rule (*R.1:21-7*), which has been in existence since 1971, requires written contingent fee agreements with clients in tort and negligence matters. These matters are also subject to specific maximum legal fee limits established by the Supreme Court.

Another more recent rule (*R.1:21-7A*) regarding retainer agreements in matrimonial matters was adopted by the Supreme Court on May 24, 1982 and became effective September 13, 1982. That rule requires all agreements for legal services in matrimonial actions to be in writing and to be signed by both the lawyer and the client. In 1984, New Jersey became the first state in the nation to adopt the American Bar Association's Model Rules of Professional Conduct. *RPC 1.5* governing "Fees" was modified for adoption in New Jersey in order to insure communications on fees between lawyers and clients at the inception of the relationship. The New Jersey rule provides in subsection (b):

> When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation.

Additionally, *RPC 1.5(c)* requires that all contingent fee agreements be in writing. It can hardly be doubted that surprise and consequent dissatisfaction at a lawyer's final bill will decrease when the lawyer and client discuss, and reach agreement as to, the basis for the lawyer's charges at the inception of the relationship.

The Office of Attorney Ethics

In October 1983, the Supreme Court of New Jersey established the Office of Attorney Ethics (OAE) in order to manage all district fee arbitration and ethics committees throughout the state. The OAE has broad administrative and managerial powers over both fee and ethics committees. It renders legal and procedural advice to Fee Committees and takes action before the Disciplinary Review Board to enforce refunds of fees, through temporary suspensions, where refunds are not made in accordance with a Fee Committee's determination.

The OAE also administers the Supreme Court's Random Audit Compliance Program, which conducts compliance audits of trust and business accounts to see that mandatory record keeping practices are followed by all lawyers. That program is the largest in the nation, currently employing five full-time auditors. Beginning in March 1985 the Office of Attorney Ethics was given responsibility for the Trust Overdraft Notification Program by which all New Jersey financial institutions notify the OAE whenever an attorney trust account becomes overdrawn due to insufficient funds.

Section 2 Establishment

The Supreme Court has established 17 district fee arbitration committees with original jurisdiction in fee disputes between clients and attorneys authorized to practice in this state. *R.1:20A-1*. Many of the present Fee Committees (**Figure 1**) are similar geographically to the vicinages now used in the administration of the state court system. The 17 Fee Committees are:

District I	Atlantic, Cape May, Cumberland and Salem Counties
District IIA	North Bergen County
District IIB	South Bergen County
District IIIA	Ocean County
District IIIB	Burlington County
District IV	Camden and Gloucester Counties
District VA	Essex County (Newark)
District VB	Essex County (Suburban Essex)
District VC	Essex County (West)
District VI	Hudson County
District VII	Mercer County
District VIII	Middlesex County
District IX	Monmouth County
District X	Morris & Sussex Counties
District XI	Passaic County
District XII	Union County
District XIII	Hunterdon, Somerset and Warren Counties

Rule 1:20A-1 requires only that the districts consist of a "defined geographical area." The Court may, from time to time, alter fee districts as the administrative need arises, and upon recommendation by the Director. *R.1:20-2(b)(13).*

Geographic Committee Layout

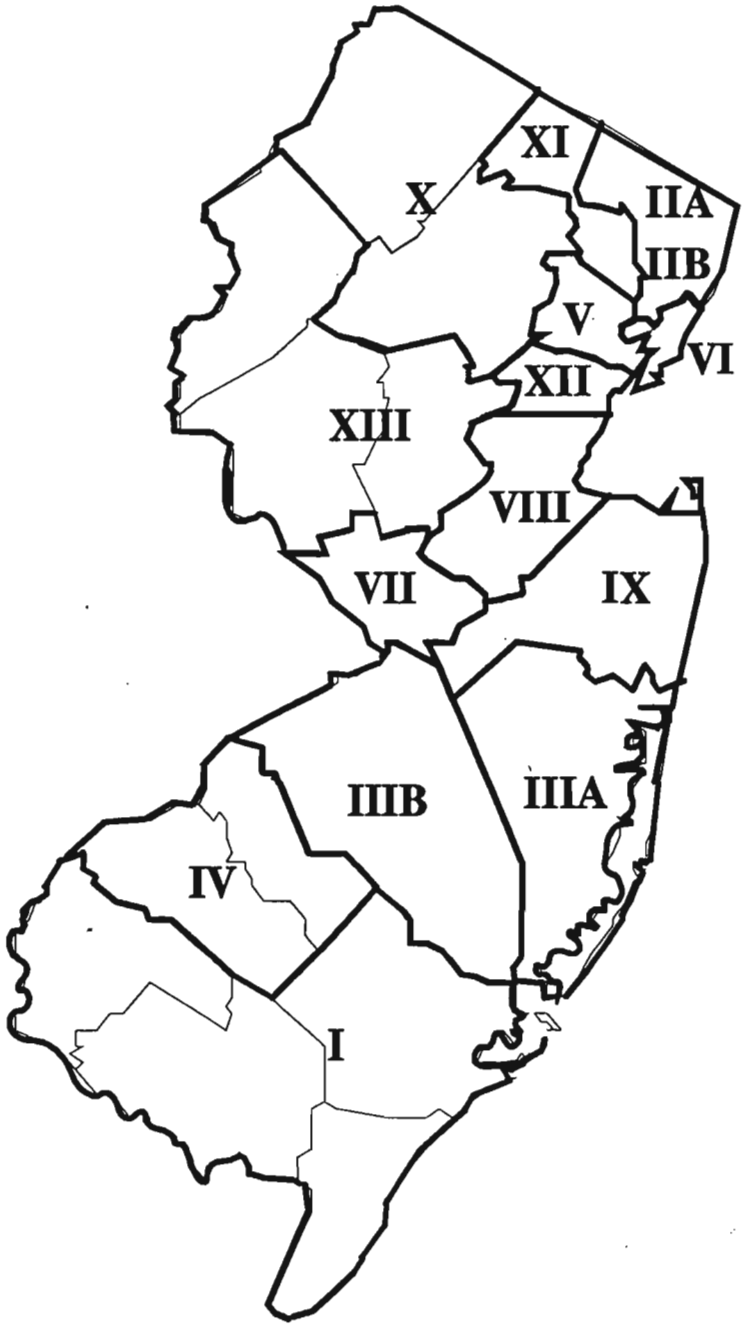

Figure 1

Section 3 Appointments

Permanent members of Fee Committees are appointed directly by order of the Supreme Court.

Section 4 Process

The OAE serves as liaison with the Supreme Court in the appointment process. Annual appointments are made in late spring and summer to be effective September 1. Interim appointments are made as necessary.

Section 5 Size

Fee Committees are established by the Court in a size which is sufficient to handle the annual caseload for each district. No Fee Committee, however, may be composed of fewer than eight members. *R.1:20A-1*.

Section 6 Composition

Effective April 1, 1979, public members were added to the committees. A minimum of four of the members of a Fee Committee are required to be attorneys. At least two public members, however, must serve on each Fee Committee. *R.1:20A-1*.

Section 7 Eligibility: Office, Residence, Political Activities

The only qualification prescribed by the rules for committee members is that they reside or work in the district or county in which they are appointed to serve. *R.1:20A-1*. If the member has more than one residence, the member is eligible to serve based upon either location. With respect to both attorney and public members, it is the Supreme Court's policy that members and potential members may hold elective or appointive municipal office while serving on district fee committees.

In the event that a member ceases to reside or work within the district, as appropriate, the member should promptly notify the OAE as well as the Chair and Secretary in writing. The Secretary or Chair must notify the OAE in the event that any member of the Fee Committee becomes unable to carry out the required duties for medical or other reasons.

Section 8 Term of Office

Members may be appointed for a period not to exceed a single consecutive four year term. Original appointments commence September 1 of each year.

A rotation system is employed in the appointment of members so that, generally, the terms of one-fourth of all of the members of each Fee Committee expire annually. *R.1:20A-1*. This procedure preserves continuity while inviting the fresh ideas which new personnel inevitably bring to a new task. Once a member has served a full term, however, the member is not thereafter eligible for immediate reappointment. *R.1:20A-1*.

Section 9 Continuation Beyond Full Term

Despite the fact that an individual's term has expired, any member who is serving in connection with a proceeding that is pending at that time continues to serve in such a matter until its conclusion. *R.1:20A-1*. The Secretary and Hearing Panel Chair should give priority to the scheduling of such holdover matters so that the retiring member's term is not extended unnecessarily. In August of each year the Chair of the Fee Committee should review with the Secretary the status of matters in which retiring members are involved. So that there are no misunderstandings, the Chair should advise the retiring member in writing of specific and continuing obligations, providing a copy to the Secretary. Any disagreements should be reported to the OAE for resolution.

Section 10 Fee Committee Meetings

The Fee Committee exists as an entity, and yet no action is taken by majority vote of its membership. Rather, individual hearing panels or single member arbitrators render determinations in all cases. *R.1:20A-3(b)*. Nevertheless, the entire Fee Committee meets in September at an organizational meeting and occasionally thereafter to discuss problems and procedures.

Section 11 Organization Meeting

The Fee Committee's organizational meeting is held in September of each year following the commencement of all appointments on September 1. This meeting sets the tone for the Fee Committee's work under the new Chair, Vice Chair and Secretary. It also permits socialization of new and existing members, both attorneys and public members.

The primary purposes of the organizational meeting are to (1) organize the Fee Committee by familiarizing members with the new officers and also (2) orient new and existing members to specifically what is required of them and within what time frame.

Section 12 Establishing Hearing Panels

Since Fee Committees act primarily through hearing panels, one of the most important actions the Chair is to take is the establishment of pre-set panels of three members. (See **Figure 7 - Section 34**, *infra.*) Two members must be attorneys, while the third should be a public member. *R.1:20A-3(b)*. Where no public member is available in a particular case, an attorney member may be substituted. In an emergency a hearing may be held with two members, but **only** with the consent of both parties. Such consent should always be in writing, since the Disciplinary Review Board has overturned cases on appeal on this ground where the Fee Committee was not able to unequivocally demonstrate that the parties knowingly waived their right to a three-member panel.

The hearing panel chairs will be selected based upon their experience. Usually the Fee Committee Chair and Vice Chair will each head a hearing panel. The composition of the remaining members of each panel should be determined based on such factors as geographical location within the fee district or area of specialization in the law. The organizational meeting may be helpful to the Chair in making assignments.

Section 13 Regular Meetings

There is no requirement for regular monthly meetings of the entire Fee Committee, although some Fee Committees find such meetings helpful. However, the Chair, Vice Chair and Secretary should communicate with each other regularly to review productivity and to respond to problems.

Section 14 Officers

Rule 1:20A-1 provides for the appointment of three officers to each Fee Committee: Chair, Vice Chair and Secretary.

Section 15 Chair

Each year the Supreme Court designates an attorney member of the Fee Committee to serve at its pleasure as Chair. *R.1:20A-1*. The Chair acts as the chief executive officer of the Fee Committee with the consequent ultimate responsibility for all policy decisions and caseload flow.

The Rules set forth specific functions to be performed by the Chair. Among them are:

- Establishment of the meeting schedule.
- Consultation with the Director on selection of the Fee Committee Secretary. *R.1:20A-1.*
- Assignment of hearing panels and designation of single member arbitrators. *R.1:20A-3(b).*
- Evaluation of applications for issuance of subpoenas and determination of motions to quash and limit. *R.1:20A-3(b)(2) and R.1:20-7(i).*
- Consultation with the Director on continuing satisfactory performance of all Fee Committee members. *R.1:20-2(b)(12).*

Some of these administrative and designation functions will be delegated to, and handled by pre-arrangement with, the Fee Committee Secretary so that procedures are routinized and expedited. Additionally, if the workload warrants, the Chair is at liberty to delegate specific functions to the Vice Chair.

Near the expiration of the Chair's term, on or about August 1st, the Chair and Secretary should review the cases of all members whose terms are

expiring so that explicit arrangements are made to (1) reassign all unadjudicated pending matters, (2) have the retiring member complete by a date certain all Arbitration Determinations in adjudicated cases and (3) assign a new member to sit on any hearing panel on which the retiring member has not yet commenced hearings.

Section 16 Vice Chair

Like the Chair, the Vice Chair is appointed annually by order of the Supreme Court. *R.1:20A-1.* The functions of the Vice Chair are more general in the rules than those of the Chair:

> When the chair is absent or unable to act or disqualified from acting due to a conflict, the vice chair shall perform the duties of the chair. *R.1:20A-1.*

Section 17 Secretary

Appointment of the Secretary is made annually by the Director after consultation with the Fee Committee Chair. The Secretary continues to serve at the pleasure of the Director (*R.1:20A-1*) and acts as the chief administrative officer of the Fee Committee. In order for a Fee Committee to function effectively, it is imperative that the Secretary, the Chair and the OAE have a close working relationship.

The Secretary is not a member of the Fee Committee and, therefore is not eligible to sit on a hearing panel. *R.1:20A-3(b).* However, the Secretary must be a member of the Bar and must also maintain an office in the district or county in which the district is located. *R.1:20A-1.* In the event that the Secretary moves out of the district or is otherwise unable to serve, either the Secretary or the Chair should so notify the OAE in order that a successor may be promptly appointed.

Section 18 Principal Office

The Secretary's office serves as the principal office for the Fee Committee. *R.1:20A-1.* This office is the place at which all fee requests are initially received and to which all correspondence should be initially referred. It is also the place where all papers required by the rules to be filed with the Fee Committee must be directed. If appropriate, the Director may designate an additional location to serve as the Fee Committee's office. *R.1:20A-1.*

Section 19 Case Screening

The Secretary of a Fee Committee acts as the primary contact person with the Bar, the Bench and the public. Many initial communications which a Secretary receives, although couched in terms of a fee dispute, are simply requests for information or direction. One of the primary jobs of the Secretary is to differentiate between matters which are truly fee disputes and those which are not. If, from a review of the facts, it appears that some other avenue of redress is available and more appropriate, then the Secretary should advise the client of the alternative referral (e.g. appellate court, legal aid society, public defender, lawyer referral service).

The Secretary is **not** a member of the Fee Committee. This separation gives the Secretary more leeway to deal with inquirers and participants in the fee system without in any way bringing into question the impartiality of the Fee Committee itself to hear the matter. Often the Secretary acts as a mediator between the client and the attorney; this is wholly appropriate. In many instances, a telephone call by the Secretary to the attorney advising the attorney of the facts will be sufficient to bridge a simple lack of communication and will lead to an amicable resolution by the parties. Such action is encouraged.

Once the Secretary has determined that a fee dispute exists, the Secretary should forward to the client six (6) copies of the Request for Fee Arbitration (**Figure 8**) and the Information Pamphlet (**Figure 9 - See Section 35,** *infra.*). (See Section 35, *infra.*)

Upon receipt of five **unaltered and fully executed** copies of the Request for Fee Arbitration, the Secretary should then screen the form **prior to** acceptance and **docketing**. Some clients will attempt to alter the final paragraph of the form above their signature in order, for example, to avoid the binding effect of the form. Such alteration cannot be accepted and the Secretary should so advise the client. Additionally, screening by the Secretary should give consideration to the following factors:

* * * * * Does the attorney named maintain an office for practice (See Question C of the Request Form) within the district? If not, under *R.1:20A-1*, the fee dispute should **not** be docketed but referred to the Director, OAE, for transfer to an appropriate Fee Committee. The only exception to the rule involves fee disputes by prisoners. (See Section 27 *infra*.)

* * * * * Is there a conflict of interest in that the fee dispute is against either a member of the Fee Committee (See Question C of the Request Form) or a partner or associate of a Fee Committee member? As discussed more fully in Section 28, *infra*, such cases should **not** be docketed, but referred to the Director, OAE for transfer to an appropriate Fee Committee.

* * * * * Are there any jurisdictional limitations under *R.1:20A-2* on the Fee Committee's ability to decide this matter? If so, the Secretary should advise the client and the attorney in writing of the decision to either accept or reject the matter and the reasons therefore. (See Chapter 4, *infra*, on **Jurisdiction**).

* * * * * Before a lawyer sues a client for a fee, the lawyer is required to give the client Pre-Action Notice of the right to request fee arbitration, including the name and address of the Fee Secretary. *R.1:20A-6*. While it cannot always be ascertained from the Request Form, if such notice has been given, the client has 30 days after receiving notice within which to file for arbitration. Otherwise the client looses the right to arbitrate, unless the attorney also agrees. Question 9(b) of the Attorney Fee Response addresses this jurisdictional issue. (See Chapter 4, *infra*, on Jurisdiction.)

* * * * * Is the client an inmate in a New Jersey institution within the Fee Committee's district? If not, the matter should be referred to the Director, OAE for transfer. If the client is in an institution outside the state, the committee must generally decline jurisdiction. (See Section 27 *infra*.)

If upon review and screening of the Request for Fee Arbitration the Secretary is satisfied that a proper fee dispute is presented, the matter should be docketed. Docketing involves five steps: (1) listing the matter on the open docket sheet, (2) preparing an index card (3) opening a file (4) determining if a filing fee is due and has been paid and (5) forwarding one copy of the Request, any filing fee check and the first docket card to the OAE.

Section 20 Index Cards

In order to assist fee committees, as well as the OAE, in maintaining a current record of the status of fee cases, carbonized four-part index cards have been developed for use by Fee Secretaries. **Figure 2** shows the "Docket Card," This is the top card.

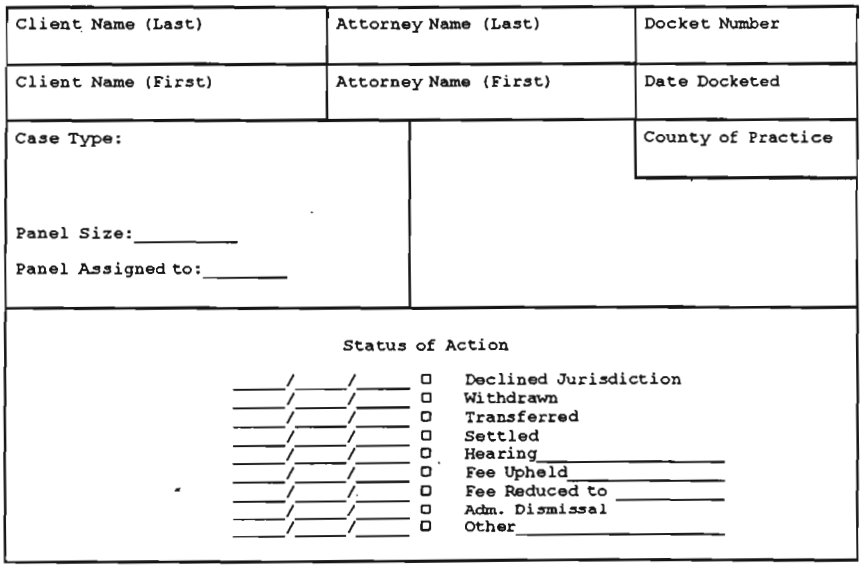

Figure 2

Three additional cards are provided, one with the docket number shaded, one with the grievant name shaded and one with the attorney last name shaded. All cards are completed by the Secretary at the time of docketing. The **first** card should be attached to the Request for Fee Arbitration and forwarded to the OAE; no cover letter is necessary. The second, third and fourth cards should be retained by the Secretary for the Fee Committee's records.

There are five major areas on the index card to which attention should be directed:

a. Docket Number and Attorney

A docket number must be assigned to **each** attorney whose fee is challenged. The docket number is a four-part number assigned as follows: The Roman numeral assigned as the designation for the particular district; the last two digits of the calendar year in which the file is opened and, **starting with number 1 on January 1 of each year,** the sequential number of the case, followed by the letter **"F"** which designates a matter being processed by the Fee Committee, as distinguished from a district ethics committee. Thus, the first fee case to be opened in 1995 by the district committee for the counties of Atlantic, Cape May, Cumberland and Salem would be designated as follows:

I-95-001F

This number should be typed in the index card space entitled "Docket Number."

A separate docket number must be assigned for each attorney complained of. Thus, if a fee dispute is received against two attorneys from different law firms, two separate docket numbers should be assigned and two separate sets of cards completed. However, where the individual attorney who handled the matter is known, the matter should be docketed against that individual. Where a firm name or multiple members of a law firm are listed without identifying the individual who actually handled the matter, the case should be docketed against the senior member of the firm. In the area designated "Attorney Name," the Secretary should insert the name of the attorney whose fee is questioned. If more than one attorney is the subject matter of the grievance, the attorney's last name should be followed by the words "*et al.*" Only an individual name and **not** a firm name must be typed as "Attorney Name." Additionally, in the empty block on the docket card, the docket number assigned to the related case should also be shown. For example, "See I-95-002F." In this regard, it must be remembered that **no fee arbitration case can be entertained against a business entity.** Thus, it would be incorrect to list as the name of an attorney the name of a law firm, such as, "Smith, Jones, and Row." A fee dispute inquiry which does not specify the individual attorney(s) to be charged should be acknowledged, but the client should be advised that he/she must name the **specific individual**

who actually performed services or who was entrusted with the conduct of the matter.

b. Client Name

Regardless of the number of clients, **only one individual should be listed** in the box designated "Client Name." Thus, corporate and similar fee disputes should be listed in the name of the officer or person filing that Request for Fee Arbitration and not in the name of the entity on whose behalf it is written. If there is more than one client, the Secretary should simply put the words "*et al*" after the clients last name. In other words, it is not necessary to make up four (4) separate sets of cards simply because four (4) clients sign one fee dispute against one or more attorneys. Rather, the designation "*et al*" will be sufficient.

c. Date Docketed

In the space entitled "Date Docketed," the Secretary should place the **date** on which the **docket number** was actually **assigned.**

d. County of Practice

The name of the **county where the attorney maintains an office** for the practice of law, which office locale provides the Fee Committee with jurisdiction, is inserted in the space provided. In non-regionalized districts, this will usually mean inserting the one particular county in which the district is located, unless, of course, the matter has been transferred from another committee. In regionalized committees, like District XIII (Hunterdon, Somerset and Warren Counties), each card will reflect the particular county within that district in which the attorney maintains the law office. For cases which have been transferred from another Fee Committee, the county (outside of the particular district) in which the attorney has maintained the law office over which jurisdiction was asserted, is the county which will be listed on the index card.

e. Case Type

Designate the type of matter giving rise to the dispute in the categories listed on the Fee Request Form:

___	Admiralty/Maritime	(V)	
___	Adoption/Name Change	(A)	
___	Bankruptcy/Insolvency/Foreclosure	(B)	
___	Collection	(H)	
___	Contract	(K)	
___	Corporation/Partnership Law	(X)	
___	Criminal, Quasi-criminal and Municipal Court	(C)	
___	Domestic Relations (Divorce, Support, Custody)	(D)	
___	Estate/Probate	(E)	
___	Federal Remedies/Civil Rights	(F)	
___	Government Agency Problems (Local Thru Federal)		
___	Immigration/Naturalization	(M)	
___	International Law	(I)	
___	Juvenile Delinquency	(J)	
___	Labor	(L)	
___	Landlord/Tenant	(Q)	
___	Negligence (Personal Injury Property Damage)	(N)	
___	Patent/Trademark/Copyright	(P)	
___	Real Estate	(R)	
___	Small Claims Court	(S)	
___	Tax	(T)	
___	Workers Compensation	(W)	
___	Other Litigation (specify)	(Y)	
___	Other Non-Litigation (specify)	(Z)	

f. Panel Size

Designate the numbers "1" (to designate a matter where the amount of the bill is less than $3,000 so a single member arbitrator can sit) or "3" (to designate where the total fee is $3,000 or over, thus requiring a three member panel). All of this information is computerized for use by the committee."

g. Panel Assigned to

Designate to which panel the matter has been assigned, such as, "Panel B."

Other than stated above, it is not necessary for the Secretary to complete any information in the boxes entitled "Status of Action." For the Fee Committee's own convenience, however, the Secretary may have the assigned clerical staff complete this information on the committee's copies of the docket cards as the case is closed so that an accurate disposition record may be maintained by the Fee Committee. The OAE will complete all other information on the cards when they are received. Additional supplies of the carbonized index cards can be obtained from the OAE as needed.

Section 21 Docket Control

Docket numbers are assigned chronologically by year beginning on January 1st of each year. Every Fee Committee must maintain a manual docketing system utilizing open and closed docket sheets:

a. Open Docket Sheet

When a case is originally opened and an index card prepared, it is simultaneously listed on the Open Docket Sheet (**Figure 3A**) and given the next chronological docket number. All cases remain on the Open Docket until they are closed.

DISTRICT _____

YEAR: 19___

OPEN DOCKET SHEET

DOCKET NUMBER	DATE OPENED	ATTORNEY	CLIENT	ATTORNEY FEE RESPONSE		HEARING PANEL		DATE DECISION FILED	DATE SENT TO PARTIES
				SENT	REC'D	ASSIGNED	DATE		

FIGURE 3a

DISTRICT _____

YEAR: 19___

CLOSED DOCKET SHEET

DOCKET NUMBER	DATE CLOSED	ATTORNEY	CLIENT	DISPO-SITION	REMARKS

OAE 2/1/87 DISPOSITION CODES:

AD = Arbitration Determination
S = Stipulation of Settlement
C = Closed Administratively

FIGURE 3b

b. Closed Docket Sheet

In order to tell the extent and nature of the Fee Committee's work, a Closed Docket Sheet (**Figure 3B**) is also maintained. Here all cases disposed of from the open docket sheet should be logged in chronologically by the date of disposition. By so doing the Secretary can tell for any month the number and nature of cases concluded by the committee. A case should not be shown as closed, but should remain open, until (1) an Arbitration Determination has been **filed and transmitted** to the parties and OAE, (2) a Stipulation of Settlement has been filed, or a letter received from the Panel Chair or attorney and transmitted to the OAE or (3) the matter has been administratively closed for a special reason and the **parties** and OAE have been so notified by **letter**.

A fee matter which has been appealed to the Board may, in an appropriate case, be remanded for rehearing to a Fee Committee. All remanded cases must be assigned a **new** docket number just as if a new Request for Fee Arbitration had been filed with the Fee Committee. New index cards must be prepared and the matter reflected on the open case docket as a newly added case. The new index card, together with a copy of the Fee Arbitration Request Form should be forwarded to the OAE as a new case.

Section 22 Monthly Reports

Secretaries are required by rule to file with the OAE a monthly report, together with a one-page statistical synopsis. *R.1:20A-1*. While some Secretaries find it helpful to prepare their own reports, since January 1990 the OAE produces for each district a computerized monthly report as well as a Statewide Fee Statistics Report listing all cases added, disposed and pending in the district and in the state.

This report is **in lieu of** the committees' required report. The Statewide Fee Statistics Report shows how all committees are doing throughout the state. The Monthly Report form relates solely to each district. It contains three parts:

Part A. Files Added
Part B. Files Disposed
Part C. Matters Pending

The total in Part A of "Files Added" is identical to the same heading on the Statewide Report; this is also true of the total of Part B covering "Files Disposed" and Part C "Matters Pending." Parts A & B of the Monthly Report

have a column entitled "Enter Date." This is the date the information has actually been entered into the OAE computer. For statistical consistency all totals are counted using this date. So if a committee actually dockets a new case on February 28th, but it does not physically reach the OAE until after the first business day of the next month, it will not be reflected in OAE statistics for the month of February. It will, however, be shown on the March report. The same holds true with disposed cases.

OAE reports provide the median and average time for all cases disposed of as well as those that remain pending. This is, perhaps, the best indicator of how Fee Committees are doing. The "Panel Size" listing on Part C of the report "Matters Pending" tells committees at a glance which cases are under $3,000 and, thus, can be handled by a single member arbitrator, and which are $3,000 or more and require a three-member panel. A column on the report also shows the county where the attorney practices. County data is helpful in regionalized districts and will facilitate panel assignments. In other districts the county column will indicate which cases have been transferred into the district due (a) to conflicts or (b) to clients who are prisoners in your jurisdiction.

After receiving the OAE monthly report, the Secretary must review Part C "Matters Pending." A photocopy of this section, marked up with any changes (other than new cases added), should be returned to the OAE Fee Arbitration Assistant, **by the 20th of the month.** These reports will be reviewed at the OAE and all proper changes will be reflected in the OAE computer so that the following month's reports are up to date.

A copy of the Monthly District Report and Statewide Caseload Fee Statistics Report will be sent to the Chair, Vice Chair and Secretary. A Fee Committee may find it helpful to also provide each Panel Chair with a copy to serve as a reminder of the status of assigned cases.

Section 23 Emoluments

Effective January 1, 1993 Fee Secretaries are paid at the rate of $5,500 per annum. Such a stipend is not in payment for services rendered, but, rather, to offset out-of-pocket costs that are paid by the Secretary including official letterhead and envelopes. Emoluments are paid quarterly, at the end of the quarter to all Secretaries except for Essex. Since this county has hired full-time clerical assistance for both their ethics and fee committees, payments are made quarterly, at the beginning of each quarter. The manner and method for payment of quarterly emoluments is detailed in Section 63.

The OAE supplies all Fee Secretaries with additional items:

- All carbonized four-part index cards,
- All forms to be used, including:
  - » Requests for Fee Arbitration;
  - » Attorney Fee Response;
  - » Arbitration Determination;
  - » Stipulation of Settlement; and
- District Fee Arbitration Committee Manual for each member
- Fee Information Pamphlets

Section 24 Original Jurisdiction

In fulfilling its constitutional obligation to regulate members of the Bar, the Supreme Court has vested original jurisdiction to hear and determine fee disputes between lawyers and clients in district fee arbitration committees and in the Office of Attorney Ethics. *R.1:20A-1 & 2.*

Each Fee Committee has jurisdiction over admitted attorneys who maintain an office within that committee's particular district. The Fee Committee has full jurisdiction over an attorney "regardless of whether the attorney has been suspended, resigned, disbarred or transferred to 'disability-inactive' status since the fee was incurred." *R.1:20A-3(a).* Moreover, our rules provide that "(e)very attorney authorized to practice law in the state of New Jersey, including those specifically authorized for a limited purpose, or in connection with a particular proceeding, shall be subject to the disciplinary jurisdiction of the Supreme Court as set forth in the Constitution of 1947, Article 6, Section 2, Paragraph 3." *R.1:20-1(a).* Thus it has been held that attorneys admitted *pro hac vice* are subject to the disciplinary jurisdiction of this state. *In re Bailey, 57 N.J. 451 (1971).* See also *R.1:21-2(b)(1).* In view of the fact that fee arbitration procedures and rules are directly tied to those of disciplinary committees, Fee Committees should assume jurisdiction over fees charged by *pro hac vice* attorneys. Since such attorneys do not maintain offices in this state, however, the Director will initially assign such matters to a Fee Committee for processing. *R.1:20A-1.*

Where the attorney named is a deceased practitioner, Fee Committees have no jurisdiction, unless the attorney was a member of a multi-member firm, in which event the Secretary may docket the case in the name of the senior firm member. In the former case the client should be advised to file a claim with the administrator or executor.

Fee Committees are explicitly given jurisdiction over third-party legal matters "...in which a person other than the client is legally bound to pay for the legal services..." *R.1:20A-2.* Examples of such third-party legal matters are charges made by lawyers for financial institutions for the review and/or preparation of loan documents. Likewise, employment contracts which require the employee to pay for legal services rendered to the employer by counsel that result from the activities of the employee are specifically reviewable by Fee Committees. The only types of third-party matters over which Fee Committees do not have jurisdiction are those where "...the obligation arises out of the settlement of a legal action." *R.1:20A-2.* To permit otherwise would allow settlements to be reopened or set aside whenever a fee, borne by another party by agreement, was challenged.

Although a Fee Committee may generally have jurisdiction over an attorney, there are four instances under *R.1:20A-2(b)* where jurisdiction is discretionary and thus may be declined by the Fee Committee:

Under *R.1:20A-2(b)(1)* a Fee Committee may decline jurisdiction where:

> (N)o attorney's services have been rendered for at least two years.

The rationale here is staleness. A client should not be able to come forward and use the fee dispute process to dispute a five or ten year-old fee. However, since the rule is not mandatory, generally jurisdiction should be accepted unless the attorney is prejudiced by the delay.

The second provision for declination is set forth under *R. 1:20A-2(b)(2)* and concerns:

> (D)isputes in which persons who are not parties to the arbitration have an interest that would be substantially affected by the arbitration.

Thus, for example, if a municipal authority wishes to dispute a fee charged to it by specially hired legal counsel, and if the authority has no independent funding source but must have all disbursements approved by the county freeholders, the Fee Committee may require a written consent by the freeholders as a condition precedent to accepting jurisdiction of the matter. To do otherwise would be a waste of the Fee Committee's time, since the Arbitration Determination might be an empty decision if the freeholders disagreed with the determination and declined to fund it.

The third provision is extremely broad and permits the Fee Committee to decline jurisdiction in any case where:

> (T)he primary issues in dispute raise substantial legal questions in addition to the basic fee dispute. (*R. 1:20A-2(b)(3)*.

Fee Committees generally should not pass on constitutional or other substantial legal issues because their decisions are, practically speaking, unappealable. Moreover, Fee Committees are primarily created to render fair and fast decisions. They are not designed to hear two-week long cases involving complex legal issues. This provision for declination gives the Fee Committee great leeway to control its caseload as well as to see that justice is done for the parties within a reasonable time.

Finally, under *R.1:20A-2(b)(4)*, Fee Committees may decline jurisdiction where:

> (T)he total fee charged exceeds $100,000, excluding costs and disbursements.

Matters over $100,000 are ill suited for fee arbitration by unpaid volunteer panels. Experience indicates that these cases may properly take days and weeks of testimony whereas the typical fee arbitration case takes about an hour. Moreover, almost invariably, cases where the total fee charged exceeds $100,000 involve parties who are both represented by counsel and thus are well able to use the traditional court system, a system with full time personnel who are far better able to devote the time necessary to adjudicate these matters. The Fee Committee may, however, take jurisdiction in any of these cases if its caseload and personnel permit.

The rules preclude Fee Committees from exercising jurisdiction in three kinds of matters. The first two such provisions are set forth under *R.1:20A-2(c).*

R.1:20A-2(c)(1) provides that Fee Committees shall not have jurisdiction to decide:

> A fee which is allowed or allowable as of right by a court or agency pursuant to any applicable rule or statute.

Thus, the Fee Committee has no jurisdiction in a worker's compensation case, for example, since the amount of the fee is set by statute and allowed as of right by a court. However, in a matrimonial matter a Fee Committee would have jurisdiction to determine the fee when the amount and reasonableness thereof has not already been adjudicated by the court.

The second area where Fee Committees must decline jurisdiction is found under *R.1:20A-2(c)(2)* which provides that Fee Committees do not have jurisdiction to decide:

> 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*.

This section makes it clear that Fee Committees are prohibited from making affirmative monetary damage awards for losses caused by the attorney's malpractice. However, where poor quality work impacts on the reasonable-

ness of the fee, the committee has the authority under this section to make an appropriate adjustment to the fee.

The third and final mandatory rule requiring declination of jurisdiction by the Fee Committee is found under *R.1:20A-6* which provides that prior to filing a lawsuit, a lawyer must give a client Pre-Action Notice of the right to request fee arbitration (and the location of the appropriate district Fee Secretary). The client is afforded a period of thirty (30) days after receiving notice within which to contact the Fee Secretary and file the Fee Arbitration Request Form. If the client fails to do so the client "...shall lose the right to initiate fee arbitration." (See also Section 69 *infra*.) This means that a Fee Committee must decline untimely requests, unless the attorney consents. Usually, this reason for declining jurisdiction will not be apparent until the attorney has raised it in the Attorney Fee Response (**Figure 10, Section 37,** *infra*). Please note, however, that if there is a bona fide factual dispute concerning the validity of the Pre-Action Notice, a hearing must be conducted to determine that issue and if necessary, the underlying fee issue.

Section 25 Federal Matters

Where a New Jersey attorney or law firm is involved in a federal court matter, at least in the United States District Court for New Jersey, a client nevertheless has the right to require that the matter of the lawyer's fee be decided by a district fee arbitration committee. Such was the holding in the case of *Kelley Drye and Warren v. Murray Industries, Inc., 623 F. Supp. 522 (D.N.J. 1985)*.

In *Kelley Drye* a law firm brought an action in the United States District Court in New Jersey against one of its clients to recover $109,268 for services rendered during the representation of the client in an earlier action in that court; federal jurisdiction was based on diversity. The client filed a Request for Fee Arbitration with a New Jersey fee arbitration committee. The request asked the committee to notify the federal court so that the action would be stayed in accordance with state court *Rule 1:20A-3*.

In an opinion by the Honorable Dickinson Debevoise, the Court held that even though the plaintiff was a New York law partnership, the law firm was in fact admitted to practice law in New Jersey. When it obtained admission to the New Jersey Bar, it voluntarily subjected itself to the disciplinary jurisdiction of the New Jersey Supreme Court; that jurisdiction, the Court noted, included the fee arbitration procedures mandated by court rules. The law firm did not shed itself of the obligations it assumed simply because it

chose to institute its action for attorneys' fees in the federal court and is bound by the New Jersey fee arbitration rule.

The Court noted, however, a state cannot divest a federal court of diversity jurisdiction either by statute or court rule. Since the federal court had diversity jurisdiction, the existence of the fee arbitration rule cannot deprive the court of that jurisdiction. The determination that the federal court must retain jurisdiction does not dictate, however, that it should decide the attorneys' fee controversy. A federal court in diversity cases must give effect to the substantive law of the state in which it sits. (Citations omitted.) While the substantive law of New Jersey gives attorneys the right to charge and recover legal fees for services rendered, it also conditions the right to practice law in the state upon an undertaking to resolve attorneys' fee disputes through arbitration. The obligations imposed by this undertaking constitute substantive law that New Jersey courts will enforce. These obligations should similarly be enforced by the federal court.

Section 26 Bankruptcy Matters

Federal bankruptcy law preempts any state court actions, including fee arbitration cases. Therefore, where an attorney or a client has filed for bankruptcy the Fee Committee should decline to handle these cases and should refer the parties to the bankruptcy court.

Section 27 Prisoner Fee Disputes

Despite the general rule that fee disputes are heard in the district where the attorney has his or her principal office for the practice of law, where either the client, or on occasion the attorney, is an incarcerated prisoner in New Jersey, the policy of the fee system is to have fee hearings in the correctional facility where the party is located. To do otherwise would (a) require the Fee Committee to secure a court order in each instance to release the prisoner for a fee hearing, (b) result in considerable expense in providing transportation and armed guards for the prisoner to and from a fee hearing, (c) cause unnecessary security problems at the hearing for committee members, the attorney whose fee is questioned and, possibly, the general public, and (d) run the risk of encouraging frivolous fee matters by prisoners who simply desire "a day out."

Consequently, Secretaries in districts that house correctional facilities will process all fee disputes involving prisoners residing in those institutions. Usually these will be conducted at the following state correctional facilities:

District I (Atlantic, Cumberland, Cape May & Salem)
<Prisons: Cumberland County >

Southern State Correctional Facility
Delmont 08314
(609) 785-1300

Bayside State Prison
Leesburg 08327
(609)785-0040

Federal Correctional Institution
P.O. Box 280
Fairton 08320
(609) 453-1177

District IIIB (Burlington)

Mid-State Correctional Facility
P.O. Box 866
Wrightstown 08562
(609) 723-4221

Youth Correctional
Institution
Box 500
Bordentown 08505
(609)298-0500

District IV (Camden and Gloucester)
<Prison: Camden County >

Riverfront State Prison
Delaware & Elm Streets
Camden 08102
(609) 365-5700

District VA (Essex County - Newark)

Northern State Prison
168 Frontage Road
P.O. Box 2300
Newark 07114-2300
(201) 465-0068

District VII (Mercer)

State Prison, Trenton
3rd & Federal Streets
Trenton 08611
(609) 292-9700

Garden State
Reception & Youth
Facility
P.O. Box 11401
Yardville 08620
(609) 298-6300

District VIII (Middlesex)

East Jersey State Prison
Woodbridge Avenue
Rahway 07065
(201) 499-5010

Adult Diagnostic &
Treatment Center
P.O. Box 190
Avenel 07001
(201)574-2250

District XIII (Hunterdon, Somerset & Warren)
<Prisons: Hunterdon >

Correctional Institution for Women
Clinton 08809
(201) 735-7111

Mountainview Youth
Correctional Facility
Annandale 08801
(201)638-6191

In order to schedule a hearing at a correctional facility, arrangements should be made at least **two** weeks in **advance** through the office of the Superintendent. Notice of the hearing should then be given to the prisoner and to the other party, both of whom must be requested to provide the Secretary or Panel Chair with a list of all witnesses **in advance** of the hearing. The Secretary or Panel Chair must then provide the Superintendent with a **complete list** of **all** persons, including committee members, who will appear at the prison for the scheduled hearing. For security reasons it is usually **not possible** to add or change that list of visitors on the day of the hearing.

Occasionally an inmate will be incarcerated in an out-of-state facility. Since Fee Committees lack jurisdiction beyond the state's boundaries, such inmates must be advised that their requests cannot be entertained until they are able to appear at a hearing in this state. The rationale is that the attorney whose fee is questioned has a right to cross examine the client. Naturally,

if the inmate obtains the consent of the attorney to proceed without the inmate's in-person testimony, the Fee Committee may accept jurisdiction.

With regard to filing fees that may be due by any party, it must be remembered that there is no special exemption for prisoners. If a filing fee is due and unpaid no case will be docketed.

Section 28 Conflicts: Transfer and Disqualification

All fee disputes should be initially screened by the Secretary for conflicts of interest due to the service of members of the Fee Committee or their legal associates and partners.

The Director has determined that, for purposes of fee proceedings, conflicts of interest are of two types:

a. Direct Conflicts - requiring transfer of the matter to another Fee Committee, and

b. Indirect Conflicts - requiring only disqualification of an individual Fee Committee member from participation in a particular matter.

Where a fee dispute is filed against a **present** member of a Fee Committee, or against his/her partner or associate, a direct conflict exists and the matter will be transferred to another committee for processing.

All other conflicts, including those where a member of a Fee Committee or his/her partner or associate has otherwise been involved in a matter which underlies a fee dispute, are indirect conflicts and are remedied by the disqualification of the affected member. Inasmuch as a member of a Fee Committee exercises a quasi-judicial role, the member should be disqualified upon the same grounds and conditions applicable to judges. A member should, therefore not sit in any matter when:

(1) the member is by blood or marriage the second cousin of, or is more closely related to the client in the action;

(2) the member is by blood or marriage the second cousin of, or is more closely related to any attorney in the action. Such prescription shall extend to the partners, employers, employees, or office associates of any such attorney;

(3) the fee dispute arises out of a matter in which the law office of a member has been involved;

(4) there is any other reason which might preclude a fair and unbiased investigation, hearing or judgment, or might reasonably lead the parties to believe so. *R.1:12-1 et seq*.

Questions relating to disqualification of members, transfer of matters, or other questions of a jurisdictional nature may be referred to the OAE for review and appropriate determination. (See generally *R.1:12-1 et seq.* and *R.1:20A-1*.)

Section 29 Representation of Fee or Ethics Clients or Attorneys by Committee Members or Their Law Firms

It is the Supreme Court's policy that a Fee Committee member may not represent either an attorney or a client before a fee arbitration committee in any district in the state. Additionally, no member of the law firm of a member of a Fee Committee may appear before that member's Fee Committee; this does not prohibit such a law firm member from appearing before Fee Committees in other districts in the state.

The Supreme Court has also determined that no Fee Committee members, during their term of office, may appear before any other committee in either the attorney or judicial disciplinary system, either on behalf of respondents or grievants. In addition to Fee Committees, these committees include District Ethics Committees, the Disciplinary Review Board, the Committee on Attorney Advertising, and the Advisory Committee on Judicial Conduct. This prohibition is **personal** to members of the Fee Committee and does not extend to members of any firm with which they may be affiliated.

Section 30 Advisory Opinions

Fee Committees have authority to hear and decide actual cases and controversies involving fee disputes between attorneys and clients. They have no jurisdiction to rule upon hypothetical or other non-fact questions and are specifically prohibited by *R.1:20A-1* from rendering advisory opinions.

Rather, all requests for advisory opinions relating to the ethical propriety of specific conduct by a member of the legal profession under the Rules of Professional Conduct and other rules of the Court governing the practice of

attorneys are to be determined by the Supreme Court's Advisory Committee on Professional Ethics pursuant to *R.1:19-1 et seq*. All such requests should be forwarded to:

Secretary
Advisory Committee on Professional Ethics
Administrative Office of the Courts
CN 037
Trenton, New Jersey 08625

Section 31 Dual Complaints - Ethics and Fee

Even though the functions of ethics and fee committees have been separated since 1978, communications are often received which sound both in ethics and fee. In these matters the client should be advised that he/she **must first proceed with the fee dispute** before the appropriate district fee arbitration committee. *R.1:20A-4* and *R.1:20-3(e)*. The decision of whether or not a fee dispute is involved is made by the Fee Secretary. The only reason for declining such a fee dispute occurs where "it clearly appears... that there is presented an ethical question of a serious or emergent nature," such as misappropriation of trust funds. In these few cases, the Fee Secretary should administratively dismiss the matter and transmit the file to the Director for processing, advising of the reasons for the referral. *R.1:20A-4*.

If, during the course of the fee dispute, the Fee Committee becomes aware of evidence of unethical conduct, including overreaching, it has a duty to then refer that matter back to the Director at the conclusion of the arbitration proceeding. *R.1:20A-4*. (See Section 62, *infra*.) Additionally, a client may still believe that an ethics grievance exists after conclusion of the fee hearing and so may, at that time, bring the matter back to the ethics committee for review.

Section 32 Disposition Time

The New Jersey Fee Arbitration System was established for the purpose of providing a satisfactory method for the resolution of fee disputes between attorneys and their clients. It is commenced only at the request of a client or a third party defined by *R.1:20A-2.* Once invoked by the client, participation is mandatory upon the part of the attorney. The client may withdraw from arbitration "within thirty (30) days after the docketing of a Request for Fee Arbitration." *R.1:20A-3(b)(1).* Thereafter, the client's participation is mandatory. The constitutionality of the fee arbitration system has been upheld. *In re LiVolsi, 85 N.J. 576 (1981).*

The fee arbitration system has two primary attributes -- it is simple and it is fast. Consequently, most cases should be concluded, from initiation through disposition, in an average of 6 months.

The average fee arbitration matter consists of two stages: initiation and hearing. It will normally involve two parties: the client and the attorney. Occasionally, where an attorney other than the one originally named by the client is involved, a third dimension is added to deal with third party practice.

The procedure for scheduling and disposing of matters may vary from district to district, depending upon the volume of fee disputes to be heard and the frequency with which panels are requested to meet. Regardless of the procedure used by the Secretary, it is essential that every hearing panel establish pre-set days each month when fee hearings can be held. This avoids the excessive delays incurred when each panelist must be polled to see what dates are convenient each time a case needs to be scheduled. Such custom scheduling is inefficient and DOES NOT WORK. Establishing pre-set hearing days (such as the second Tuesday afternoon of every month) enables cases to be scheduled regularly and, if necessary, several months in advance. It also facilitates rescheduling due to occasional adjournments, since the case can be set for the next monthly hearing date.

The best procedure calls for the Secretary to forward to the client an initial letter (**Figure 5a**) enclosing a Fee Information Pamphlet (**Figure 9 - Section 35,** *infra)* and requiring the filing of the original and four (4) complete copies of the Attorney Fee Arbitration Request Form. Upon receipt, the Secretary then reviews the filings for jurisdiction and, if appropriate, dockets the case. Next, the Secretary serves the Request Form upon the attorney, by letter (**Figure 6a**) that provides him/her with the Attorney Fee Response (**Figure 10 - Section 37,** *infra*) for completion and filing, designates the hearing panel/single arbitrator (**Figure 7**) and sets the time, date and location of the hearing, all in a single letter. The hearing in this case is scheduled for not closer than

30 days from the date of the Secretary's letter (in order to allow the attorney the required time for response). The Secretary's letter advises the attorney to include the client in the service of the Attorney Fee Response, and requests that copies be filed directly with the named Hearing Panel Chair, with the original being sent to the Secretary. Thereafter, the Hearing Panel Chair/Single Arbitrator has complete control over the case until its conclusion.

Section 33 Resources Available

The following basic resources are available to Fee Committees in deciding fee cases:

* * * * * *Rule 1:20A-1 et seq. Governing the New Jersey Fee Arbitration System* -- which are included in the Appendix to this Manual.

* * * * * *Rules of Professional Conduct 1.5* (replacing former Disciplinary *Rule 2-106* of the Code of Professional Responsibility) -- which is included in the Appendix to this Manual. The RPC's can also be found at the conclusion of Part 1 of the *Rules Governing the Courts of the State of New Jersey* (both West and Gann editions).

* * * * * *Annotated Rules of Professional Conduct* -- which can be found in the pocket part supplement to Volume 1 of the *New Jersey Practice Series*.

* * * * * *Opinions of the Supreme Court's Advisory Committee on Professional Ethics* -- which are published currently in the *New Jersey Law Journal*. The Institute for Continuing Legal Education produces the only indexed compilation of these opinions with annual supplements.

Section 34 Filing Fees

Filing Fees have been imposed upon both clients and attorneys since March 1, 1993 according to the following graduated schedule:

No Fee	– where the **total** fee charged (excluding costs) is less than $1,000
$25.00	– where the **total** fee charged (excluding costs) is from $1,000 to $2,999
$50.00	– where the **total** fee charged (excluding costs) is $3,000 or more

Filing fees are user fees that reimburse the system in part for the service provided to those who use the fee system to resolve disputes. All filing fees may be paid only by check or money order payable exclusively to "Disciplinary Oversight Committee." The fee is imposed upon **both** the party filing the initial fee request, as well as on the attorney for filing the fee response. There are **no exceptions** to these rules and **no hardship exemptions.** There are no exceptions for prisoners or any other group of individuals.

All filing fees are collected in the first instance by Fee Secretaries. **(Figure 5A-6A).** The rules are straightforward. If a fee is due by a client and unpaid, no request form will be accepted and no docket number will be issued. The Secretary will then advise the client that he/she has no more than twenty days from the date the client is notified in writing to correct the deficiency. **(Figure 5B).** Failure to do so is a bar to fee arbitration and the lawyer may proceed to file suit for any legal fees due. In cases where, after review and prior to docketing, the Secretary determines that there is no jurisdiction, the Secretaries should so indicate in writing and return the original check for the filing fee. However, if the Secretary dockets the matter and sends it to a hearing panel which then declines jurisdiction, then there should be no return of the filing fee, which is non-refundable. On the other hand, if a fee is due by an attorney when the Attorney Fee Response is filed and if it is not paid, the attorney will be notified that he/she too has twenty days to correct the deficiency or "the attorney shall be barred from further participation, and the matter will proceed uncontested."

All accounting for filing fees is handled by the Office of Attorney Ethics, which will deposit all checks and maintain receipts and disbursement journals. In order to insure the orderly transmission and accountability of

checks, Fee Secretaries are provided with a three-part "Filing Fee Transmittal Sheet." (**Figure 4**). The Secretary should bundle all checks separately from the forms and place them in a sealed envelope, with the original copy (white) of the "Filing Fee Transmittal Sheet." The yellow copy must be bundled with the Fee Arbitration Request Forms and Attorney Fee Responses. The Fee Secretary will keep the bottom (pink) copy for his/her records. The checks should be separated from both the Request For Fee Arbitration and Attorney Fee Response Forms, although the forms and the checks can all be submitted in a single bulk mailing as many Fee Secretaries routinely do. The "Filing Fee Transmittal Sheet" must indicate the docket number and the **last name** of either the attorney or the client whose check is enclosed, as well as the amount of each check in the "Client Fee" or "Attorney Fee" columns. Please note that the "Other Fee" category is for third party practice when another attorney is joined in a proceeding. This column will be used only rarely. Redeposited checks, where the client or attorney's initial check has been dishonored and is resubmitted must be entered either under client fee or attorney fee. The Fee Secretary should total each filing fee column at the bottom. Then the Secretary should sign and date the sheet, retain the bottom copy (pink) and attach the white copy to the checks and bundle the yellow copy with the Fee Request Forms and mail everything to the Office of Attorney Ethics.

There will unquestionably be a few dishonored checks. Since the Office of Attorney Ethics will be depositing these checks, it will notify Fee Secretaries in those few cases where a check is returned. The Secretary will then notify the offending party (client or attorney) that the matter will be stayed pending re-submission of only a certified or cashier's check in **double the original amount**. (**Figure 5c & 6c**). If the client's re-submission is not forthcoming timely, the matter will be dismissed with prejudice. (**Figure 5d**). If the attorney's re-submission is not forthcoming, the attorney will be barred from further participation and the case will proceed (**Figure 6b**) uncontested.

The Fee Arbitration Request Form (**Figure 8**) and the Attorney Fee Response Form (**Figure 10**) reflect the new filing fee schedule prominently at the top of each form. The following question lies at the very top of both forms:

What was the amount of the lawyer's bill?

Total Legal Fee $____ + Costs/Disbursements $____ = Total Bill $_____

Total Paid to Lawyer _____

This easily accessible question will enable each Fee Secretary to quickly determine the total amount of the legal fee (not including costs and disbursements) which, in turn, determines the amount of the required filing fee. There is also a space on the form itself where the Secretary can indicate the amount of the correct fee paid.

Section 35 Request For Fee Arbitration

Arbitration proceedings are initiated by the filing a Request for Fee Arbitration; this must be done on the form approved by the Director, OAE (**Figure 8**). As noted in Section 20, where the individual attorney who handled the matter is known, the matter should be docketed against that individual. Where a firm name or multiple members of a law firm are listed without identifying the individual who actually handled the matter, the case should be docketed against the senior member of the firm. The Request Form is designed to elicit information which will enable the client to set forth the facts in a straightforward way. It also assists the Secretary to make jurisdictional and other necessary determinations. Additionally, the form (particularly Question I) provides the attorney whose fee is questioned with specific information indicating why the client disagrees with the lawyer's bill for legal services.

The Request Form requires that the client stipulate that the arbitration procedure will be binding and that it can be entered as a court judgment. *R.1:20A-3(a)*. There can be no alteration by the client of this stipulation or of any other part of the form. If clients attempt to do so they should be advised that, unless they return the form unaltered, the Fee Committee will take no action on it.

At the same time the client is provided with the Fee Request Form by sending the Initial Client Transmittal Letter (**Figure 5A**), the Secretary will also provide the client with an information pamphlet entitled "Information About the Supreme Court of New Jersey's Attorney Fee Arbitration System" (**Figure 9**). The purpose of this pamphlet is to avoid misunderstandings and to be sure that clients know, before they sign and file their Fee Request Forms, exactly what procedures are used in the fee system. The pamphlet may also be helpful to attorneys and it should be freely distributed.

Section 36 Service Upon Attorney and Law Firm

Once the properly completed Request for Fee Arbitration has been received together with any required filing fee, screened for conflicts and jurisdictional limitations and docketed, the Secretary "shall serve (a copy) upon the

attorney." *R.1:20A-3(b)(2)*. The Secretary "shall also forward to the attorney for completion an Attorney Fee Response Form" (**Figure 10** - Section 37, *infra*). *R.1:20A-3(b)(2)*.

Additionally, the Secretary is required to "also serve a copy of the client's Request for Fee Arbitration and Attorney Fee Response upon the law firm, if any, of which the original attorney is a member." *R.1:20A-3(b)(2)*. The purpose of this rule is to assure that where a law firm is due a fee, or is obligated therefore, the Fee Committee's determination is binding upon that entity. Fair notice to the firm, if any, is therefore required.

Service may be made by regular mail, unless the letter will result in barring a party from further participation, in which case it should be by Certified Mail, Return Receipt Requested. Service must be forwarded to the attorney at the last address indicated on the official records of the Lawyers' Fund For Clients Protection, or as set forth in the most current edition of the *New Jersey Lawyers Diary and Manual*. *R.1:20-7(h)*

Occasionally attorneys disappear. This most commonly occurs where they have already been disciplined (i.e. temporarily suspended from practice, disbarred or suspended for a definite term). An attorney's flight does not divest the district committee of jurisdiction, which continues regardless of the attorney's physical location. In situations where it appears that the attorney has disappeared or is otherwise unavailable, service should be made to both the address listed in the Lawyers Diary and that listed with the Lawyer's Fund For Clients Protection. While the Fee Committee may wish to conduct additional investigation or consult with the OAE prior to setting such matters down for hearing, these cases should be adjudicated and **not held in abeyance** until the attorney surfaces. In these circumstances, Fee Committees should communicate with the OAE Fee Assistant to determine a home address or to attempt other personal contact with the attorney. If the attorney still cannot be located, written permission to publish a Notice of Hearing in a local newspaper will be given by the Director. It must be remembered that the attorney, like the client, is only entitled to due process and not undue delay of process.

Section 37 Attorney Fee Response

The Secretary is required to forward to the attorney an Attorney Fee Response for completion in the form approved by the Director, OAE (**Figure 10**). Form letter 6A has been created for this purpose. The attorney is required to return the completed forms within 20 days of the attorney's

receipt of it together with any required filing fee. The attorney is also required to serve a copy on the client and so certify on the form.

The Attorney Fee Response is designed to elicit meaningful information that will help the client and the Fee Committee understand the nature and justification for the bill. Of particular interest is Question 10, which contains the attorney's response to the client's statement on the Request for Fee Arbitration form indicating why the client disagrees with the lawyer's bill. Extentions of time to file may be granted for "good cause shown." *R.1:20-7(k)*.

Section 38 Attorney's Failure to File or Pay

If the attorney fails to file a timely response or pay any filing fee due, the Fee Secretary will send a deficiency letter (**Figure 6b or 6c**) advising the lawyer that if the response is not filed and/or the fee is not paid within twenty (20) days, Supreme Court Rules provide that the attorney "...shall be barred from further participation, and the matter will proceed uncontested." *R.1:20A-3(a)(2)(i)* and *R.1:20A-3(b)(2)*. If the response and/or filing fee is not paid within said twenty (20) day grace period the letter barring participation (**Figure 6d**) should be sent to the attorney Certified Mail, Return Receipt Requested, with copies to the other party and the Hearing Panel Chair. Further, if the attorney submits a payment that is dishonored, the Secretary will notify the attorney to submit a certified or cashiers check (**Figure 6e**) failing which the attorney will be barred from further participation (**Figure 6f**).

If for some reason the Secretary does not take appropriate steps to bar the attorney's participation for failure to file a timely response, the hearing panel is not without recourse. Under such circumstances the panel should proceed to conduct the hearing and at such hearing, it may "...in its discretion, refuse to consider evidence offered by the attorney which would reasonably be expected to have been disclosed on the Attorney Fee Response. *R.1:20A-3(b)(2)*.

Section 39 Third Party Practice

The Request for Fee Arbitration (**Figure 8 - Section 35** *supra*) was designed for the layman/client. It requires the client to name the "lawyer who handled your case" as the party against whom the arbitration is filed. While in the usual case the attorney named will be the correct party, there are other instances when this may not be so. Where someone other than the attorney

initially named by the client is or may be legally responsible for the fee, the rule provides a third party practice so the other attorney can be joined.

To invoke this third party practice the attorney initially named by the client simply checks the appropriate box and inserts in Question 11 of the Attorney Fee Response form "the name of any other third party attorney or law firm with whom the original attorney was associated in the practice of law at the time the legal services were rendered to the client which the original attorney claims is liable for all or part of the client's claim." *R.1:20A-3(b)*. The original attorney then serves an extra copy of the Attorney Fee Response (together with a copy of the Request for Fee Arbitration) 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 is filed with the Fee Secretary, who mails a new Attorney Fee Response form to the joined third party attorney or law firm. The third party attorney or law firm completes their Attorney Fee Response form within 20 days and serves it "upon the client and the original attorney" while filing it with the Secretary, together with any filing fee due. *R.1:20A-3(b)*.

Section 40 Subsequent Filings - Service Upon Parties

The Service Letter to the Attorney (**Figure 6A**) makes clear that any filings by the parties subsequent to the Attorney Fee Response, must be served upon all other parties. Non-compliance with this rule of fundamental fairness may mean that it "MAY NOT BE CONSIDERED" by the hearing panel.

Section 41 Legal Representation

The fee arbitration system is designed so that legal representation by any party is unnecessary. Nevertheless, our rules provide that "(b)oth 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." *R.1:20A-3(b)(4)*. There is no provision for the appointment of counsel in any case. Counsel not admitted to practice law in New Jersey may be admitted *pro hac vice* by complying with *R.1:21-2* and filing an application with the Disciplinary Review Board.

Section 42 Discovery

There is no provision for any discovery (including depositions or interrogatories) in fee arbitration matters.

Section 43 Subpoenas

Both the attorney and the client are entitled to the issuance of subpoenas to testify as well as subpoenas for the production of books and records. *R.1:20A-3(b)* and *R.1:20-7(i)*. Respective forms of subpoenas have been approved by the OAE and the Supreme Court. See **Figures 11** and **12**. These subpoenas are issued in the name of the Fee Committee and may be signed by the Secretary or any Fee Committee member. There is no attendance fee for such subpoenas.

With respect to subpoenas issued *sua sponte* by the Fee Committee, the sheriff of any county is specifically required by statute to serve a subpoena issued by a duly constituted fee or ethics committee **without payment of any fee**. *N.J.S.A. 22A:4-9*. (See Section 64, *infra*.) Generally, however, the party requesting the subpoena must be responsible for its service. Subpoenas may be served any place within the state of New Jersey by any person 18 or more years of age by delivering a copy thereof to the person named. Subpoenas may also be served upon an attorney who is either a witness or a party by certified mail, return receipt requested. All subpoenas issued under authority of the Fee Committee may be enforced by the Superior Court in the manner provided by *R.1:9-6* as in the case of a subpoena of a public officer or agency. *R.1:20-7(i)(4)*.

While both the attorney and the client are allowed wide latitude in the issuance of subpoenas deemed relevant to the presentation of their cases, the Chair of the Fee Committee, or of the hearing panel, may request a showing of good cause for the issuance of requested subpoenas, and may deny the issuance of subpoenas where there is patently no necessity or relevance for the evidence or witnesses. There are no interlocutory appeals from such rulings on the part of a Chair; nevertheless, any objection thereto will be preserved to the conclusion of the matter and may be considered in connection with an appeal, if any. All motions to quash or limit testimony, or to protect a witness must be addressed to the Fee Committee Chair for disposition, or to the Chair of the hearing panel. *R.1:20A-3(b) and R.1:20-7(i)*.

Section 44 Settlement

Settlements by the parties are always favored in the law. If the parties can reach an agreed resolution of the matter at any time then the Secretary or Hearing Panel can consider dismissing the case. In order to protect both parties, however, and to insure that the settlement reached in fact disposes

of the underlying dispute, either the Secretary, or the Hearing Panel Chair should forward to the attorney a form of Stipulation of Settlement (**Figure 13**) to be completed, signed by the attorney and the client, and returned for filing directly with the Secretary. However, the Fee Committee cannot compel the filing of a Stipulation. Therefore, to avoid delay the Secretary or Hearing Panel Chair who is notified of a settlement should confirm this in a letter to the parties with a copy to OAE advising that the matter is being dismissed and marked as "settled." The letter should request that the parties notify the Secretary immediately if this is not so. A copy of the Stipulation can be sent to the parties and they should be asked to sign and return it directly to the Secretary.

The form of Stipulation of Settlement provides a monetary synopsis of the original fees charged, the total amount of the fees agreed upon, and either the balance due by the client or the amount to be refunded by the attorney. More importantly, it also provides for an agreed time period within which the settlement will be accomplished as well as answering the question as to what happens if either party fails to comply with their stipulated agreement. This protects all parties from entering in good faith into an agreement when the other party intends from the outset not to comply, but only to "buy" additional time. Experience has indicated that, prior to the use of the form in 1983, many settlements were used by parties merely as a delaying tactic.

As written, the Stipulation of Settlement provides that if the attorney fails to comply the client shall promptly notify the Fee Committee. However, the Fee Committee can, at the client's option, (a) vacate the Stipulation and bring the matter on for hearing or (b) refer the matter to the Director, OAE, for enforcement of the Stipulation under *R.1:20A-3(e)* through a motion for temporary suspension in accordance with *R.1:20-15(k)*. Both of the above remedies are strong enforcement mechanisms and the attorney is bound to participate. Since the fee arbitration system cannot insure compliance by clients, it is necessary to set forth an additional range of remedies for the attorney. The following options are available to the attorney where the executed Stipulation of Settlement is not complied with:

(a) obtain judgment in the amount of the Stipulation with the client expressly waiving all right to defend the matter on the merits;

(b) re-open the fee arbitration matter and have the reasonable amount of the fee decided by the Fee Committee;

(c) proceed upon any default or other judgment already obtained, or

(d) bring legal proceedings to collect the total bill alleged to be due and owing.

It must be underlined that the Secretary cannot compel the execution of a Stipulation of Settlement. Therefore, the Secretary should close out the file **immediately on notification of a settlement** and so advise the OAE. The form of settlement should then be sent to the parties for their signatures and they should be asked to return it to the Secretary. If the form is returned it should be sent to the OAE.

FEE ARBITRATION
FILING FEE TRANSMITTAL SHEET

Office of Attorney Ethics

	Docket #	Client Name	Attorney Name	Client Fee	Attorney Fee	Other Fee
1.	XII-94-41F	Schultz	Jones	$ 25	$	$
2.	XII-94-42F	Brown	Johnson	25	25	
3.	XII-93-43F	James	Smith	50		
4.	XII-93-44F	Bigelow	Jacobs	25		
5.	XII-93-47F	Wood	Stone	25	25	
6.	XII-93-34F	Smith	O'Gorman		50	
7.	XII-93-38F	O'Reilly	(Sampson)			25**
8.						
9.						
10.						
11.						
12.						
13.						
14.						
15.						
16.						
17.						
18.						
19.						
20.						
21.						
22.						
23.						
24.						
25.						
			TOTAL	$150	$100	$ 25

**Third Party

04 / 16 / 93
Date Submitted

John J. Lawyer
Secretary's Signature
District XII Fee
Arbitration Committee

OAE 1/1/93

Figure 4

INITIAL REQUEST FORMS TO CLIENT

(Date)

(Name & Address of Client)

Re: **Request For Fee Arbitration**

Dear (name):

I enclose six (6) copies of an Attorney Fee Arbitration Request Form. I also enclose a pamphlet entitled "Information About New Jersey Attorney Fee Arbitration System." Please read the pamphlet and, if you wish to submit your case to arbitration, complete and return to me the original and four (4) copies of the request form, retaining one copy for your records. Please do not attach letters, pleadings or other documents, except as noted on the form. If a filing fee is due, as described on the top of the Request Form, you **MUST** enclose a check payable to "Disciplinary Oversight Committee" in the indicated amount. If a filing fee is due and no check is enclosed, your case must be rejected. There are no exceptions to the filing fee requirement.

Upon receipt of these forms I will review the matter and, if the Committee has jurisdiction over the case, assign the case for hearing to a three person panel (if the amount of the bill exceeds $3,000) or to a single attorney arbitrator (if the amount of the bill is less than $3,000). You will be notified of my action within three weeks after I receive your request form.

Very truly yours,

Secretary, District __ Fee
Arbitration Committee

Encls.

Figure 5a

FILING FEE DEFICIENCY BY CLIENT

(Date)

(Name & Address of Client)

Re: **Filing Fee Deficiency**
(Name of Case)_____

Dear (Name):

I have received your recent Request for Fee Arbitration forms. However, a required filing fee check was either not enclosed or contained the following deficiency(ies):

___ No check was enclosed. Please submit a check in the amount of $_____.

___ Check amount incorrect. Please submit check in the amount of $_____.

___ Check incorrectly payable. Please make check payable only to "Disciplinary Oversight Committee."

___ Check was not signed. Please sign and return.

___ Check was undated. Please date and return.

I must advise you that you have only twenty (20) days from the date of this letter within which to correct any deficiency and send me a check in the correct amount. If you fail to do so immediately your case must be dismissed and you cannot be permitted to file again for fee arbitration of this matter.

Very truly yours,

Secretary, District __ Fee
Arbitration Committee

Figure 5b

DISHONORED INSTRUMENT BY CLIENT

(Date)

(Name & Address)

Re: **Dishonored Check**
(Name of Case)_____
Docket No._____

Dear (Name):

I have been advised by the Office of Attorney Ethics that the check you submitted in payment of the fee arbitration filing fee has been returned by the bank as unpaid. The rules of the Supreme Court of New Jersey provide that this matter shall be stayed for a period of twenty (20) days. In order to avoid dismissal of your case with prejudice, you must submit to me only a certified or cashiers check in double the amount of the original filing fee within twenty (20) days of the date of this letter. If I have not received this check within that time, I must dismiss your case and you cannot be permitted to again file for fee arbitration of this matter. Please proceed accordingly.

Very truly yours,

Secretary, District ___ Fee
Arbitration Committee

Figure 5c

DISMISSAL WITH PREJUDICE CAUSED BY CLIENT

(Date)

(Name & Address)

Re: **Dishonored Check**
(Name of Case)_____
Docket No._____

Dear (Name):

I recently notified you that your filing fee check had been dishonored. Since you have not remedied this deficiency as required, your case is being dismissed with prejudice. It cannot be refiled. By copy of this letter I am advising the attorney whose fee you questioned that the attorney may commence a lawsuit to establish the amount of any fee owed.

Very truly yours,

Secretary, District ___ Fee
Arbitration Committee

cc:Attorney

Figure 5d

INITIAL LETTER TO ATTORNEY

(Date)

(Attorney name and address)

Re: **(Name of Case)**_____
Docket No._____

Dear (name):

In accordance with *R.1:20A-3(b)*, I am serving upon you one copy of a Fee Arbitration Request. I also enclose an Attorney Fee Response Form which you are required to complete within twenty (20) days.

Please file your original Attorney Fee Response, together with any required filing fee, directly with me. Please serve a copy of your response on each panelist/single arbitrator within twenty (20) days of your receipt of this letter. The names and addresses of the hearing panel members or single arbitrator assigned to this case are checked on the attached sheet. You are also required to send one complete copy of your response (with attachments) to the client by certified mail, return receipt requested. If a filing fee is due, as described on the top of the Attorney Fee Response Form, you **must** enclose a check payable to "Disciplinary Oversight Committee" in the indicated amount. There are no exceptions to the filing fee requirement. If a timely Attorney Fee Response is not filed or if a filing fee is due and no check is enclosed, Supreme Court rules provide that you will be barred from further participation and the matter will proceed uncontested.

Should you fail to file the Attorney Fee Response within twenty (20) days, a hearing will nevertheless be scheduled. However, you should be advised that the panel/arbitrator deciding the case may, as a matter of discretion, refuse to consider evidence offered by you which would reasonably be expected to have been disclosed on the Attorney Fee Response.

Both you and the client are advised that **hereafter all inquiries should be directed solely to the designated Panel Chair or Single Arbitrator, whose name and address is shown on the attached sheet.**

Figure 6a

In the event that the client wishes to respond to the Attorney Fee Response, the client must send the original response to me and must serve copies on you and on each panelist/single arbitrator at least five (5) days prior to the hearing. If a response or filing is made with the panel by any party but not served upon the adversary as required, that filing **WILL NOT BE CONSIDERED** by the panel/arbitrator.

At anytime after 20 days from the attorney's receipt of this letter both the attorney and client may be notified by the Panel Chair/Single Arbitrator of the time, date and lcoation of the hearing at least 10 days in advance of the scheduled date. All parties are expected to be present at the hearing and to bring with them their complete files in the matter. It is the parties responsibility to secure the presence of any necessary witnesses. If subpoenas are necessary, they may be requirest by contacting the Panel Chair/Siungle Arbitrator.

If a lawsuit is pending regarding this fee, the attorney must request that the suit be stayed pending resolution of the matter by the Fee Committee.

Very truly yours,

Secretary
District _ Fee Arbitration Committee

Encls.
Attorney Fee Response Form (6 copies)
List of hearing Panel Members
Attorney Fee Arbitration Request Form (1 copy)

cc: Client (w/part. encls.-List of hearing Panel Members)
Hearing Panel Members (w/part.encls.-List of hearing Panel Members and Attorney Fee arbitration Request Form)

FILING FEE DEFICIENCY BY ATTORNEY

(Date)

(Attorney Name and Address)

Re: **Filing Fee Deficiency**
(Name of Case)_____
Docket No.___ _____

Dear (Name):

I have received your recent Attorney Fee Response forms. However, a required filing fee check was either not enclosed or contained the following deficiency(ies):

___ No check was enclosed. Please submit a check in the amount of $_____.

___ Check amount incorrect. Please submit check in the amount of $_____.

___ Check incorrectly payable. Please make check payable only to "Disciplinary Oversight Committee."

___ Check was not signed. Please sign and return.

___ Check was undated. Please date and return.

I must advise you that you have only twenty (20) days from the date of this letter within which to correct any deficiency and send a check in the correct amount. If you fail to do so immediately Supreme Court rules provide that you "shall be barred from further participation, and the matter will proceed uncontested." *R.1:20A-3(a)(2)i.*

Very truly yours,

Secretary, District ___ Fee
Arbitration Committee

cc: Office of Attorney Ethics

Figure 6b

FEE RESPONSE AND FILING FEE DEFICIENCY BY ATTORNEY

(Date)

(Attorney Name and Address)

Re: Fee Response and Filing Fee Deficiency
(Name of Case)_____
Docket No._____

Dear (Name):

I have not received your Attorney Fee Response nor your filing fee in the above matter.

I must advise you that you have only twenty (20) days from the date of this letter within which to file your response and the correct filing fee in the amount of $_____. If you fail to do so, Supreme Court rules provide that you "shall be barred from further participation, and the matter will proceed uncontested." R.1:20A-3(a)(2)i and R.1:20A-3(b)(2).

Very truly yours,

Secretary, District ___ Fee
Arbitration Committee

cc: Client
Hearing Panel Chair
Office of Attorney Ethics

Figure 6c

BAR TO ATTORNEY'S PARTICIPATION

(Date)

(Attorney Name & Address)

Re: Fee Response and Filing Fee Discrepancy
(Name of Case)_____
Docket No._____

Dear (Name):

I recently notified you that I had not received your Attorney Fee Response and/or your filing fee in the above matter. Since you did not remedy this deficiency as required, I must advise you that, pursuant to *R.1:20A-3(a)(2)(i)* (as to non-payment of filing fees) and/or *R.1:20A-3(b)(2)* (as to failure to file attorney fee response) your failure is no longer remediable and you are hereby barred from further participation in this matter, which shall proceed uncontested. By copy of this letter I am so notifying all parties.

Very truly yours,

Secretary, District ___ Fee
Arbitration Committee

cc: Client
Hearing Panel Chair

Figure 6d

DISHONORED INSTRUMENT BY ATTORNEY

(Date)

(Name & Address)

Re: **Dishonored Check**
(Name of Case)_____
Docket No._____

Dear (Name):

I have been advised by the Office of Attorney Ethics that the check you submitted in payment of the fee arbitration filing fee has been returned by the bank as unpaid. The rules of the Supreme Court of New Jersey provide that this matter shall be stayed for a period of twenty (20) days. In order to avoid dismissal of your case with prejudice, you must submit to me only a certified or cashiers check in double the amount of the original filing fee within twenty (20) days of the date of this letter. If I have not received this check within that time, Supreme Court rules provide that you "shall be barred from further participation, and the matter will proceed uncontested." *R.1:20A-3(a)(2)ii.* Please proceed accordingly.

Very truly yours,

Secretary, District ___ Fee
Arbitration Committee

Figure 6e

BAR TO ATTORNEY'S PARTICIPATION

(Dishonored Filing Fee Check)

(Date)

(Name & Address)

Re: **Dishonored Check**
(Name of Case)_____
Docket No._____

Dear (Name):

I recently notified you that your filing fee check had been dishonored. Since you have not remedied this deficiency as required, I must advise you that, pursuant to *R. 1:20A-3(a)(2)ii*, your failure is no longer remediable and you are hereby barred from further participation in this matter, which shall proceed uncontested. By copy of this letter I am so notifying all parties.

Very truly yours,

Secretary, District ___ Fee
Arbitration Committee

cc: Client
Hearing Panel Chair/Single Arbitrator

Figure 6f

NOTICE OF HEARING

(Name & Address of Client)

(Name & Address of Attorney)

Re: **(Name of Case)**_____
Docket No._____

This letter is to advise you that a hearing will be held in this case as follows:

TIME: _____

DATE: _____

LOCATION: _____

_____

_____

Please arrange to be present at that time with all witnesses and documents needed to present your case.

_____
Panel Chair/Single Arbitrator

Figure 7

HEARING PANEL MEMBERS/SINGLE ARBITRATOR

PANEL A

( ) A-1_____ CHAIR
Address_____
_____
Phone( ) _____

( ) A-2_____
Address_____
_____
Phone( ) _____

( ) A-3_____
Address_____
_____
Phone( ) _____

PANEL B

( ) B-1_____ CHAIR
Address_____
_____
Phone( ) _____

( ) B-2_____
Address_____
_____
Phone( ) _____

( ) B-3_____
Address_____
_____
Phone( ) _____

PANEL C

( ) C-1_____ CHAIR
Address_____
_____
Phone( ) _____

( ) C-2_____
Address_____
_____
Phone( ) _____

( ) C-3_____
Address_____
_____
Phone( ) _____

PANEL D

( ) D-1_____ CHAIR
Address_____
_____
Phone( ) _____

( ) D-2_____
Address_____
_____
Phone( ) _____

( ) D-3_____
Address_____
_____
Phone( ) _____

FLOAT ER
( ) _____
_____

[w/encls. (Attorney Fee arbitration Request Form) to individuals checked]

ATTORNEY FEE ARBITRATION REQUEST FORM

A NONREFUNDABLE FILING FEE CHECK MUST BE INCLUDED
PAYABLE TO "DISCIPLINARY OVERSIGHT COMMITTEE" AS FOLLOWS:

Filing Fee	Total of Legal Fee
None	Up to $999
$25.00	$1,000 to $2,999
$50.00	$3,000 or more

THERE ARE NO EXCEPTIONS TO THIS REQUIREMENT

PLEASE TYPE OR PRINT LEGIBLY ALL INFORMATION

A. WHAT WAS THE AMOUNT OF THE LAWYER'S BILL?

Total Legal Fee $_____ + Costs/disbursements $_____ = Total Bill $_____

Total Paid to Lawyer $_____

B. CLIENT: MR./MRS./MISS/MS. (CIRCLE ONE)

Last Name _____ First _____ Mi _____

Address _____ Street/P.O. Box _____

City _____ State _____ Zip _____ County _____

Telephone: Home (____) _____ Office (____) _____

C. THE SPECIFIC LAWYER WHO HANDLED MY CASE IS:

Name: _____
Last (Include Sr., Jr., III, Etc.) First Mi

Name of **Law Firm**, If Any, with Which Lawyer Is Associated

Office Address _____ Street/p.o. Box _____

City _____ State _____ Zip _____ County _____

Office Telephone: (____) _____

D. THE TYPE OF CASE HANDLED BY THE LAWYER WAS: (CHECK ONE)

___ Admiralty/Maritime	(V)	___ International Law	(I)
___ Adoption/Name Change	(A)	___ Juvenile Delinquency	(J)
___ Bankruptcy/Insolvency/Foreclosure	(B)	___ Labor	(L)
___ Collection	(H)	___ Landlord/Tenant	(Q)
___ Contract	(K)	___ Negligence (Personal Injury Property Damage)	(N)
___ Corporation/Partnership Law	(X)	___ Patent/Trademark/Copyright	(P)
___ Criminal, Quasi-criminal and Municipal Court	(C)	___ Real Estate	(R)
___ Domestic Relations (Divorce, Support, Custody)	(D)	___ Small Claims Court	(S)
___ Estate/Probate	(E)	___ Tax	(T)
___ Federal Remedies/Civil Rights	(F)	___ Workers Compensation	(W)
___ Government Agency Problems (Local Thru Federal)	(G)	___ Other Litigation (specify) _____	(Y)
___ Immigration/Naturalization	(M)	___ Other Non-Litigation (specify) _____	(Z)

E. WAS THERE A WRITTEN FEE AGREEMENT OR FEE LETTER FROM THE LAWYER EXPLAINING HOW MUCH WOULD BE CHARGED? YES ___ NO ___

(1) Had the lawyer or law firm ever represented you before accepting this case? YES ___ NO ___
(2) Was the fee charged by the lawyer contingent on the outcome of the case so that there was no fee due unless the lawyer recovered money for you? YES ___ NO ___

(This Section for Secretary's Use Only)
DOCKET NUMBER _____ DATE DOCKETED _____ FILING FEE PAID $ _____

* * * CONTINUED ON REVERSE SIDE * * *

Figure 8

(3) When did the lawyer first agree to handle your case? _____

(4) When did the lawyer last do any work on this case? _____

F. DID THE LAWYER ADVISE YOU IN WRITING THAT YOU COULD REQUEST FEE ARBITRATION? YES ___ NO ___

(1) If yes, attach a copy and state the date you received the letter or notice _____.

G. HAS THE LAWYER BROUGHT A LAWSUIT AGAINST YOU FOR THE FEE? YES ___ NO ___

(1) If yes, attach a copy of the complaint and your answer, if any, and list:

Docket No. _____; County Where Filed _____;

Date you were served with the complaint _____.

H. ATTACH A COPY OF ALL BILLS YOU RECEIVED FROM THE LAWYER AND LIST ALL AMOUNTS PAID TO THE LAWYER AND THE DATES OF PAYMENT

_____

_____

_____

I. BRIEFLY EXPLAIN WHY YOU DISAGREE WITH THE LAWYER'S TOTAL BILL?

_____

_____

_____

_____

_____

_____

_____

_____

(use additional sheets if needed)

I further state that, although I have the right to present this matter to a Court in this State, I wish to waive this right and submit my case to the New Jersey Supreme Court's District Fee Arbitration Process. I realize that I have 30 days only from the date this Request Form is filed within which I may withdraw, in writing, from the arbitration process. Once withdrawn I cannot again file for fee arbitration. I understand that if the total fee charged is less than $3,000 a single attorney arbitrator will hear the case; otherwise three arbitrators will decide the case. I agree that the determination of a Fee Committee is final and legally binding upon both the attorney and myself and is subject to appeal, only in very limited instances of actual fraud, substantial procedural irregularities, failure of an arbitrator to properly be disqualified and where the arbitrators make an obvious mistake of law. I am further aware that if the lawyer has sued me and provided I have filed a timely Request Form, that lawsuit will be stopped and the amount of the fee as determined by the Fee Committee, if any, shall be entered as a judgment against me without further notice to me. I also understand that, if no suit is pending, the determination of the Fee Committee may by summary action be docketed as a judgment against me. **Fee proceedings are confidential.**

DATED: _____ SIGNED: _____

(Print Name Below Signature)

PLEASE REVIEW THE PAMPHLET "INFORMATION ABOUT NEW JERSEY ATTORNEY FEE ARBITRATION SYSTEM" PROVIDED BY THE FEE SECRETARY.

CAE-G24a 3/1/95

PLEASE NOTIFY DISTRICT SECRETARY OF DISABILITY ACCOMMODATION NEEDS.

INFORMATION ABOUT THE SUPREME COURT OF NEW JERSEY'S ATTORNEY FEE ARBITRATION SYSTEM

This pamphlet has been prepared for use by clients who believe the fee charged by their lawyer is unreasonable and may wish to file a request for fee arbitration against the lawyer. Please read it carefully. It explains the procedures and is designed to prevent misunderstanding. If, after reading this brochure you have any questions, please call the Office of Attorney Ethics.

Published as a public service by the

OFFICE OF ATTORNEY ETHICS
OF THE
SUPREME COURT OF NEW JERSEY
CN 963
TRENTON, NEW JERSEY 08625
(609) 292-8750

Hotline for Fee Arbitration Forms
1-800-406-8594

Printed 1995

INTRODUCTION

New Jersey lawyers are required to provide written fee agreements to new clients. This must be done shortly after the lawyer first accepts the case. Even if you have been regularly represented by the lawyer in the past, you should discuss any questions regarding the fee to be charged at the initial conference so that you will have a clear understanding of what the lawyer has been hired to do and how much the case will cost. Despite agreements and discussions about fees, sometimes problems arise. Fee disputes, like any disagreement over the value of services, may be resolved by court suit.

As an alternative to court action, the Supreme Court of New Jersey has created district fee arbitration committees, which will resolve, at your request, through binding arbitration, disputes concerning alleged unreasonable fees. If you desire assistance by a fee arbitration committee in determining whether the fee charged by your lawyer was reasonable you should call the toll free hotline number (1-800-406-8594) and you will be connected to the district fee arbitration secretary to receive a Request for Fee Arbitration Form.

FEE ARBITRATION IS NOT ALWAYS NECESSARY

What should you do if your lawyer's bill seems unreasonable? Say so. Sometimes unpleasantness can be prevented if you and your lawyer talk things over. Ask your lawyer to explain why the bill is higher than you expected. You may find out the case was more complicated and took more time than you realized. Alternatively, the lawyer may agree that a mistake was made in the bill.

FEE ARBITRATION VS. CIVIL LITIGATION

If discussion does not solve the problem, you can take the dispute to court--or to fee arbitration. Fee arbitration is a hearing conducted by one or more persons not involved in the dispute. Like judges, they hear the arguments on both sides and decide the outcome of the dispute. Fee arbitration is impartial, inexpensive and usually faster than going to court.

A lawyer must send you formal notice of your right to utilize fee arbitration before the lawyer may institute legal action to recover a fee. That notice will advise you of your right to choose the fee arbitration process. In that notice the attorney is also required to list the name, address and phone of the fee secretary and to advise you that you have 30 days within which to choose the fee arbitration alternative. The attorney must wait 30 days from the date of notice before starting the suit. In most cases, if you promptly choose to take your dispute to arbitration, the lawyer must arbitrate. If you do not file a Request for Fee Arbitration form within 30 days of receiving notice from the lawyer, you lose your right to utilize the fee arbitration system. Most clients are interested in a speedy, inexpensive method of resolving fee disputes and animosity is likely to be reduced by the less formal, less adversarial nature of fee arbitration.

FILING FEES

All Requests for Fee Arbitration and all Attorney Fee Responses must be accompanied by a non-refundable administrative filing fee as follows:

No Fee -where the total fee charged (excluding costs) is less than $1,000

$25.00 -where the total fee charged (excluding costs) is from $1,000 to $2,999

$50.00 -where the total fee charged (excluding costs) is $3,000 or more.

There are no exceptions to this rule and no hardship exemptions. Filing fees must be paid by check payable only to "Disciplinary Oversight Committee" at the time the Request Form or Response Form is filed. Non-payment of a required filing fee or dishonor of a check that has been submitted can result in dismissal with prejudice of a client's claim and can result in the attorney being barred from further participation in the case.

COMMENCING FEE ARBITRATION

The fee arbitration process is initiated by your asking for a Request for Fee Arbitration Form from the secretary of the fee committee in the district where the lawyer maintains an office for the practice of law. There are district fee committees throughout the state

Figure 9

with jurisdiction generally conforming to county lines. Forms and information may be obtained from the appropriate committee secretary. Please call the hotline number (1-800-406-8594) and you will be connected to the appropriate district fee arbitration secretary.

BINDING ARBITRATION

Once you choose to pursue fee arbitration by signing the binding arbitration form, you are bound by the fee committee's jurisdiction unless you withdraw your request for fee arbitration within 30 days. The lawyer is also bound by the proceeding. By requesting fee arbitration both you and your lawyer agree to comply with the decision of the fee arbitration committee. There is no unconditional right to appeal any arbitration determination. Appeals are strictly limited to instances of gross procedural error, obvious legal error or actual fraud.

EXCEPTIONS TO THE RULE OF MANDATORY ARBITRATION

The fee arbitration procedure is not available in every case. A fee committee may, in its discretion, decline to arbitrate fee disputes regarding matters in which no lawyer's services have been rendered for at least two years or in which the total legal fee exceeds $100,000. The fees in some kinds of cases, such as worker's compensation cases, are determined by the court and are not subject to fee arbitration. A fee committee may further decline to arbitrate disputes in which persons who are not parties to the arbitration have an interest that would be substantially affected by the arbitration, such as where someone other than the client will have to make payment on a fee award. Similarly, when the primary issues in dispute raise substantial legal questions in addition to the basic fee dispute, such as claims of legal malpractice, the fee committee may decline to hear the case. While fee committees do not have the authority to award you money damages for legal malpractice, they are permitted to decide the underlying fee issue if they believe the fee issue can be separated from the malpractice issue. In such situations, you will not lose your right to later file a lawsuit for legal malpractice. Finally, if the lawyer gives you proper, written notice of your right to select fee arbitration, but you fail to secure and file the appropriate form within 30 days of receiving notice, the fee committee must decline to accept the matter.

PRE-HEARING PROCEDURE

Within 20 days after the fee secretary sends your Request for Fee Arbitration to the lawyer, the lawyer must file and send you an Attorney Fee Response on a form provided by the committee. A failure to file the response may result in the lawyer being barred from further participation in the proceeding or in the exclusion of certain evidence offered by the lawyer at the hearing. The burden of proof to demonstrate the nature of the fee agreement and the reasonableness of the ultimate fee is on the lawyer. All basic documentation necessary to carry this burden should be submitted with the Attorney Fee Response. This documentation includes (1) a copy of the written fee agreement; (2) all correspondence confirming or explaining the fee arrangement; (3) the lawyer's time records; (4) all interim bills and the final bill including costs; and (5) a statement of all amounts paid on account. Prior to the hearing neither you nor your lawyer has the right to make formal inquiries or to take depositions. If your lawyer believes that any other lawyer or member of a law firm is responsible for, or entitled to, any portion of the fee, it is your lawyer's responsibility to see to it that that lawyer or firm is made a party to the arbitration proceeding.

WHO ARE THE ARBITRATORS?

Since 1979, fee arbitration committees have been composed of both lawyers and public members. Most fee arbitration cases are heard before panels of three members, composed of either two lawyers and one public member or three lawyers. However, if the total amount of the fee charged is less than $3,000, the hearing may be held before a single lawyer member of the fee committee. All fee committee members are directly appointed by the Supreme Court of New Jersey and serve without compensation.

HEARING AND DETERMINATION

After the attorney files the Attorney Fee Response, the committee will schedule a hearing with at least 10 days notice to the parties. Arbitration hearings are private and formal; however, they do not require observance of strict courtroom procedure and evidence rules. Ordinarily both you and your lawyer appear at the hearing without legal representation; however, both parties are entitled to legal counsel. All witnesses are sworn; however, no stenographic or tape-recorded record is made.

Be aware that, when you are given notice of the time, date and place for the arbitration hearing, it is your obligation to contact all witnesses you will rely on and to insure their appearance at the hearing. If the witness is important and will not appear voluntarily, you may ask the fee secretary to issue a subpoena. You may also compel the production of documents through subpoenas. You are responsible for personally serving any subpoenas you request. You also must be prepared for the hearing by bringing all letters, documents or writings which you wish the arbitrators to consider.

The hearing panel or single arbitrator must decide the matter promptly. Except in unusual cases, the arbitration determination will be decided within 30 days following conclusion of the hearing. You will be notified of that decision thereafter by the committee secretary. The unsuccessful party has 30 days from receipt to comply with the determination.

LIMITED RIGHT OF APPEAL

The amount of the fee as determined by the fee committee is binding and final. A limited right of appeal to the statewide Disciplinary Review Board is provided. The grounds for such an appeal are as follows:

(1) Failure of a panel member with a conflict to be disqualified;
(2) Failure of the fee committee to substantially comply with mandatory procedural requirements;
(3) Actual fraud on the part of any member of the fee committee; or
(4) Gross and obvious mistake of law by the fee committee.

This limited appeal may be taken within 21 days after receipt of the fee committee's written determination by writing to the Disciplinary Review Board at Richard J.

Hughes Justice Complex, CN 962, Trenton, New Jersey 08625, requesting Notice of Appeal forms. These forms, properly completed, must be returned to the Disciplinary Review Board **within 21 days** of your receipt of the appeal forms. Absent compelling reasons, the Board will not consider untimely requests for, or returns of, Notice of Appeal forms. The timely filing of a notice of appeal automatically stops the collection of any judgment obtained based upon the fee committee's arbitration determination. All limited appeals are considered by the Board on the written record. The Board's decision is final.

ENFORCEMENT OF FEE AWARD

If a fee committee orders a lawyer to refund a portion of the fee to you, the lawyer is required to make such payment within 30 days of receipt of the fee decision. If the lawyer fails to make such payment, you should write to the Office of Attorney Ethics, which is empowered to file a motion with the Disciplinary Review Board seeking a recommendation that the lawyer be temporarily suspended from the practice of law until compliance is obtained. If the Board determines that a refund has improperly been withheld, it may recommend to the Supreme Court of New Jersey that the lawyer be suspended from the practice of law until compliance is achieved. The Board can also impose additional monetary sanctions on the delinquent lawyer for failing to abide by the fee committee's ruling. On the other hand if the fee committee determines that you owe money to the lawyer and you fail to pay within 30 days, the lawyer may enter the judgment in court. **You cannot relitigate the matter.**

CONFIDENTIALITY

Fee arbitration proceedings are confidential, except where a lawsuit is filed in a court concerning the fees. Under Supreme Court Rules, once you file for fee arbitration, you are required thereafter to keep all communications **regarding the fee matter confidential.** You are free to discuss your dissatisfaction with others. You simply may not disclose the fact that you have filed a fee dispute against the lawyer. You may not breach this confidentiality by disclosing your fee dispute to persons other than members of the fee arbitration system, except to discuss the case with other witnesses or to consult an attorney.

AVOIDANCE OF FUTURE FEE DISPUTES

Always ask your lawyer for a written fee agreement, and make sure you understand exactly what it does and does not cover. If you were renting a house, you would ask if the costs of heat and water were included in the rental price. Ask your lawyer specific questions, too. For instance, will you be charged each time you telephone the lawyer? Will the fee go up if the case takes longer than either of you expects? If the lawyer charges by the hour, ask for a written bill on a regular basis. That way, you will know how much the case is costing as it moves along, and you will not be in for a big surprise at the conclusion of the matter.

Some lawyers will take your case on a "contingency" basis when you sue someone for money. This means you will not be charged legal fees if you lose the case, although you may be responsible for out-of-pocket costs. If you win, you pay the lawyer a percentage of the money the court awards you. Before you agree to a contingency fee, make sure you know how it will work in your case. What will the lawyer's percentage be? Will it be taken from the amount you win before or after court costs are subtracted? Will the fee be less if the case settles out of court? What if you settle the case before trial but after the lawyer has done all the work to get ready for trial? Will the fee be more if you lose in the trial court, but appeal the decision to a higher court and win?

CONCLUSION

Those involved in the New Jersey attorney fee arbitration system appreciate your interest. We seek fair and impartial resolution of fee disputes in the interests of the public, clients and the legal profession.

Please notify the District Fee Secretary of disability accommodation needs.

A NONREFUNDABLE FILING FEE CHECK MUST BE INCLUDED
PAYABLE TO "DISCIPLINARY OVERSIGHT COMMITTEE" AS FOLLOWS:

Filing Fee	Total of Legal Fee
None	Up to $999
$25.00	$1,000 to $2,999
$50.00	$3,000 or more

THERE ARE NO EXCEPTIONS TO THIS REQUIREMENT

FOR SECRETARY'S USE ONLY

Filing Fee Paid $_____

Docket No. _____

, Client

v.

, Attorney

ATTORNEY FEE RESPONSE

1. What was the total amount of the lawyer's bill?

   Total Legal Fee $_____ + Costs/Disbursements _____ = Total Bill $_____

2. (a) Type of case_____

   (b) Date representation commenced_____

   (c) Date services completed or representation terminated_____

3. Was there a written fee agreement or fee letter sent to the client explaining how much would be charged?

   Yes _____ No _____

   (a) If yes, attach a copy.

   (b) If no, had you or the law firm regularly represented the client before?

   Yes _____ No _____

   (c) If no, what arrangement for legal fees was agreed upon, and when?

   _____

   _____

   (d) Was this a contingency case? Yes ____ No _____

4. (a) Briefly, what was the fee arrangement?_____

   _____

   _____

   _____

   (b) What was the initial fee quoted to the client? $_____

   (c) What was the final bill? $_____

5. If the final bill [4(c)] is different than the initial fee quoted [3(b)], state the reason, the date the client was advised of the change and attach copies of any documents advising the client of the change.

   _____

   _____

   _____

◄ ◄ ◄ COMPLETE BOTH SIDES ► ► ►

Figure 10

6. Was an itemized bill or bills submitted to the client?

   Yes ____ No ____ (If yes, attach copy)

7. Did you maintain time records in this case? Yes ____ No ____ (If yes, attach copies)

8. Set forth ALL monies paid to you on the clients' behalf and show:

DATE RECEIVED	AMOUNT	CASH/CHECK/OTHER

9. Have you brought a lawsuit for your fees? Yes ____ No ____
   (Attach copies of any pleadings)

   (a) If yes, state the date of service of process on client _____

   Docket No. _____ County Filed _____

   (b) Did you give pre-action notice to client under *R. 1:20A-6*? Yes ____ No ____ Date _____

10. State your response to the clients' answer to question "I" of the Attorney Fee Arbitration Request Form which explains why the client disagrees with your bill _____

11. Do you assert that another attorney or law firm with whom you were associated at the time legal services were rendered to the client may be liable for or entitled to any part of the client's claim? Yes ____ No ____. If so, state the correct names below and serve them in accordance with *R. 1:20A-3(b)*.

    Name _____

    Firm _____

    Mailing Address _____

    _____ Telephone: (____) _____

CERTIFICATION OF SERVICE

I hereby certify that all of the foregoing statements made by me are true, that all documents attached are true, and that I have, contemporaneously with filing this form with the secretary of the district fee arbitration committee, mailed a copy by certified mail postage prepaid to the client. I am aware that if this statement is willfully false I am subject to punishment.

Date: _____ Signed: _____

(Please Print Name Below Signature)

OAE-G24b 3/1/95

PLEASE NOTIFY DISTRICT SECRETARY OF DISABILITY ACCOMMODATION NEEDS.

SUPREME COURT OF NEW JERSEY

DISTRICT _____ ETHICS/FEE ARBITRATION COMMITTEE

DOCKET NUMBER _____

SUBPOENA DUCES TECUM

IN THE MATTER OF	:	
	:	**THIS SUBPOENA IS ISSUED under *R.1:20A-3(b)(2)* and *R.1:20A-5* in connection with a confidential investigation or hearing under the Rules of the New Jersey Supreme Court and YOU ARE HEREBY WARNED NOT TO BREACH THE CONFIDENTIALITY OF THIS INVESTIGATION.** It shall not be regarded as a breach of confidentiality for a person subpoenaed to consult with an attorney.
v.	:	

TO: _____

_____

YOU ARE HEREBY COMMANDED to appear at _____

_____

in the City of _____ on _____

at _____. You are further ordered to appear without fee and bring with you the following records: _____

_____

_____

_____

If you fail to appear and produce the said records, you may be held in contempt of court under *R.1:9-6* of the Rules of the Supreme Court of New Jersey.

DATE:

_____
Name and Title

Figure 11

SUPREME COURT OF NEW JERSEY

DISTRICT _____ ETHICS/FEE ARBITRATION COMMITTEE

DOCKET NUMBER _____

SUBPOENA AD TESTIFICANDUM

IN THE MATTER OF	:	
	:	**THIS SUBPOENA IS ISSUED under *R.1:20A-3(b)(2)* and *R.1:20A-5* in connection with a confidential investigation or hearing under the Rules of the New Jersey Supreme Court and YOU ARE HEREBY WARNED NOT TO BREACH THE CONFIDENTIALITY OF THIS INVESTIGATION.** It shall not be regarded as a breach of confidentiality for a person subpoenaed to consult with an attorney.
v.	:	

THE STATE OF NEW JERSEY, to: _____

_____

YOU ARE HEREBY COMMANDED to attend and give testimony on

_____ day, _____, 19__, at ____ o'clock __.M., at _____

_____

_____

_____

You are further ordered to appear without fee. If you fail to appear, you may be held in contempt of court under *R.1:9-6* of the Rules of the Supreme Court of New Jersey.

DATE:

_____
Name and Title

Figure 12

DISTRICT FEE ARBITRATION COMMITTEE
DOCKET NO._____

, Client

v.

, Attorney

STIPULATION OF SETTLEMENT

A request for fee arbitration having been made to the District Fee Arbitration Committee based upon a written request for fee arbitration by the client pursuant to *Rule 1:20A-1 to 1:20A-6*, and the parties having come to an amicable agreement as to the total amount of the fee to be paid in this matter thus making a hearing pursuant to *Rule 1:20A-3(b)* unnecessary, it is hereby agreed and stipulated as follows:

1. **THE TOTAL FEE ORIGINALLY CHARGED** by the attorney was:

   (a) Charges for legal services..... $_____

   (b) All costs and disbursements [if not included in (a)]..... $_____

   (c) Total of all charges..... $_____

2. **THE TOTAL AMOUNT TO BE PAID** to the attorney is (including all costs/disbursements and amounts previously paid by the client).....$_____

3. **THE AMOUNT PREVIOUSLY PAID** by the client is.....$_____.

4. (a) **THE BALANCE DUE** by the client to the attorney is.....$_____

   OR

   (b) **THE AMOUNT TO BE REFUNDED** by the attorney is.....$_____

Pursuant to the above Agreement, it is on this _____day of _____, 19_____

AGREED that the total amount presently due (to be repaid by the attorney to the client)/(from the client to the attorney) isthe sum of $_____; and it is

FURTHER AGREED that payment of the amount agreed to shall be made within _____ ( ) days of the date hereof; and it is

FURTHER AGREED that this matter is dismissed with prejudice upon condition that this agreement is fully and timely complied with; otherwise (a) **if the client has failed to comply**, the attorney has the option to: (1) obtain judgment in the amount hereof and the client waives all right to defend the matter on the merits, (2) re-open this matter and have the fee decided by the Fee Committee, (3) proceed upon any default or other judgment previously entered, or (4) bring legal proceedings to collect the total bill alleged to be due and owing as if this Stipulation were never executed; (b) **if the lawyer has failed to comply**, the client shall promptly notify the Fee Committee which shall take appropriate action including referral to the Director of the Office of Attorney Ethics.

_____ _____

CLIENT
(Please print name below signature)

ATTORNEY
(Please print name below signature)

> > > COMPLETE BOTH SIDES < < <

Figure 13

(THE FOLLOWING ITEMS ARE TO BE COMPLETED BY THE ATTORNEY)

Contingent Fee ..... YES___NO___

Written Fee Agreement ..... YES___NO___

Time Records ..... YES___NO___

Pending Civil Litigation By Attorney For Fee ..... YES___NO___

Type of Case: (check one)

___ Admiralty/Maritime (V)
___ Adoption/Name Change (A)
___ Bankruptcy/Insolvency/Foreclosure (B)
___ Collection (H)
___ Contract (K)
___ Corporation/Partnership Law (X)
___ Criminal, Quasi-criminal and Municipal Court (C)
___ Domestic Relations (Divorce, Support, Custody) (D)
___ Estate/Probate (E)
___ Federal Remedies/Civil Rights (F)
___ Government Agency Problems (Local Thru Federal) (G)
___ Immigration/Naturalization (M)
___ International Law (I)
___ Juvenile Delinquency (J)
___ Labor (L)
___ Landlord/Tenant (Q)
___ Negligence (Personal Injury Property Damage) (N)
___ Patent/Trademark/Copyright (P)
___ Real Estate (R)
___ Small Claims Court (S)
___ Tax (T)
___ Workers Compensation (W)
___ Other Litigation (specify) (Y)
_____
___ Other Non-Litigation (specify) (Z)
_____

OAE-G25a 3/1/95

Section 45 Time For Scheduling Hearing

Generally, the fee arbitration hearing can be scheduled at any time after the expiration of the time for filing of an original (or any third party) Attorney Fee Response Form. Notice of hearing is required to be given "at least 10 days in advance, in writing, of the time and place of the hearing." *R.1:20A-3(b)*. The parties must also be advised that they have the right, for good cause shown, to have subpoenas issued for relevant documents and witnesses. As stated in more detail in Section 34, the best procedure calls for the Secretary to serve the Request for Arbitration and Attorney Fee Response Form on the attorney and law firm, if any, **and** to schedule the hearing in one letter (**Figure 6 - Section 34**, *supra*) by simply setting the hearing date 30 days from the date of the letter.

Section 46 Designation of Hearing Panel/Single Arbitrator

As discussed in Section 12, it is the Chair's responsibility at the beginning of the term to designate hearing panels of at least three members. *R.1:20A-3(b)*. One of the panel members should be a public member if at all possible. A majority of the panel members must be lawyers. The Chair of the Fee Committee will designate one attorney member to be the Chair of each hearing panel. A quorum for the hearing of any matter consists of at least three (3) members of the Fee Committee. Matters are determined by a majority of the membership sitting on the panel provided a quorum is present. *R.1:20A-3(b)*.

The Chair may designate a single attorney member of the Fee Committee to sit as an arbitrator "in all cases in which the amount of the total fee charged is less than $3,000." *R.1:20A-3(b)*. This is an obvious cost/benefit provision. The threshold amount, formerly $1,000, was raised in 1986 to its present value of $3,000.

R.1:20A-3(b) provides that, when by reason of absence, disability or disqualification, the number of members of the panel able to act is less than a quorum, and when the hearing has not commenced and the Chair is unable to substitute a third panelist, the remaining two members of the panel may proceed to take evidence and render a determination **only** with the consent of both the client and the attorney.

In no event is the Secretary of the Fee Committee eligible to sit on any hearing panel. *R.1:20A-3(b)*. Since the Secretary is not technically a member of the Fee Committee, and since the Fee Secretary deals adminis-

tratively with both parties to the fee dispute, the Secretary's impartiality is enhanced by restricting that office to a non-adjudicative role.

Section 47 Hearing Room

The Hearing Panel Chair should arrange for an appropriate hearing room at which the trial of the matter will be conducted. When possible, fee hearings should be held at public facilities. The Hearing Panel Chair or a member thereof may offer a conference room in their law office as an appropriate location. As an alternative the Fee Secretary may also arrange with the trial court administrator of the vicinage for the use of an administrative hearing room. Likewise, many municipal courtrooms are available by arrangement during the day. Or, if the local bar association maintains offices with a conference room, the Fee Secretary or Hearing Panel Chair may request use of these facilities. It is important that the physical setting of the hearing reflect the seriousness of the proceedings, as well as allow for their confidentiality. **In no event should the law office of the attorney whose fee is questioned ever be used.**

Section 48 Conduct of Formal Hearing

At the outset of the hearing, indeed at the time the matter is assigned to them, each panelist should review the names of the parties to determine whether there is any reason they should be disqualified from sitting. In the context of commercial arbitration proceedings the Supreme Court has held that:

> (E)very arbitrator... (should) make full disclosure of possible conflicts of interest to the parties, prior to commencement of arbitration proceedings. This disclosure should reveal any relationship or transaction that he has had with the parties or their representatives as well as any other fact which would suggest to a reasonable person that the arbitrator is interested in the outcome of the arbitration or which might reasonably support an inference of partiality. *Barcon Associates, Inc. v. Tri-County Asphalt Co., 86 N.J. 179, 192 (1981).*

If no objection is made after full disclosure, any conflict is waived. If an objection is made, then the member will have to determine whether or not disqualification under *R.1:12-1 et seq.* is mandated. (See Section 28, *supra*.)

HEARING PANEL CHECKLIST

A. PRE-HEARING

- Avoid any familiarity with client, attorney or their counsel.
- Each panelist should have copies of all pleadings.
- Strict rules of evidence need not be observed *R.1:20A-3(b)(4).*
- Requests for sequestration of witnesses may be granted, but not of parties who have a right to be present at all times. *R.1:20-3(b)(4).*
- Neither party has any right to withdraw after 30 days from the docketing of the request form. *R.1:20A-3(b)(1).*
- No stenographic or other record is to be made. *R.1:20A-3(b)(4).*
- All proceedings are confidential and not open to the public, except for parties, counsel and witnesses. *R.1:20A-5.*

B. HEARING

- Introduce all panelists and specify who is Chair.
- Ask parties and their counsel to introduce themselves.
- Ask if parties have any objection to:
  - composition of panel (i.e. any reason for disqualification).
  - procedures used by committee not in conformance with fee pamphlet.
- All witnesses and parties must be sworn. *R.1:20-3(b)(4).*
- Attorney must proceed first, as the attorney has the burden of proof of the reasonableness of the fee by a preponderance of evidence. *R.1:20A-3(b)(1).*
- *R.P.C. 1.5* requires all lawyers to communicate in writing to the client "the basis or rate of the fee... before or within a reasonable time after commencing representation," unless the lawyer has regularly represented the client. Therefore, every lawyer should be asked to produce such agreement or writing and, if none exists, the lawyer should be asked how the lawyer established the fee.
- Client may then present his/her case.
- Attorney should be given an opportunity for rebuttal.
- Client should then be given final opportunity to respond.
- The panel should take a moment, if appropriate, to explain to parties any misunderstanding about the law or any legal practice. This enhances understanding and avoids appeals.
- At the conclusion of the hearing, if not earlier, the panel should review with the parties the total amount of the lawyer's bill [compare Request Form Question "A" with Attorney Fee Response Question 1], as well as the amounts paid by the client [compare Request Form Question "A" with Attorney Fee Response Question 8]. These figures are necessary in order to properly complete the Arbitration Determination Form.
- The panel should reserve decision and decide in private.
- The **first** decision to be made is the **TOTAL REASONABLE CHARGE** to which the panel finds the attorney to be entitled. This amount cannot exceed the amount of fees and costs billed.
- The Arbitration Determination should be completed and sent to the Secretary.
- Advise all parties that the Secretary will send them an arbitration determination form in due course, usually within 30 days. *R.1:20-3(b)(4).*
- Appeals are strictly limited and reasons will be detailed in Secretary's letter.
- **NOTE:** If, after appearing, any party leaves before the proceeding is concluded, the party should be advised that the matter will proceed, that the party's absence will have no effect on the case, and that, by leaving, the party waives the right to object to anything that subsequently occurs, including the introduction of evidence and cross-examination of witnesses.

OAE 9/4/90; 5/31/95

Figure 14

In addition, at the outset of the proceeding, it is an excellent idea to determine if either party has any objections which may support, or tend to support, a later appeal. The parties should be asked if they have any objections with respect to procedures used by the Fee Committees (e.g. issuance of subpoenas), failure of panel members to disqualify themselves or if they wish to question the partiality of any of the panel members. Any objections should be discussed and ruled upon openly by the panel. Usually there will be no objections. If this is done routinely it can be solidly set forth by the Hearing Panel Chair in defense in the Committee's response to any appeal. (See Section 59 *infra*.)

The hearing of a fee arbitration matter is to be conducted formally and in private. It is to be presided over by the Hearing Panel Chair. The "(s)trict rules of evidence need not be observed." *R.1:20A-3(b)*. The proceedings should be conducted in a dignified manner and all witnesses testifying must be duly sworn by the Hearing Panel Chair. All applications for rulings should be directed to the Panel Chair who, after consultation with the members of the hearing panel, shall rule thereon. There are no interlocutory appeals from decisions by a hearing panel. Requests for sequestration of witnesses may be granted. However, both the original client and the attorney have the right at all times to be present during the hearing with their respective attorneys. *R.1:20A-3(b)*. Therefore, they may not be sequestered. Insofar as applicable, the rules governing procedure in civil actions, including opening statements, offers of proof, the order of presentation of witnesses, and closing statements are to be followed.

While the atmosphere in an arbitration proceeding should be more relaxed than a formal court proceeding, proper decorum must always be maintained. There should be **no familiarity whatsoever** exhibited between the hearing panelists and any of the parties or their attorneys either before, during or after fee proceedings. This avoids any appearance of impropriety, which may tend to support an appeal.

Occasionally, either a client or an attorney who has been duly noticed will fail to appear at a fee hearing. So long as proper service has been made the panel may go forward with the matter unless, upon inquiry, there is a reasonable and bona fide excuse. Usually, the Panel Chair will attempt at the hearing to reach the absent party by phone to see if there is a bona fide excuse. If so, the matter should be re-scheduled. It must be remembered, however, that fee hearings cannot be scheduled for the convenience of all parties. Like a court, they must generally be scheduled for the convenience of the panel. If, without just cause, either the attorney or the client fails to

attend a properly scheduled fee hearing, the panel or arbitrator should proceed to hear the evidence from the available party and render a decision accordingly. There is no automatic rule or default procedure.

For the convenience of the hearing panel, a Hearing Panel Checklist has been prepared (**Figure 14**). This checklist outlines a standard procedure, which should be followed uniformly in all fee proceedings.

Section 49 Requests For Adjournment

Once a fee arbitration matter has been scheduled for hearing, requests for adjournments should be directed to the Hearing Panel Chair. As with requests for extensions of time to file Attorney Fee Responses, requests for adjournment of formal hearings should be granted only for "good cause shown." *R.1:20-7(k).*

In unusual cases where requests for adjournment are due to alleged trial conflicts on the part of attorneys, the Hearing Panel Chair should communicate with the Judge or Assignment Judge involved in order to determine what appropriate arrangements can be made for the release of counsel from a trial commitment. Likewise, such procedure applies to trial conflicts of members of the Fee Committee. When it is necessary to continue a fee hearing, the Hearing Panel Chair should, insofar as practical, schedule the continued hearing for a time certain within 30 days after the date of the previously scheduled hearing.

Section 50 Withdrawal By Client

The rules specifically provide that "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 clients shall have no right of withdrawal." *R.1:20A-3(b)(1).* Once a client has properly withdrawn, the client is not permitted to resubmit the matter to fee arbitration. *R.1:20A-3(b)(1).* Withdrawal unilaterally by the client must be distinguished from settlements, which may occur at any time.

Occasionally a client or attorney will get up from a hearing and announce his/her intention to leave prior to completion of the fee arbitration matter. If this occurs, and unless the panel has consented to an adjournment for cause, the Hearing Panel Chair should advise the departing party that his/her unilateral absence will have **no effect** on the proceedings, and that the panel will continue to hear any remaining evidence and issue its Arbitration Determination. The party should also be advised that by leaving they waive

any right to object to anything which occurs subsequently, including the introduction of evidence and the cross-examination of witnesses.

Section 51 Burden Of Proof

The burden of proof in fee arbitration matters is upon the attorney "to prove the reasonableness of the fee in accordance with *RPC 1.5*." *R.1:20A-3(b)*.

Section 52 Standard Of Proof

The standard of proof in fee arbitration matters is a "preponderance of the evidence." *R.1:20A-3(b)*.

Section 53 Criteria For Determination

The general criteria for determining the reasonableness of a fee are set forth in *RPC 1.5*. *R.1:20A-3(b)*. They are:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent.

Additionally, the panel will be aware of several rules requiring written fee arrangements. *RPC 1.5(b)* requires that, unless the lawyer has regularly

represented the client, "the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation."

RPC 1.5(c) also provides that all contingent fee agreements "shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated." Moreover, special rules exist to govern contingent fees charged in matrimonial (*R.1:21-7A*) and tort suits (*R.1:21-7*). Thus, the panel's job will be made easier by the existence of either a written agreement, court rule limit or custom and history of the lawyer's regular representation of the client.

Occasionally, an attorney will have failed to comply with the rule and no written agreement or statement of the basis of the fee will exist. The question then becomes what effect does non-compliance with the rule have on the fee. While the Supreme Court could have provided that failure to comply with the rule causes the attorney to forfeit any fee, it did not do so. Therefore, the effect of non-compliance should generally be limited to resolving any doubts as to the fee agreement in the client's favor, so long as the client's position is reasonable.

The Supreme Court's Advisory Committee on Professional Ethics has addressed the issue of the alleged "non-refundable retainer." In *Advisory Opinion 644, 126 N.J.L.J. 966 (Oct. 11, 1990)*, the Advisory Committee held that "non-refundable retainers are not unethical *per se* but are subject always to the overriding precept that any fee arrangement must be reasonable and fair to the client." Since *RPC 1.5(a)* states that ethically a lawyer may not charge more than a "reasonable" fee, such retainers must be reviewed for reasonableness. In view of the start-up costs of creating a file as well as the declination of other work which acceptance of a client's file requires, there is no question but that an initial retainer may be reasonable although it is in excess of the product of the lawyer's hourly rate multiplied by the amount of time expended on a particular case. It is equally obvious, however, that it would be extremely difficult to justify retaining a $10,000 non-refundable retainer in a matrimonial matter when the client reconciles two weeks after the lawyer was retained. Each case will have to be reviewed for reasonableness.

Finally, the panel should be mindful that while it is not permitted to make affirmative damage awards for legal malpractice, it "...may consider the

quality of services rendered in assessing the reasonableness of the fee pursuant to *R.P.C. 1.5." R.1:20A-2(c)(2)*.

Section 54 Arbitration Determination

At the conclusion of a hearing the panel or single member arbitrator should deliberate in private and reach a conclusion. That conclusion will be embodied in the form of an Arbitration Determination (**Figure 15**), which is to be completed and signed only by the Panel Chair.

The Arbitration Determination is, first and foremost, a monetary synopsis of the entire fee proceeding.

> The initial figure, **TOTAL OF ALL CHARGES** [1(c)], represents the total legal fee [1(a)] originally requested by the attorney **plus** costs and disbursements [1(b)].
>
> Item 2, the **TOTAL REASONABLE FEE**, is the most important figure. It is the sum of all legal fees **plus** costs and disbursements to which the Hearing Panel has determined the lawyer is entitled.
>
> Item 3, **AMOUNT PAID**, reflects all sums paid to date to the lawyer by, or on behalf of, the client.
>
> The net result of the Hearing Panel's adjudication is found by subtracting item 3, **AMOUNT PAID**, from item 2, **TOTAL REASONABLE FEE.**
>
> The result will either be a **BALANCE DUE** by the client [4(a)], or
>
> an **AMOUNT TO BE REFUNDED** [4(b)] by the attorney.

If the requested fee has been upheld and fully paid by the client, then a zero (or the word "none") should be entered in 4(a) and 4(b).

The remaining matters which the Panel Chair must complete on the front of the Arbitration Determination are the Docket Number, the caption, the hearing date and the signature portion. Where third party practice has been invoked so that more than one attorney is liable for the fee, the Panel Chair should make sure that the caption of the Arbitration Determination correctly reflects the name of the attorney who is due to receive, or who is responsible for refunding, the fee. If there is any confusion about this a separate Arbitration Determination Form should be completed for **each** attorney.

DISTRICT FEE ARBITRATION COMMITTEE
DOCKET NO. _____

, Client

v.

, Attorney

ARBITRATION DETERMINATION

This matter having come on for hearing before a duly constituted panel of the District Fee Arbitration Committee based upon a written request by the client pursuant to *Rule 1:20A-1 to 1:20A-6*, and a hearing having been held by the Committee on _____, 19____, and testimony having been taken pursuant to *Rule 1:20A-3(b)*, the undersigned hereby submits the following monetary synopsis of the FINDINGS OF FACT:

1. **THE TOTAL FEE CHARGED** by the attorney is:

   (a) Charges for legal services..... $_____

   (b) All costs and disbursements [if not included in (a)]..... $_____

   (c) Total of all charges..... $_____

2. **THE TOTAL REASONABLE CHARGE** to which the attorney is found to be entitled is (including all costs/disbursements and amounts previously paid by the client).....$_____

3. **THE AMOUNT PREVIOUSLY PAID** by the client is.....$_____

4. (a) **THE BALANCE DUE** by the client to the attorney is.....$_____

   OR

   (b) **THE AMOUNT TO BE REFUNDED** by the attorney is.....$_____

Pursuant to the above findings, it is on this _____ day of _____, 19____ **ORDERED AND ADJUDGED** that the total amount presently due (to be repaid by the attorney to the client)/(from the client to the attorney) is the sum of $_____; and it is **FURTHER ORDERED** that the amount awarded shall be paid within 30 days from the date of receipt of this determination unless the parties mutually agree in writing to extend the time for payment. A civil judgment may be entered forthwith in accordance with *R.1:20A-3* in the amount of this determination; however, no costs of suit shall be allowed if the award is paid within 30 days nor shall execution issue within a period of 30 days.

_____
Chair
(Please Print Name Below Signature)

* * * COMPLETE BOTH SIDES * * *

Figure 15

DID THE ATTORNEY ATTEND THE HEARING? _____YES ____NO
DID THE CLIENT ATTEND THE HEARING? _____YES ____NO

STATEMENT OF REASONS SUPPORTING DETERMINATION

THE ABOVE STATEMENT OF REASONS AS WELL AS THE FOLLOWING ITEMS ARE TO BE COMPLETED BY THE PANEL CHAIR

SIZE OF HEARING PANEL (CHECK ONE) ____1 ____2 ____3 ____4 OR MORE
CONTINGENT FEE. . . . . YES_____ NO_____
WRITTEN FEE AGREEMENT. . . . . YES_____ NO_____
TIME RECORDS . . . . . YES_____ NO_____
PENDING CIVIL LITIGATION BY ATTORNEY FOR FEE . . . . . YES_____ NO_____
WAS THERE OVERREACHING . . . . . YES_____ NO_____
CASE REFERRED TO AN ETHICS COMMITTEE (*R.1:20A-4*) . . . . . YES_____ NO_____
TYPE OF CASE: (CHECK ONE)

___Admiralty/Maritime (V)
___Adoption/Name Change (A)
___Bankruptcy/Insolvency/Foreclosure (B)
___Collection (H)
___Contract (K)
___Corporation/Partnership Law (X)
___Criminal, Quasi-criminal and Municipal Court (C)
___Domestic Relations (Divorce, Support, Custody) (D)
___Estate/Probate (E)
___Federal Remedies/Civil Rights (F)
___Government Agency Problems (Local Thru Federal) (G)
___Immigration/Naturalization (M)
___ International Law (I)
___ Juvenile Delinquency (J)
___ Labor (L)
___ Landlord/Tenant (Q)
___ Negligence (Personal Inury Property Damage) (N)
___ Patent/Trademark/Copyright (P)
___ Real Estate (R)
___ Small Claims Court (S)
___ Tax (T)
___ Workers Compensation (W)
___ Other Litigation (specify) (Y)
_____
___ Other Non-Litigation (specify) (Z)
_____

OAE-G25b 3/1/95

Each Arbitration Determination is required to contain a **brief STATEMENT OF REASONS** explaining how the panel reached its decision. An appropriate space is provided at the top of the reverse side of the arbitration form for this purpose. If necessary, it may be continued on an additional sheet. This requirement is primarily intended to educate the attorney and the client as to how the Fee Committee came to its conclusion. In cases where the fee is charged on an hourly basis, the statement of reasons may simply state that the testimony before the panel indicated that the attorney agreed to represent the client in a divorce matter at $100 per hour, for example, and that the panel determined the attorney to have reasonably expended 20 hours resulting in a total reasonable charge of $2,000. Likewise, where the fee is based upon a written contingent fee agreement, or any other written agreement, the statement of reasons should be straightforward. There may be cases where a final result is reached through an accommodation of differing opinions. Every effort should be made to give a clear and reasonable explanation to support such final determinations.

Finally, the lower portion of the reverse side of the Arbitration Determination contains statistical data which is accumulated by the OAE. The Panel Chair or single member arbitrator should complete this section.

The completed Arbitration Determination must be promptly filed with the Secretary, who will enter it into the Fee Committee's records and then, within 30 days, serve it upon the parties and file it with the OAE. **In no case should the Panel Chair or Single Arbitrator ever serve the parties directly -- everything must be channeled through the Secretary in order to maintain proper control over the caseload.**

The Arbitration Determination and Statement of Reasons should be served by the Secretary within 30 days of (a) the conclusion of the hearing or (b) "from the end of any time period permitted for filing of supplemental briefs or other materials." *R.1:20A-3(b)*. The Secretary will serve the parties with a Notification Letter (**Figure 16**) in the form approved by the Director, OAE. *R.1:20A-3(b)(4)*. The Notification Letter encloses a copy of the Arbitration Determination. It also advises them of the **very limited** grounds upon which an appeal can be based, as well as the time within which an appeal can be filed and the procedure for doing so.

Section 55 Enforcing Arbitration Determinations And Settlements

In most circumstances awards of arbitration panels will be paid voluntarily by the appropriate party within thirty (30) days from receipt of the Determi-

NOTIFICATION TO PARTIES OF DECISION

(Date)

(Client Name and Address)

Re: **(Name of Case)**_____
Docket No._____

Dear (Name):

Enclosed is the Arbitration Determination which sets forth a monetary synopsis of the decision in your case.

As noted in your initial Request Form, neither you nor the attorney has any right to appeal the merits of this case. Only a very limited type of appeal may be taken and then only where either the attorney or the client can prove:

(1) any member of the Fee Committee hearing the fee dispute failed to be disqualified when required to do so, or,

(2) the Fee Committee failed substantially to comply with the procedural requirements governing Fee Arbitration matters, or,

(3) there was actual fraud on the part of any member of the Fee Committee.

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

Figure 16

If you believe that you have facts which prove one of these three grounds, you may appeal this decision of the Committee to the Supreme Court's Disciplinary Review Board within twenty-one (21) days of the receipt of this letter. Requests for appeal forms must be in writing specifying the name of the attorney complained against and the docket number of the case as well as your name and address. Do not go into the facts of the case or the reasons for your appeal in the letter requesting the appeal form itself. Telephone requests for such forms cannot be honored. The twenty-one (21) day appeal period will be satisfied if your letter requesting appeal forms is received within that period and if the appeal forms themselves are returned within twenty-one (21) days from the date they are actually forwarded to you. The address to which all requests for appeal forms must be sent is:

Robyn M. Hill, Chief Counsel

Disciplinary Review Board

Richard J. Hughes Justice Complex

CN 962

Trenton, New Jersey 08625

Very truly yours,

Secretary
District __ Fee
Arbitration Committee

Encl.
cc: Attorney (w/encl.)
Panel Chair/Single Arbitrator (w/o encl.)
Chair, District ___ Fee Arbitration Committee (w/encl.)

nation as required by *R.1:20A-3(b)(4)*. In matters where enforcement action becomes necessary and the Fee Committee is contacted for assistance, the following outline will help the Secretary direct the client or the attorney to their appropriate remedy. In all cases the inquiring party should be advised that the Fee Committee itself has no authority to enforce any determination.

A. ENFORCING ARBITRATION DETERMINATIONS BY THE CLIENT

In the event that an attorney has failed to pay a refund as ordered in an Arbitration Determination (and no appeal is filed) within the allotted twenty-one day period, the client should be advised by the Fee Committee Secretary to provide that information directly to the Deputy Ethics Counsel, OAE. *R.1:20A-3(e)*. The OAE will contact the attorney for an explanation and direct that payment of the refund be made within 10 days. The attorney will be advised that if the attorney does not comply with this demand, the OAE will move for his/her temporary suspension from the practice of law and/or for sanctions under *R.1:20-15 (j) and (k)*. Under truly exceptional circumstances the OAE may withhold an application for temporary suspension if the attorney's non-compliance with the Fee Committee's determination is excusable. Such circumstances might include bankruptcy or other absolute inability to pay. In the rare case that an attorney does not comply after a motion is made for temporary suspension, the client should be directed to secure other counsel for institution of the appropriate civil collection procedures. The client is entitled to the entry of a judgment in the amount of the Arbitration Determination via a summary action as described in the section that follows regarding enforcement remedies of attorneys.

B. ENFORCING ARBITRATION DETERMINATIONS BY THE ATTORNEY

1. No Lawsuit Pending.

In the event that a client fails to pay an arbitration award within the thirty day compliance period and no lawsuit for collection of the fee is pending, the attorney's enforcement remedy is a summary action in the Superior Court under *R.4:67*. The Arbitration Determination itself is not a judgment and it cannot merely be filed or docketed with the court and enforced in any manner. To commence the necessary action the attorney must file a verified complaint in the Superior Court, Law Division (Special Civil Part for cases under $5,000) alleging (1) the fee arbitration proceeding, (2) the client's consent to the

entry of a judgment by summary action, (3) the determination in the attorney's favor and (4) the client's failure to pay within thirty days. The complaint should request summary disposition pursuant to *R.4:67-1(1)* and demand judgment in the amount of the Arbitration Determination together with costs. At the time the complaint is filed, the attorney may present to the court *ex parte* an order to show cause providing for service on the client at least ten days in advance of the hearing and a return day on which judgment may be entered on the pleadings. See *R.4:67-2(a)*; *R.4:67-3*; *R.4:67-4(a)* and *R.4:67-5*. The client is precluded from interposing a defense on the merits by *R.1:20A-3(a)*, hence, the entire proceeding may be concluded in less than 30 days. Following entry of judgment the attorney may proceed with execution as in the case of any civil judgment.

While it is permissible to begin this summary action immediately upon receipt of a favorable Arbitration Determination and proceed to judgment before the thirty day period for compliance has expired, such an approach risks unnecessary work and the cost of filing and serving the complaint and order to show cause. The Supreme Court has administratively determined that a client may not be assessed court costs if he/she pays an arbitration award within the thirty day compliance period allowed by court rule. Furthermore, the filing of an appeal stays all enforcement efforts (*R.1:20A-3(e)*), which eliminates any time advantage gained by commencing the suit before expiration of the appeal period.

2. Lawsuit Pending.

If an action for the disputed fee is pending at the time an Arbitration Determination is rendered, the enforcement procedure is simplified. Upon entry of the award, the Fee Committee Secretary will file a copy of the Determination with the clerk of the appropriate court who will vacate the stay and reactivate the matter. *R.1:20A-3(b)*. If the award (or refund) is not paid within the thirty day compliance period, the attorney (or client) may (1) move for summary judgment under *R.4:46-1* or (2) move to convert the plenary action to a summary action under *R.4:67-1(b)* and *R.4:67-2(b)* and, simultaneously, for the entry of judgment. [Note: the summary judgment rule (*R.4:46*) requires 28 days notice to the defendant and the standard motion rule (*R.1:6-3*) requires 16 days notice; these periods can be shortened by order on *ex parte* application, which should be granted routinely in light of the parties prior agreement to be bound by the Arbitration Determination.]

The most convenient approach, however, is to proceed to have judgment entered by default under *R.4:43-1* and *R.4:43-2*. If the pre-arbitration action had proceeded to default, a request for the entry of judgment may be submitted to the clerk, without further notice to the client, under *R.4:43-2(a)*. The request for judgment must be supported by a certification setting forth the Arbitration Determination and the defendant's non-military service. If the action was stayed prior to default, default must first be entered under *R.4:43-1*. The client is precluded from filing an answer by the agreement for the entry of judgment contained in the Request For Fee Arbitration (**Figure 8 - Section 35**, *supra*). Accordingly, default proceedings may be commenced as soon as the stay is lifted and concluded immediately upon expiration of the thirty-day compliance period.

It is permissible to move for the entry of judgment prior to expiration of the thirty day compliance period; however, such action may entail unnecessary work and expense if payment is timely made. Costs (filing and service fees) are recoverable if the client was provided with pre-action notice (*R.1:20A-6*) and he/she fails to remit the balance due within the required thirty day period.

Where pre-arbitration litigation had proceeded to default judgment in a liquidated amount, no additional action by the attorney is necessary prior to beginning execution if the Arbitration Determination differs in amount from the judgment a corrective order must be submitted to the court which amends the default judgment to conform to the amount of the Arbitration Determination. In the event that payment is received prior to the entry of judgment, the action must be dismissed. *R.1:20A-3(e)*. If payment is received after judgment has been entered, a warrant for satisfaction must be prepared, executed and provided to the client. *R.1:20A-3(e).*

C. ENFORCING STIPULATIONS OF SETTLEMENT BY CLIENT

From the client's standpoint arbitration settlements are enforced in the same manner as Arbitration Determinations of a hearing panel. The uniform Stipulation of Settlement (**Figure 13 - Section 44**, *supra*) provides that the client shall notify the Fee Committee of an attorney's non-payment of an agreed refund on a timely basis. If so advised, the Fee Committee Secretary will notify the OAE, which will demand compliance within ten days. An application for the attorney's temporary suspension under *R.1:20-15(k)* will almost invariably follow continued failure to comply with the settlement.

D. ENFORCING STIPULATIONS OF SETTLEMENT BY ATTORNEY

An attorney faced with a client's non-payment of an arbitration settlement within the agreed time period has the option of moving to enforce the settlement or seeking to collect the entire fee.

To enforce the settlement the attorney must file suit and proceed to judgment (or complete an already pending action) as in the case of Arbitration Determinations. (See Section 55B.) The client is precluded by the uniform Stipulation of Settlement (**Figure 13 - Section 44,** ***supra***) from interposing a defense on the merits, which permits judgment to be secured in summary fashion.

If the attorney chooses to reject the settlement and pursue the entire fee, the attorney may either re-open the arbitration proceeding or commence (or complete) an ordinary civil action. In these proceedings, neither party is bound in any way by the defunct settlement and the Arbitration Determination or the civil judgment will be entered solely on the merits.

In all cases where a client has violated an arbitration settlement, that individual (1) may not withdraw from arbitration if the attorney chooses to re-open the proceeding and (2) may not re-file for arbitration if the attorney chooses to pursue an ordinary civil action to collect the amount agreed upon in the settlement or the total fee.

Section 56 Grounds For Appeal

As stated in the letter notifying the parties of the Arbitration Determination (**Figure 16 - Section 54,** *supra*), only a very limited appeal is available in fee matters. There are only four (4) grounds for appeal, namely, 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*;

(3) there was actual fraud on the part of any member of the Fee Committee. *R.1:20A-3(c)*; 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.

For further discussion of these appeal grounds see *In re LiVolsi 85 N.J. 576, 603 (1981)*.

Section 57 Procedure For Filing Appeal

An appeal may be taken by either party (client or attorney) by filing a Notice of Appeal (**Figure 17**) with the Disciplinary Review Board. A written request for appeal forms must be filed with the Board's office "within 21 days after the parties' receipt of the Fee Committee's written Arbitration Determination." *R.1:20A-3(d)*. An appeal will **not** be considered by the Board if the request is filed out of time. For docket control purposes, appeal forms are issued only by the Board. Please forward requests to appeal to that office. Do **not** issue the forms through the district office. The completed appeal forms must then be returned to the Board within 27 days of mailing (21 days plus 6 days for mailing to and from). The appeal must include (on the form itself or elsewhere) a supporting affidavit or certification "stating the factual basis therefore." *R.1:20A-3(d)*.

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Richard J. Hughes Justice Complex
25 West Market Street, CN 962
Trenton, New Jersey 08625

District Docket No. _____

Client Name _____

Address _____

_____

Attorney Name _____

Address _____

_____

NOTICE OF APPEAL
Fee Arbitration Committee
[R. 1:20A-3(c) and (d)]

Date Hearing(s) Held: _____

Date Written Fee Determination Issued: _____

I wish to appeal from the decision of the District Fee Arbitration Committee in the above case. I understand that I cannot appeal simply because I disagree with the Committee's decision. I have attached a copy of the Fee Arbitration Determination. My appeal is based on the following: [check pertinent box(es)]

NOTE: Pursuant to Supreme Court Rule 1:20A-3(c), these are the **ONLY** grounds upon which an appeal may be used. The Disciplinary Review Board has no other jurisdiction to hear an appeal on any other grounds.

[ ] 1. A member of the committee hearing the fee dispute failed to disqualify himself/herself in accordance with the standards set forth in R. 1:12-1.

[ ] 2. The committee failed substantially to comply with the procedural requirements of R. 1:20A.

[ ] 3. There was actual fraud on the part of a member of the committee.

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

[TYPE OR HANDPRINT LEGIBLY]
COMPLETE BOTH SIDES

Figure 17

The **SPECIFIC FACTS** which prove the grounds for appeal checked on the reverse side of this appeal are as follows:

(Use separate sheets if necessary and attach all documents and/or statements signed by any witness who will substantiate the facts stated above).

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Date _____ Signature of Appellant _____

I certify that an identical copy of this Notice of Appeal has been served by ordinary mail, postage prepaid on the other party to this fee dispute, and on the Secretary of the Fee Arbitration Committee.

Date _____ Signature of Appellant _____

DRB/6-95

The party filing the appeal must serve complete copies of the appeal on the other parties and on the Secretary of the Fee Committee. The Notice of Appeal form itself requires that the party appealing certify that proper service has been made, either "personally or by ordinary mail." **(Figure 17)**.

Section 58 Effect Of Notice Of Appeal - Stay

The rules provide that 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." The automatic stay remains in effect and "shall not be lifted until final conclusion of the fee arbitration proceedings." *R.1:20A-3(d)*.

Section 59 Committee Response To Appeal

Upon receipt of a properly filed appeal, the Disciplinary Review Board issues an acknowledgement letter (**Figure 18**) and requests a two-part response from the Fee Committee within 21 days. *R.1:20A-3(d)*. First, the **Secretary** is requested to provide the Board with the entire "record of proceedings before the Fee Committee and any briefs or other papers filed with the Fee Committee." *R.1:20A-3(d)* and **Figure 18**. Second, since there is usually no transcript or recording made of the proceedings and since the grounds for appeal are, by their nature, a challenge to the conduct of the hearing, the **Hearing Panel Chair** is requested to "furnish to the Board a specific reply to the facts in the notice of appeal," also within 21 days. *R.1:20A-3(d)* and **Figure 18**. A copy of the response of the Hearing Panel Chair **must be served upon all other parties** involved in the fee arbitration matter.

Section 60 Response By Other Party To Appeal

Any other party to the fee arbitration proceeding may file a response to the Notice of Appeal within 21 days after receipt thereof. Any response must be filed with the Board and served upon all other parties.

Section 61 Final Board Action

The Board shall dismiss the appeal if it determines either:

(1) that the notice of appeal fails to state an allowable ground for appeal, or

DISCIPLINARY REVIEW BOARD
of the
SUPREME COURT OF NEW JERSEY

Date_____

RE: In the Matter of _____
Docket No. DRB _____
District Docket No. _____

Dear_____:

The Board has received an appeal of the above referenced fee arbitration determination. Enclosed is a copy of the Notice of Appeal submitted by (Grievant) and a record of the proceedings before the committee.

In accordance with R. 1:20A-3(d), as the Chair of the Fee Arbitration Panel, you are required to submit a specific reply to the allegations in the Notice of Appeal within 21 days of the date of this letter. Your response to the claims of the appellant is necessary to the Board's review.

Please forward your response to this office. A copy of this response must be sent to both parties involved in the Fee Arbitration matter.

I would appreciate your prompt attention to this request.

Very truly yours,

Joseph R. Warner
Administrative Assistant

JRW:ghv
Enclosure

cc: _____, Esq., Secretary
District____Fee Arbitration Committee (w/o enclosure)
_____, Esq. (w/o enclosure)

Figure 18

(2) that the affidavit or certification fails to state a factual basis to support a properly asserted ground. *R.1:20A-3(d)*.

Otherwise, if the notice of appeal and supporting affidavit or certification comply with the rules, the Board will review the challenge to the arbitration. Review is based on the written record and occurs without appearance by any party. The Board may affirm or reverse the Fee Committee's determination. If the Determination is reversed it may either be remanded by the Board "for a new arbitration hearing," or the Board may "determine the matter itself if it deems such action appropriate." *R.1:20A-3(d)*. The Board will notify the parties of its decision in every matter.

All cases that are remanded must be treated as brand new cases by the district and a **new** docket number must be assigned just as if the case had been filed for the first time. New index cards must be prepared and the matter reflected on the open case docket as a newly added case. The new docket card will reflect the newly assigned docket number and in the blank area of the card, the word "Remand" must be typed. The new docket cards, a copy of the Fee Arbitration Request Form and a copy of the DRB's remand letter should be sent to the OAE. Naturally, remanded cases are exempt from again paying filing fees.

Section 62 Referral To Office of Attorney Ethics

All members of Fee Committees have an ethical duty, **after hearing and determining a fee,** to review the case and decide whether it involves ethical misconduct that raises a substantial question as to the attorney's honesty, trustworthiness or fitness as a lawyer in other respects (including overreaching). *R.1:20A-4.* If the panel or arbitrator concludes that any matter involves such ethical misconduct the case should be referred to the Director for investigation." *R.1:20A-4.* Such referrals should be made by letter "detailing the facts known to the Fee Committee" and should "include a complete copy of the Fee Committee's file." *R.1:20A-4.* After the conclusion of a fee arbitration a client may independently file a grievance with an ethics committee.

Section 63 Usual Expenses - Emoluments

Effective January 1, 1992, the OAE provides quarterly emoluments of $1,375 to Secretaries at the end of each quarter. Out of this stipend Secretaries are expected to provide for the following ordinary Fee Committee expenses: postage, photocopying, file folders, telephone calls, stationery and envelopes. The OAE supplies index cards, Fee Information Pamphlets, and all fee forms to the Secretary as needed.

Emoluments are paid to Secretaries based upon the annual rate of $5,500 per Secretary per district. Shortly after the 15th of the last month of a quarter, an OAE voucher (**Figure 19**) is forwarded to the Secretary for signature. This serves as an invoice which supports the quarterly payment. That payment is transmitted by check from the Disciplinary Oversight Committee and is accompanied by a Receipt For Payment (**Figure 20**), which must be signed by the Secretary and returned to the OAE.

Section 64 Fees For Service Of Committee Subpoenas

In the event that it is necessary for a Fee Committee *sua sponte* to issue and serve subpoenas **on its own behalf**, such process may be forwarded to the sheriff of the appropriate county in order to effectuate service. By statute, the sheriff is not permitted to accept any fee for making such service. In this regard, *N.J.S.A. 22A:4-9* provides as follows:

> Whenever any duly authorized ethics committee of a county or state bar association which has been recognized as such by the Supreme Court, shall require the

OAE VOUCHER (EMOLUMENT)

☐ OFFICE OF ATTORNEY ETHICS ☐ DISCIPLINARY REVIEW BOARD

VOUCHER

Transaction Date **Date**	Funds Obligated Date: Number:	Voucher Number 4875
Accounting Codes General Ledger: Classification: **DFAC Emolument**		Voucher Amount **$1,375.00**

Payee Name and Address	Payee Declaration:
Name and Address of Secretary I.D. No._____	I certify that this invoice is correct, that the goods or services shown have been furnished or rendered, and that no bonus has been given or received therefore. _____ Signature of Secretary Payee Signature Secretary _____ Date Title Date

Description of Goods or Services

Quantity		Unit Price	Amount
	_____Quarter 1995 Secretarial Emolument **(Name of Secretary, Title) District __ Fee Arbitration Committee**		**$1,375.00**
		Total	$1,375.00

Certification of Receipt of Goods or Services	Certification by Disciplinary Oversight Committee
I certify tht the goods or services described herein have been received: Signature _____ Signature Director _____ Date Title Date	I certify that this invoice is correct and payfment thereof is approved: Signature _____ Signature Treasurer _____ Date Title Date

Figure 19

RECEIPT FOR PAYMENT (EMOLUMENT)

Please complete and return to this office

RECEIPT

Receipt is hereby acknowledged of payment of $_____ for costs incurred as Secretary of the District _____ Ethics/Fee Arbitration Committee for the quarter ending _____.

Date_____ _____Signature

S.S. No. or Tax I.D. No. _____

Figure 20

> service of a process of subpoena issued pursuant to section 22A:2-4 of this Title, every sheriff or other officer serving said process shall not require the payment of any fee for making such service.

Likewise, *N.J.S.A. 22A:2-4* states:

> Whenever any duly authorized ethics committee of a county or state bar association which has been recognized as such by the Supreme Court, shall make any application pursuant to the Rules of the Supreme Court, the clerk of said court shall issue process of subpoena, or any further orders pursuant to said rules, without requiring the payment of any fee for the same.

For the above reasons, the OAE cannot generally reimburse either for mileage or service fees, paid to a private agency, except in the most compelling circumstances, and then only with advance approval.

Of course clients and attorneys who wish subpoenas issued are themselves responsible for making service.

Section 65 Court Reporters - Transcripts

Fee arbitration rules provide that "no stenographic or other similar record shall be made except in exceptional circumstances at the direction of the Board or the Director." *R.1:20A-3(b)*. In view of the very limited nature of the appeal available in fee matters, there is no need to make a record of the proceedings.

Section 66 Interpreters/Translators

In appropriate cases the OAE can assist in arrangements for the appearance of interpreters or for the translation of foreign language documents. Naturally, requests for this service should be made at least **two weeks in advance** of the required date.

Section 67 Confidentiality

Rule 1:20A-5 sets forth requirements regarding confidentiality of fee arbitration matters. Under this rule confidentiality of the proceedings remains absolute, except in the following two situations:

(1) if action is "necessary for compliance with (the fee arbitration) rules," or

(2) if it is necessary "to take ancillary legal action with respect (to a fee matter)."

Thus, where it is necessary to reduce an Arbitration Determination or Stipulation of Settlement to judgment, it is naturally not inappropriate under the first exception to disclose the fee arbitration proceeding. Likewise, it is permissible under the second stated exception to apply, in an appropriate case, for an order of attachment for assets which are in danger of disappearing and which are needed to satisfy an actual or potential fee arbitration determination.

Otherwise, all "proceedings made and conducted in accordance with the (fee arbitration) rules shall be confidential." *R.1:20A-5*. Applications for disclosure must be made to the Disciplinary Review Board or the Supreme Court.

Section 68 Interest On Fee Determination

Since *R.1:20A* does not address the issue, the general rule is that no interest is allowable in any fee arbitration award. However, there are presently three situations where an award of interest in favor of an attorney may be allowed, provided that the attorney has first proved to the hearing panel's satisfaction the factual basis therefore as set forth in two opinions of the Advisory Committee on Professional Ethics. These opinions provide for interest as follows:

(a) Where an attorney's fee agreement initially contemplates delay in payment, he/she may secure the **client's agreement** to pay interest. *Opinion 293, 97 N.J.L.J. 929* (11/28/74).

(b) Where the convenience of a client is served and there is no coercion or overreaching, an attorney may accept a client's **note with reasonable interest** for the payment of a past-due bill. *Opinion 293, 97 N.J.L.J. 929* (11/28/74).

(c) An attorney may demand interest on a delinquent account **provided he has made it clear** at the outset of the relationship that interest will be charged if the fee is not paid within thirty (30) days after receipt of a written statement by the client. *Opinion 446, 105 N.J.L.J. 105* (2/7/80).

Section 69 Pre-Action Notice To Client

While not directly involved in fee arbitration proceedings, all members should realize that *R.1:20A-6* requires every attorney to notify a client of the availability of the district fee arbitration committee as a condition precedent to the filing by the attorney of a civil suit for fees. Since attorneys are also required under *N.J.S.A. 2A:13-6* to provide the client with a copy of the final bill as a condition precedent to filing a suit for fees, there would seem to be little problem in complying with both provisions at the same time for convenience.

Specifically, Pre-Action Notice must be given in writing and must "be sent by certified **and** regular mail to the last known address of the client." Alternatively, the notice may be hand delivered to the client. In order to comply with the rule all Pre-Action Notices must:

a. 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 most current New Jersey Lawyer's Diary and Manual information is sufficient.]

b. advise the client:

(1) of the right to request fee arbitration;

(2) that the client should immediately call the secretary to request appropriate forms

(3) that the request must be filed with the Fee Secretary within 30 days after receipt of the Pre-Action Notice, and

(4) that if the client fails to timely make such request "the client shall lose the right to initiate fee arbitration." *R.1:20A-6*.

R.1:20A-6 makes clear that an attorney's failure to give Pre-Action Notice is jurisdictional in any civil suit filed and must be alleged in the complaint. If it is not, the rule specifically declares that the lawsuit "shall be dismissed."

The pre-action notice rule applies to an action seeking to impose an attorney's lien pursuant to *NJSA 2A:13-5*. *Rosenfeld v. Rosenfeld 239 NJ Super. 77, (Ch. Div. 1989)*; and *Mateo v. Mateo 281 NJ Super. 73, (App. Div. 1995)*.

Section 70 Immunity

All members and Secretaries of Fee Committees, the OAE and DRB are "absolutely immune from suit, whether legal or equitable in nature, for any conduct in the performance of their official duties." *R.1:20-7(e)* and *R.1:20A-5*. Any legal process received by a Fee Committee member should be forwarded to the OAE for Attorney General's representation.

Likewise, the same immunity has been extended to clients and witnesses "for all communications to... and for testimony given in fee arbitration... proceedings." That immunity is **CONDITIONED** expressly however, upon the maintenance by those parties of the confidentiality of the fee arbitration proceedings and is lost upon "any publication or distribution of information by a client... or witness that violates (the confidentiality rule)."

Section 71 Destruction of Fee Files

The Fee Secretary forwards to the OAE all original Arbitration Awards, together with copies of Fee Request Forms and Stipulations of Settlement. The primary reason to maintain files at the district level, therefore, lies in the need to provide the record on appeal, either to the Disciplinary Review Board, or to the Hearing Panel Chair in order to respond to an appeal. Consequently, the Fee Secretary is authorized to destroy the file at any time after six (6) months from the final disposition of the matter by the Fee Committee.

Section 72 Americans With Disabilities Act (ADA)

The ADA is a federal law that is intended to protect qualified individuals with disabilities from discrimination on the basis of disability in the services,

programs, or activities of all state and local governments. The Act requires Fee Committees to insure that communications with individuals with disabilities are as effective as communications with others. For example, individuals who are deaf or hard-of-hearing may require qualified interpreters or computer-aided transcription services as well as other assistance. Individuals with vision impairments may require qualified readers or other assistance.

All requests for assistance under the ADA must be **immediately** referred to OAE Deputy Ethics Counsel. Please include all background material and a brief written summary of the underlying matter. No hearing should be scheduled in any matter where assistance under the ADA has been requested until you have received a written decision concerning said request from the Office of Attorney Ethics.

RPC 1.5 Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by law or by these rules. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) Except as otherwise provided by the Court Rules, a division of fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer, or, by written agreement with the client, each lawyer assumes joint responsibility for the representation; and

(2) the client consents to the participation of all the lawyers involved; and

(3) the total fee is reasonable.

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. 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.

Comment

Provisions governing the creation of districts, appointments, officers, organization and offices were added to this Fee Arbitration rule to parallel the revised disciplinary rules.

The last paragraph of R. 1:20A-1 has been captioned subparagraph (e) and has been modified to permit the filing of a fee arbitration case in any district where the attorney actually has a law office, rather than limiting it to only the district where the principal office is maintained. This change is required by the mobility of practitioners and the multiplicity of offices that may be maintained in several counties. Additionally, it is impractical for the client or for the Secretary of the Fee Committee to be able to easily determine from the New Jersey Lawyer's Diary or other readily available source which of several offices is in fact the one principal office.

1:20A-2. Jurisdiction

(a) Generally. Each Fee Committee shall, pursuant to these rules, have jurisdiction to arbitrate fee disputes between clients and attorneys. 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) involving a matter in which no attorney's services have

been rendered for at least two years;

(2) in which persons who are not parties to the arbitration have an interest that would be substantially affected by the arbitration;

(3) in which the primary issues in dispute raise substantial legal questions in addition to the basic fee dispute;

(4) in which the total fee charged exceeds $100,000, excluding out-of-pocket costs and disbursements.

(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 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.

(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.

Comment

R. 1:20A-2 has been rewritten for clarity. Paragraph (a) states the general jurisdictional powers of fee committees. In addition, the rule now makes clear that the decision of the fee arbitration committee is final and binding on the parties, and that, pursuant to R. 1:20A-3(c), the Board, alone, has appellate jurisdiction in these matters.

Paragraph (a) states initially the general rule that only fee disputes between clients and attorneys are subject to arbitration, with the exception of third-party legal matters where one other than the lawyer's client is legally responsible to pay the legal

fee.

For example, in the matter of *Paul Linker et. al. v. The Car Corp.*, Sup. Court Law Div. Essex Co. Docket No. L-8394-94, decided Aug. 15, 1994, the attorney filed a summary action pursuant R. 4:67 to reduce a fee determination to judgment. The client, who elected not to appeal the fee arbitration determination to the Disciplinary Review Board, raised its procedural defenses for the first time in the Superior Court enforcement action. The trial court permitted said collateral attack and remanded the matter back to the fee arbitration panel to conduct a new hearing. Such collateral challenges to fee determinations would be prohibited by the rule change.

Paragraph (b) sets forth sequentially the discretionary reasons for declining jurisdiction. Subparagraphs (1) through (3) are taken from the existing rule. Subparagraph (4) is new. It is intended to reduce the Fee Committee's jurisdiction in complex and protracted cases, especially those over $100,000. Generally such matters present a significant imposition upon a system which is designed for speed and volume. Matters over $100,000 are ill-suited for fee arbitration by unpaid volunteers. Experience indicates that these cases may properly take days and weeks of testimony, whereas the typical fee arbitration case takes about an hour. Moreover, almost invariably cases where the total fee charged exceeds $100,000 involve parties who are both represented by counsel and thus are well able to use the traditional court system, a system with full-time personnel who are far better able to devote the time necessary to adjudicate these matters. The Fee Committee may, however, take jurisdiction in any of these cases if its caseload and personnel permit.

Subparagraph (c)(1) restates the existing rule regarding mandatory declination of jurisdiction where a court or agency has passed on the matter. Subparagraph (c)(2) is new and is offered by the Office of Attorney Ethics. This rule modification addresses the recurring question as to what extent, if any, Fee Committees should consider the issue of legal malpractice. The rule revision clarifies the prior advice given to all Fee Committees by the Director, Office of Attorney Ethics that they were prohibited from making affirmative damage awards for legal malpractice. However, Fee Committees have always been advised that they are required to make appropriate adjustments where poor quality work impacts upon the reasonableness of the fee. The client's right to pursue an independent malpractice action is preserved.

The former rule's silence on these issues resulted in uncertainty by the parties as to whether legal malpractice claims are considered at all by Fee Committees and, if so, whether independent litigation was or would be barred by *res judicata* and/or the single controversy doctrine. This issue is the subject of a motion for leave to appeal pending before the New Jersey Supreme Court in the matter of *Tarulli v. Rose* (Appellate Division Docket No. AM 1058). In that case, the trial court relaxed R. 1:20A-3(b)(1) in order to permit the plaintiff to withdraw from fee

arbitration almost 2 years after the expiration of the 30 day withdrawal period in order to pursue a subsequent legal malpractice claim against the attorney. The plaintiff had contended that fee arbitration proceedings did not provide him with a meaningful forum in which to adjudicate his legal malpractice claims and that the fee arbitration determination would thereafter bar him from filing a legal malpractice lawsuit under the single controversy doctrine citing, *inter alia Cogdell v. Hospital Center At Orange*, 116 *N.J.* 7 (1989).

The rule change provides a mechanism for the expeditious resolution of the fee issue while preserving the client's independent right to litigate malpractice claims in an appropriate forum. Submissions and evidence presented in Fee Arbitration proceedings are prohibited from being utilized in independent legal malpractice actions in the same fashion as such information is barred from use in Automobile Arbitration proceedings by N.J.S.A. 39:6A-33.

Subparagraph (d) sets forth a specific procedure and authority for deciding jurisdictional issues. The former rule was silent on the subject.

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. The request or consent shall include a stipulation by the client that if an action for payment of the fee is then pending, it shall be stayed pending a determination by the fee committee, and the amount of the fee as so determined may be entered as a judgment in the action. The stipulation shall further provide that if no such action is then pending, the attorney or the client may, by summary action brought pursuant to Rule 4:67, obtain judgment in the amount of the fee as determined by the fee committee in accordance with N.J.S.A. 2A:24-1 to 11. If the client refuses so to stipulate, the fee committee shall take no further action except proceedings pursuant to Rule 1:20A-4. 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.

(2) Administrative Filing Fee. All requests for arbitration and all attorney responses must be accompanied by a non-refundable administrative filing fee to be determined as follows: no fee when the total amount of the fee charged is $1,000 or less (excluding

costs and disbursements); $25.00 when the total amount of the fee charged (excluding costs and disbursements) is greater than $1,000 but less than $3,000; and $50.00 when the total amount of the fee charged (excluding costs and disbursements) is $3,000 or more. 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 appropriate 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 appropriate 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 mater 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) and guidelines of the Director. All service 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 a party from further participation. 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 with whom the original attorney was associated in the practice of law at the time the legal services were rendered to the client 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 appropriate filing fee (if any) 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. 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;

(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 21 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 and the secretary of the Fee Committee 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 21 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. Within the same time, the secretary of the Fee Committee shall file with the Board the record of proceedings before the Fee Committee and any briefs or other papers filed with the Fee Committee. Within 21 days after filing and service of notice of appeal 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 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 this 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 R. 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 or the Court.

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 accordance with N.J.S.A. 2A:24-1 to 11.

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.

Comment

Paragraph (a) has been modified so that language purportedly permitting an attorney to initiate a fee dispute has been deleted as confusing, since the rule clearly states that a matter can be arbitrated only at the "client's written request". Paragraph (a)(2) has been changed to reflect the substitution of the Disciplinary Oversight Committee for the Ethics Financial Committee.

The Office of Attorney Ethics recommends that paragraph (b)(1) be modified to make it clear that the election by the client to withdraw from fee arbitration is final. This eliminates a previous ambiguity in the rule. The time period permitted for withdrawal has been clarified by giving the client 30 days from "docketing" rather than "filing". This change accords with the realities of the volunteer nature of a Secretary's job. Paragraph (b)(2) is amended to set forth the manner in which service is to be made in accordance with revised Rule 1:20-7(h). Certified mail or personal service is only required where the letter will result in a party being barred from further participation in the proceeding. Paragraph (b)(2) has been modified at the recommendation of the Office of Attorney Ethics to incorporate a procedure which permits the Secretary to bar the further participation in the arbitration of an attorney who refuses to file a response after receiving a follow up notice to do so within 20 days. This procedure is

already available under Rule 1:20A-2(i) when an attorney files a response without paying the appropriate filing fee. The change eliminates the anomalous situation which now occurs under the rule where an attorney who has filed a timely response but has not paid a filing fee, can be barred from further participation, while an attorney involved in a non-filing fee matter (total fee under $1000) cannot be barred from further participation even though the attorney files no response at all. Fee committees are presented with situations where an attorney will appear at a hearing without having filed an Attorney Fee Response or where the response has been hand delivered the previous day. This is not fair to the fee committee or the client and undermines the integrity of the system. While the present rule permits the fee committee to refuse to consider evidence which should have been timely submitted, this option is rarely followed. Instead, the hearings are usually adjourned to permit the fee committee and the client to review the submission, or the hearing is conducted and the late submission along with related testimony is considered by the hearing panel. Clients view each of these approaches as unfairly favoring the attorney, since the client has been required to strictly comply with the rules in order to initiate the process.

The rule change would provide a mechanism for the fee secretary who has not received a timely response to notify the attorney that a response (and, if appropriate, a filing fee) is due and if it is not filed within an additional 20 days, the attorney will be barred from further participation in the proceedings. This section has also been revised to clarify the fact that, as stated in subsection (b)(4), the client has 30 days from receipt of the arbitration determination within which to comply and pay any balance due. If the client does so, no judgment should be entered.

Paragraph (b)(4) has been amended in several respects. First, language has been added to clarify the fact that no stenographic or other record is generally to be made in fee proceedings except in "exceptional circumstances". This clarifies the prior long-standing rule. Second, language has been added to avoid any automatic transmittal of an arbitration determination from the fee secretary to a court in a case where there is a pending civil proceeding by the lawyer for the fee. Such transmittal should be limited to situations where the lawyer has not been paid by the client or where the client has not paid a refund within 30 days after receipt of the arbitration determination. Otherwise there is no need for the transmittal, which event could, in fact, prove confusing to the court and to litigants.

Paragraph (c) has been modified to add a fourth ground for appeal. Where the fee committee makes a palpable mistake of law that leads to an unjust result, the Disciplinary Review Board should have authority in the interest of justice to correct this error of law. For example, were a fee committee to determine that, although three attorneys were partners in the practice of law, they are not individually liable to refund a fee to a client because the partnership no longer exists, this would constitute a palpable mistake of law since legally all partners are liable individually

for partnership debts. This gross legal error should be correctable by the Board on appeal. The standard adopted by the Commission is "palpable mistake of law" as defined in *Perini v. Greate Bay Hotel & Casino, Inc.*, 129 *N.J.* 479 (1992). (Mistake which on its face was gross, unmistakable, undebatable or in manifest disregard of the applicable law, which mistake has led to an unjust result.)

Paragraph (d) has been amended to delete as inappropriate the question on appeal as to whether or not the appeal was recorded, since paragraph (b)(4) states the general rule that "no stenographic or other record shall be made" as a matter of course. In fact the Board and the Director together have only authorized recording on one or two occasions since the inception of this rule.

The DRB recommends that the 30 day period provided to appeal and to file responses be amended to 21 days to be consistent with the time frames provided for ethics appeals.

Paragraph (e) has been amended to add, in one location, related enforcement provisions that were previously scattered in R. 1:20-3(a) and (b)(4). The final paragraph is new and states that when a lawyer has been paid and has collected the balance due from a client under an arbitration determination or stipulation of settlement, the lawyer must, on the client's request, promptly prepare, execute and deliver to the client a warrant for satisfaction of any judgment obtained. Past experience indicates that some emotional situations have arisen where a few attorneys, who have been paid, fail or refuse to discharge a judgment that adversely affects the client's credit rating. The amendment makes clear that the cost of filing the warrant is solely the client's.

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.

Comment

Provisions requiring fee committees to hold matters in abeyance on referral of a case to an ethics committee have been deleted as unnecessary. Rather, these cases should be administratively dismissed. Minor language changes have also been made to accord with the changes made in the structure of the attorney disciplinary system. Finally, at the suggestion of the Office of Attorney Ethics, the standard for referral of a matter by the fee committee to an ethics committee has been set forth. For clarity and uniformity the same standard required of all lawyers for reporting misconduct under Rule of Professional Conduct 8.3(a) has been used. The rule already recognizes a client's right to file an ethics grievance at the end of a fee arbitration proceeding.

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.

Comment

For clarity, the revised immunity provisions of Rule 1:20-7(e) applicable to disciplinary authorities are specifically made available to fee arbitration authorities.

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.

Comment

Experience since adoption in 1990 of the 21 day time period for a client to invoke fee arbitration has demonstrated that it may be too short. Fee Secretaries themselves have been the primary proponents of a longer time period, especially in view of the fact that a client who misses filing within time is forever barred from the fee arbitration process. An increase from 21 to 30 days is recommended. Likewise, in order to avoid confusion language has been added to specify that the client should first call the Fee Secretary to secure the appropriate forms and then complete and file them. Some clients file handwritten requests near the end of the 21 day period without realizing they need to secure and complete the appropriate forms.

Minor language changes have been made so that the rule is consistent with the proposed modification to R. 1:20A-1(e), which permits the hearing to be conducted in any district in which the attorney whose fee is questioned maintains an office, rather than limiting venue only to the district where the attorney's principal office is maintained.

1:21-7. Contingent Fees

(a) As used in this rule the term "contingent fee arrangement" means an agreement for legal services of an attorney or attorneys, including any associated or forwarding counsel, under which compensation, contingent in whole or in part upon the successful accomplishment or disposition of the subject matter of the agreement, is to be in an amount which either is fixed or is to be determined under a formula.

(b) An attorney shall not enter into a contingent fee arrangement without first having advised the client of the right and afforded the client an opportunity to retain the attorney under an arrangement for compensation on the basis of the reasonable value of the services.

(c) In any matter where a client's claim for damages is based upon the alleged tortious conduct of another, including products liability claims, and the client is not a subrogee, an attorney shall not contract for, charge, or collect a contingent fee in excess of the following limits:

(1) 33 1/3% on the first $250,000 recovered;

(2) 25% on the next $250,000 recovered;

(3) 20% on the next $500,000 recovered; and

(4) on all amounts recovered in excess of the above by application for reasonable fee in accordance with the provisions of paragraph (f) hereof; and

(5) where the amount recovered is for the benefit of a client who was a minor or incompetent when the contingent fee arrangement was made, the foregoing limits shall apply, except that the fee on any amount recovered by settlement without trial shall not exceed 25%.

(d) The permissible fee provided for in paragraph (c) shall be computed on the net sum recovered after deducting disbursements in connection with the institution and prosecution of the claim, whether advanced by the attorney or by the client, including investigation expenses, expenses for expert or other testimony or evidence, the cost of briefs and transcripts on appeal, and any interest included in a judgment pursuant to R. 4:42-11(b); but no deduction need be made for post-judgment interest or for liens, assignments or claims in favor of hospitals or for medical care and treatment by doctors and nurses, or similar items. The permissible fee shall include legal services rendered on any appeal or review proceeding or on any retrial, but this shall not be deemed to require an attorney to take an appeal. Where representation is undertaken on behalf of both a husband and wife or parent (or guardian) and child in a derivative action, or where a claim for wrongful death is joined with a claim on behalf of a decedent, the contingent fee shall be calculated on the aggregate sum of the recovery.

(e) Paragraph (c) of this rule is intended to fix maximum permissible fees and does not preclude an attorney from entering into a contingent fee arrangement providing for, or from charging or collecting a contingent fee below such limits. In all cases contingent fees charged or collected must conform to RPC 1.5(a).

(f) If at the conclusion of a matter an attorney considers the fee permitted by paragraph (c) to be inadequate, an application on written notice to the client may be made to the Assignment Judge for the hearing and determining of a reasonable fee in light of all the circumstances. A copy of any such application and of all papers filed in support of or in opposition thereto, together with a copy of the court order fixing the fee shall be filed with the Administrative Office of the Courts. This rule shall not preclude the exercise of a client's existing right to a court review of the reasonableness of an attorney's fee.

(g) Where the amount of the contingent fee is limited by the provisions of paragraph (c) of this rule, the contingent fee arrangement shall be in writing, signed both by the attorney and the client, and a signed duplicate shall be given to the client. Upon conclusion of the matter resulting in a recovery, the attorney shall prepare and furnish the client with a signed closing statement. Such contingent fee arrangement and closing statement, if any, shall be in the form prescribed by the Administrative Director of the Courts.

(h) Calculation of Fee in Structured Settlements. As used herein the term "structured settlement" refers to the payment of any settlement between the parties or judgment entered pursuant to a proceeding approved by the Court, the terms of which provide for the payment of the funds to be received by the plaintiff on an installment basis. For purposes of paragraph (c), the basis for calculation of a contingent fee shall be the value of the structured settlement as herein defined. Value shall consist of any cash payment made upon consummation of the settlement plus the actual cost to the party making the settlement of the deferred payment aspects thereof. In the event that the party paying the settlement does not purchase the deferred payment component, the actual cost thereof shall be the actual cost assigned by that party to that component. For further purposes of this rule the party making the settlement shall disclose to the party receiving the settlement its actual cost and, if it does not purchase the deferred payment aspect of the settlement, the factors and assumptions used by it in assigning actual cost.

(i) Calculation of Fee in Settlement of Class or Multiple Party Actions. When representation is undertaken on behalf of several persons whose respective claims, whether or not joined in one action, arise out of the same transaction or set of facts or involve substantially identical liability issues, the contingent fee shall be calculated on the basis of the aggregate sum of all recoveries, whether by judgment, settlement or both, and shall be charged to the clients in proportion to the recovery of each. Counsel may, however, make application for modification of the fee pursuant to paragraph (f) of this rule in appropriate cases.

Note: Source – R. 1:21-6(f), as adopted July 7, 1971 to be effective September 13, 1971 and deleted December 21, 1971 to be effective January 31, 1972. Adopted December 21, 1971 to be effective January 31, 1972. Amended June 29, 1973 to be effective September 10, 1973. Paragraphs (c) and (e) amended October 13, 1976, effective as to contingent fee arrangements entered into on November 1, 1976 and thereafter. Closing statements on all contingent fee arrangements filed as previously required between January 31, 1972 and January 31, 1973 shall be filed with the Administrative Office of the Courts whenever the case is closed; paragraph (c) amended July 29, 1977 to be effective September 6, 1977; paragraph (d) amended July 24, 1978 to be effective September 11, 1978; paragraph (c) amended and new paragraphs (h) and (i) adopted January 16, 1984 to be effective immediately; paragraph (d) amended July 26, 1984 to be effective September 10, 1984; paragraph (e) amended June 29, 1990 to be effective September 4, 1990; paragraphs (b) and (c)(5) amended July 13, 1994 to be effective September 1, 1994.

COMMENT

1. History. On August 19, 1971, a group of proposed rule amendments dealing primarily with calendar control techniques, but including also proposals for the limitation of contingent fees, was published in the New Jersey Law Journal. Because of the extent and nature of the Bar's reaction to these proposals, a hearing was held by the Supreme Court on November 6, 1971, on the proposals relating to contingent fees, extension of the court day and curtailment of recesses. The Court's modified program was consequently adopted on December 21, 1971, effective January 31, 1972. The program consists primarily of the following rule adoptions and amendments.

1. Contingent fees are limited, regulated and controlled. (R. 1:21-7, amended effective November 1, 1976).

2. The provision for commencement of the annual term of court on the Monday following Labor Day is deleted. The term shall commence annually on the date to be fixed by the Chief Justice. (R. 1:30-2(a)).

3. The provision requiring clerks' offices to be open from 9:00 a.m. to 4:30 p.m. is deleted. The days and hours of their operation shall be fixed by the Chief Justice (the opening fixed as of January 31, 1972, at 8:30 a.m.). (R. 1:30-4).

4. Motions to the Supreme Court for summary disposition of an appeal taken as of right from a judgment of the Appellate Division are authorized. (R. 2:8-3).

5. Proceedings in the Supreme Court after certification is granted are expedited by requiring the parties to rely on the briefs filed below unless leave to file new briefs is granted. (R. 2:12-11).

6. Interest on judgments is fixed at six percent from the date of entry, and in tort actions, at six percent from the date of institution of the action or 6 months after the date of the tort, whichever is later. (R. 4:42-11).

The constitutionality of the contingent-fee rule was promptly challenged and sustained. See Amer. Trial Lawyers Assoc. v. N.J. Supreme Ct., 126 N.J. Super. 577 (App. Div. 1974), aff'd 66 N.J. 258 (1974). It should be noted that the policy of this rule is regarded as a matter of sufficiently strong interest to compel the choice of New Jersey law in this regard and hence the application of the rule to a retainer agreement made in New Jersey by a New Jersey lawyer with New Jersey clients for prosecution of their case in another State. See Bernick v. Frost, 210 N.J. Super. 397 (App. Div. 1986).

2. Paragraph (a). With respect to the format and operation of this rule, paragraph (a) defines "contingent fee arrangement" as one where compensation is contingent in whole or in part upon the successful outcome of the matter, whether the compensation upon the contingency is either fixed in advance or determinable by an agreed formula. It has been held applicable to out-of-state firms prosecuting the action in New Jersey by way of local counsel. Anderson v. Conley, 206 N.J. Super. 132 (Law Div. 1985). Note, however, that the validity of the contingent fee arrangement is limited to the attorneys directly representing clients. Accordingly, it has been held that a contingent fee arrangement between plaintiff's attorney and a medical-legal consulting service based on a percentage of plaintiff's ultimate recovery is void as against public policy. See Polo by Shipley v. Gotchel, 225 N.J. Super. 429 (Law Div. 1987).

3. Paragraph (b). Paragraph (b) of the rule requires the attorney to afford the client an opportunity to elect a retainer on a "reasonable value of services" basis as a condition precedent to entering into a contingent fee arrangement. This paragraph was amended effective September 1994 to render the text gender neutral.

4. Paragraph (c). Paragraph (c) of the rule promulgates a maximum fee schedule both for adults and minors and incompetents in tort (including product liability) matters where the client is not a subrogee. Note that the rule has been held inapplicable to judgments and settlements obtained in wrongful death actions on which there is a worker's compensation lien and the class of entitled beneficiaries includes one or more adults as well as minors. McMullen v. Maryland Cas. Co., 127 N.J. Super. 231 (App. Div. 1974), aff'd 67 N.J. 416 (1975), reversing 123 N.J. Super. 248 (Law Div. 1973). It has also been held inapplicable to an accountant malpractice action. See H. Rosenblum, Inc. v. Adler, 221 N.J. Super. 507 (App. Div. 1987). See further as to the scope of this rule, Comment on paragraph (i), infra.

The schedule itself was most recently amended in January, 1984 to provide for 1/3 contingent fee on the first $250,000, 1/4 on the next $250,000 and 1/5 on the next $500,000. Where the recovery exceeds one million, application on the excess must be made pursuant to paragraph (f). The fee on minors' settlements is limited to 25%. As to calculations in structured settlements and class litigation, see paragraphs (h) and (i) of this rule. Note further that the rule has been held not to be retroactive. Kingman v. Finnerty, 198 N.J. Super. 14 (App. Div. 1985); Anderson v. Conley, 206 N.J. Super. 132 (Law Div. 1985). This paragraph was amended effective September 1994 to substitute the word "minor" for "infant."

Absent a showing that the agreed contingent fee provided in the retainer agreement in the case of an minor or incompetent is unreasonable or unconscionable, the attorney is entitled to have the agreement honored by the court. See Modery v. Liberty Mut. Ins. Co., 228 N.J. Super. 306, 309-310 (App. Div. 1988).

5. Paragraph (d). Paragraph (d) requires that the calculation of the fee be made on the net recovery—namely, the gross award or settlement less all trial costs, irrespective of whether advanced by the attorney or client, including filing fees, investigation expenses, expert expenses, briefs and transcripts and presumably also discovery expenses such as depositions. The rule exempts as disbursements expenses incurred by the client for medical care. Finally, the rule provides that the maximum permissible fee includes any appeal, review or retrial of the case. It should also be pointed out that the calculation is required to be made without regard to the pre-judgment interest added to the judgment in tort actions by virtue of R. 4:42-11(a) and (b).

This paragraph of the rule was amended, effective September 11, 1978, to make clear that where an attorney represents separate nominal parties in derivative actions, such as spouses where one's claim is per quod, parent and child where the parent's claim is per quod, and death actions in which both survivorship claims and dependent's claims are made, the contingent fee is to be calculated on the basis of the aggregate recovery and not separately on the basis of the recovery on each individual claim. It was again amended, effective September, 1984, to make clear that post-judgment interest is to be included in the calculation of the net recovery on which the contingent percentage is based. Since a contingent fee is ordinarily not received until payment is made by defendant, a payment delay will cause the same economic harm to the attorney as to the client. Moreover, receipt by the attorney of the post-judgment interest on the "fee" portion of the recovery in no way prejudices the legitimate expectation of the client.

As to deductible disbursements see Delle Fave v. Sanitation Equip. Corp., 197 N.J. Super. 555 (Law Div. 1984) (cost of legal research and legal materials not deductible). And see Estate of Vafiades v. Sheppard Bus Service, 192 N.J. Super. 301 (Law Div. 1983), holding that xeroxing, telephone calls and attorney transportation expenses are non-deductible attorney overhead.

As to the basis of calculation in a structured settlement and class litigation, see paragraphs (h) and (i) respectively.

6. Paragraph (e). Paragraph (e) of the rule underscores the Court's intention that the fee schedule be regarded as a maximum and that attorneys may charge less. Presumably, the provision takes into account the customary practice preexisting the rule whereby attorneys voluntarily adjusted their fees below the contingent retainer formula in appropriate circumstances. The rule was, however, amended effective November 1, 1976, to expressly require that all contingent fee arrangements, whether at maximum or not, conform with the requirements and principles of DR 2-106(A). The reference to the DR was corrected by amendment effective September, 1990, citing instead its successor, R.P.C. 1.5(a). Note further that this paragraph has been construed as providing for the retrospective operation of the rule. See McMullen v. Conforti & Eisele, 67 N.J. 416 (1975).

7. Paragraph (f). Paragraph (f) of the rule permits an attorney who considers the maximum fee permitted by the rule to be inadequate in an exceptional case to apply, on written notice to his client, to the Assignment Judge for a hearing on and

determination of a reasonable fee in the circumstances. This provision is applicable to contingent fees in actions involving infant and incompetent plaintiffs as well as actions involving competent adults. Murphy v. Mooresville Mills, 132 N.J. Super. 197 (App. Div. 1975), certif. den. 68 N.J. 156 (1975). The claim of inadequacy must, of course, be thoroughly substantial and documented and cannot rest merely on the claim of a successful result in a generally difficult type of litigation without showing of the particular difficulty of the specific litigation in question. Bolle v. Community Memorial Hospital, et al., 145 N.J. Super. 593 (App. Div. 1976), certif. den. 74 N.J. 275 (1977). See also McNelis v. Cohen, 188 N.J. Super. 87 (Law Div. 1982). And see Buckelew v. Grossbard, 189 N.J. Super. 584 (Law Div. 1983), aff'd. 192 N.J. Super. 188 (App. Div. 1983), also addressing the question of allocation of the allowed fee among successive plaintiff's lawyers. See also Daly v. Great Atlantic & Pacific Tea Co., Inc., 191 N.J. Super. 622 (Law Div. 1983); Iskander v. Columbia Cement Co., 192 N.J. Super. 114 (Law Div. 1983), aff'd. 197 N.J. Super. 169 (App. Div. 1984); Luchejko v. Membreno, 193 N.J. Super. 733 (Law Div. 1983); Harris v. Boland, 193 N.J. Super. 737 (Law Div. 1983); Anderson v. Conley, 206 N.J. Super. 132 (Law Div. 1985); Wurtzel v. Werres, 201 N.J. Super. 544 (App. Div. 1985), certif. den. 102 N.J. 353 (1985). As to the application of this provision to a structured settlement, see Merendino v. FMC Corp., Pacillo v. Harris Mfg. Co., and Tobias v. Autore; Landgraf v. Glasser, supra. See also Bambi v. O., 196 N.J. Super. 349 (Law Div. 1984); A. v. D., 196 N.J. Super. 340 (Law Div. 1984); Magriplis v. Mr. Bar-B-Q, 196 N.J. Super. 238 (Law Div. 1984); Dillon v. Allstate Ins. Co., 196 N.J. Super. 195 (Law Div. 1984); Burd v. Hackensack Hospital Ass'n., 195 N.J. Super. 35 (Law Div. 1984); Bartoli v. Baiunco, 197 N.J. Super. 109 (Law Div. 1984); Keller v. Dougherty, 197 N.J. Super. 406 (Law Div. 1984); Delle Fave v. Sanitation Equip. Corp., 197 N.J. Super. 555 (Law Div. 1984); McCombs v. New Jersey State Police, 242 N.J. Super. 261 (Law Div. 1990).

8. Paragraph (g). Paragraph (g), requiring the contingent fee arrangement to be in writing and signed both by the attorney and client and requiring a formal closing statement upon the conclusion of the matter is essentially the same as deleted paragraph (f) on R. 1:21-6(f) (adopted September, 1971). This rule adds the requirement that both the fee agreement and closing statement be in the form prescribed by the Administrative Director of the Courts. The rule, as originally adopted, further required that for study purposes, a copy of all such documents be filed with the Administrative Office of the Courts. That requirement has been eliminated by amendment, effective September 10, 1973, subject to the proviso that closing statements continue to be filed in cases where the fee agreement was filed prior to the effective date of the rule.

9. Paragraph (h). Paragraph (h), which is self-explanatory, was added by amendment effective January, 1984, in order to solve the problem of defining, in the case of a so-called structured settlement, the basis on which the contingent fee is to be calculated. The rule defines structured settlement as one in which payment of part of the settlement is deferred on an installment basis of some kind and fixes value as the total of the initial cash payment and the actual cost of the deferred payment package. Actual cost is defined as purchase price or assigned value.

See, applying the contingent fee rule prior to the adoption of paragraph (h), Merendino v. FMC Corp., 181 N.J. Super. 503 (Law Div. 1981); Pacillo v. Harris Mfg. Co., 182 N.J. Super. 322 (Law Div. 1981); Tobias v. Autore, 182 N.J. Super. 328 (Law Div. 1982); Landgraf v. Glasser, 186 N.J. Super. 381 (Law Div. 1982).

And see, applying the rule, Delle Fave v. Sanitation Equip. Corp., 197 N.J. Super. 555 (Law Div. 1984).

10. Paragraph (i). Paragraph (i), which is self-explanatory, was added by amendment effective January, 1984.

11. Administrative Clarifications. In Notice to the Bar, 95 N.J.L.J. Index Page 341 (1972), the Administrative Director of the Courts made the following clarifications of the contingent fee rule:

1. The rule applies to tort litigation in the federal courts in New Jersey.

2. The fee limits apply to contingent fee arrangements entered into prior to the effective date of the rule if not completely performed as of that date.

3. The rule does not apply to "business torts" such as fraud or conspiracy to interfere with contractual relationships but includes all typical negligence cases, such as auto accidents, product liability and "slip and fall".

As to the applicability of the contingent fee schedule to that portion of a third-party recovery to which the Division of Worker's Compensation has subrogation rights, see McMullen v. Maryland Casualty Co., 123 N.J. Super. 248 (Law Div. 1973). And see Pagan v. Hillside Metal Products, Inc., 140 N.J. Super. 154 (App. Div. 1976), holding that the one-third maximum prescribed by N.J.S. 34:15-40(b), notwithstanding, it is the actual contingent fee paid on the third-party recovery which controls, provided that fee is not in excess of one-third of the recovery.

12. Lawyer Sharing of Contingent Fees. In LaMantia v. Durst, 234 N.J. Super. 534 (App. Div.), certif. den. 118 N.J. 181 (1989), the court addressed the problem of contingent fee sharing where several firms have been successively involved in a representation and particularly where the attorney handling the matter has changed firms during the representation. The court concluded that sharing is to be done on a quantum meruit allocation basis which takes into account such factors as the length of time each firm spent on the case, the quality, nature and extent of the services rendered by each, pre-existing partnership agreements, the so-called rainmaking factor, and the viability of the claim at its various stages.

13. Other Matters. In Matter of Advisory Com. on Pro. Ethics, 125 N.J. 181 (1991), the Supreme Court proscribed the use of a client form extending to the attorney the authority to endorse the client's name to a settlement draft.

1:21-7A. Retainer Agreements in Family Actions

All agreements for legal services by an attorney or attorneys in connection with family actions shall be in writing signed by the attorney and client. A signed duplicate copy of the agreement shall be delivered to the client. This rule shall not apply in those cases where no fee is charged for services rendered.

Note: Adopted May 24, 1982, to be effective September 13, 1982; caption and text amended November 1, 1985 to be effective January 2, 1986; caption and text amended November 5, 1986 to be effective January 1, 1987.

COMMENT

This rule was adopted effective September 13, 1982, in response to increasing lawyer-client problems concerning fees in matrimonial litigation. The Supreme Court Commentary accompanying the rule (see 109 N.J.L.J. Index Page 514 (1982)) explains that:

> "Disputes between lawyers and clients concerning matrimonial fees are less likely to occur if the fee agreement is in writing. The agreement need not follow a specific form. It may be styled as a formal agreement or, when appropriate, as a letter signed by the attorney and client. The effectiveness of the written agreement in minimizing disputes depends on the number and nature of the matters specifically agreed upon. Therefore, while this rule does not mandate the inclusion of any particular matter, and while the circumstances on occasion may render specific agreement on some matters impractical, the following are often appropriate matters for inclusion and should be considered by counsel in drafting the fee agreement:
>
> 1. Detailed listing of legal services anticipated to be rendered subject to the agreement (*e.g.*, research, investigation, drafting, appearances, correspondence, telephone calls).
> 2. General scope of services to be rendered (*e.g.*, divorce, equitable distribution, support, custody, negotiations).
> 3. Legal services not covered by the agreement.
> 4. Provisions to take effect if the matter, initially believed to be uncontested, becomes contested.
> 5. Method of computing fee. This may be general or specific depending upon the nature of the matter and the agreement between the lawyer and client. If any charges are to be based on time, the hourly rate of the attorneys should be set forth. If charges are to be based on other factors, those factors should be stated.
> 6. Expenses for which client will be liable in addition to fees (*e.g.*, filing fees, investigators, experts, paralegals, telephone calls, copying).
> 7. When payment is to be made.
> 8. Whether bills are to be rendered periodically and if so what the billing period will be.
> 9. If a fee is paid at the commencement of the matter, whether such fee is to be applied against the amounts that become due under the agreement or is a payment in addition to such amounts.
> 10. Whether counsel fees awarded and paid are to be applied against amount due under agreement and if so to what extent.
> 11. Provisions for determining amount due if client retains another lawyer."

The rule was amended effective January, 1986 to substitute the phrase "actions for the dissolution of marriage" for "matrimonial action." The explanation given by the Report of the Supreme Court Committee on Family Division Practice, 116 N.J.L.J. Index Page 148 (1985) is that "'Matrimonial Actions' is limiting and does not include other civil matters that are cognizable in the Family Part." The rule was again amended effective January, 1987 to replace the "dissolution of marriage" phrase by the phrase "family actions," thus extending the applicability of the rule to all family matters.

As to the propriety of a contingent fee arrangement in respect of equitable distribution, see Salerno v. Salerno, 241 N.J. Super. 536 (Ch. Div. 1990).

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