

Rule 416

South Carolina Appellate Court Rules

RULES OF PROCEDURE

SOUTH CAROLINA BAR

RESOLUTION OF FEE DISPUTES BOARD

RULE 1. CREATION

There is hereby created the Resolution of Fee Disputes Board of the South Carolina Bar ("Board").

RULE 2. JURISDICTION

The purpose of the Board is to establish procedures whereby a dispute concerning fees, costs or disbursements between a client and an attorney who is a member of the South Carolina Bar (the Bar) may be resolved expeditiously, fairly and professionally, thereby furthering the administration of justice, encouraging the highest standards of ethical and professional conduct, assisting in upholding the integrity and honor of the legal profession, and applying the knowledge, experience and ability of the legal profession to the promotion of the public good. As used in these Rules, "fee" is deemed to include a legal fee, costs of litigation and disbursements associated with a legal cause, claim or matter and "client" is defined as a person on whose behalf professional legal services have been rendered by an attorney who is a member of the South Carolina Bar. A dispute exists when the parties to an employment agreement between lawyer and client have a genuine difference as to the fair and proper amount of a fee. The amount in dispute, as used in these Rules, is the dollar amount of that difference. A dispute does not exist solely because of the failure of the client to pay a fee.

Under no circumstances will the Board participate in: (1) a fee dispute involving an amount in dispute of \$50,000 or more; (2) disputes over fees which by law must be determined or approved, as between lawyer and client, by a court, commission, judge, or other tribunal. When an allegation of attorney misconduct arises out of a fee dispute other than as to the reasonableness of the fee, the Board, in its discretion, may refer the matter to the Commission on Lawyer Conduct. If the alleged misconduct does not arise out of a fee dispute, it shall be referred to the Commission on Lawyer Conduct. (3) No fee dispute may be filed with the Board more than three (3) years after the dispute arose.

If an attorney is suspended from the practice of law after a fee dispute has been filed with the Board, the Board shall retain jurisdiction over the dispute until the conclusion of the fee dispute process. This shall include all applicable appeals under Rule 20.

Jurisdictional issues shall be determined by the circuit chair.

Last Amended by Order dated December 6, 2011.

RULE 3. APPOINTMENT AND TENURE

The Board shall be appointed by the President of the Bar ("President") and shall consist of not fewer than five (5) members of the Bar of this state from each judicial circuit of the state. Members of the Board shall be appointed for terms of three (3) years or until a successor has been appointed. Where additional members are subsequently appointed, those appointments shall be on a staggered basis so that the number of terms expiring shall be approximately the same each year. The expiration of a term will coincide with the date of expiration of the term of the incumbent President in the same year. A member of the Board may be reappointed.

RULE 4. DUTIES

The Board is authorized to receive, inquire into, take proofs, and make findings and final determination of disputes between attorneys and clients. It shall be the duty of the Board to encourage the amicable resolution of fee disputes falling within its jurisdiction. Each member shall continue to serve until completion of ongoing work on the Board.

Amended by Order effective, September 7, 2007.

RULE 5. APPOINTMENT OF EXECUTIVE COUNCIL

From among the appointed Board members, the President shall appoint an Executive Council comprised of the following: One Executive Council member from each of the four Judicial Regions of the state and one at large member. The President shall designate the chair of the Executive Council.

The Executive Council shall have the authority to interpret these Rules. The duties of the Executive Council will be to oversee and assist the functioning of the Board in the respective circuits of the state and to make recommendations to the Board of Governors as to procedures to be followed and rules to be amended.

Executive Council members should be experienced in the practice of law with no fewer than seven (7) years active practice, and in the case of the chair, not fewer than ten (10) years active practice.

The terms of the Executive Council shall be for three (3) years. The expiration of a term will coincide with the date of expiration of the term of the incumbent President in the same year. Should the term of an Executive Council member on the Board expire and the member not be reappointed to the Board, the member's term on the Executive Council shall expire at the same time the member's term on the Board expires. In that event, the President shall appoint a replacement

member to the Executive Council for the unexpired term. A member of the Executive Council may be reappointed.

The Executive Council shall meet at such times and places as may be called by the chair or by any four members thereof.

Amended by Order effective August 7, 2015.

RULE 6. CIRCUIT PANEL

The members of the Board within a judicial circuit comprise the circuit panel. The President shall appoint one member of the circuit panel as circuit chair and such other members as co-chairs as needed, all of whose terms shall be at the pleasure of the President. Appointment of co-chairs shall be made upon recommendation of the circuit chair.

RULE 7. HEARING PANEL

The members of the Board appointed to hear or consider a specific case or proceeding will be the hearing panel. The hearing panel will be appointed by the circuit chair from the circuit panel except as provided in Rule 18 concerning conflicts of interest.

RULE 8. ASSIGNED MEMBER

The member of the circuit panel who is assigned to conduct the initial investigation of an application shall be known as the "assigned member." The assigned member shall not be a member of the hearing panel which hears a dispute investigated by that assigned member or represent a party before that hearing panel. With the consent of the Executive Director of the Bar and as provided in Rule 11, a Bar staff person who is a Bar member or who is supervised by a Bar member may be appointed as the assigned member.

Amended by Order dated September 7, 2007.

RULE 9. RULE EXCLUSIVE UPON CONSENT

(a) Any client-applicant for the services of the Board must consent in writing to be bound by a final decision of the Board. Thereafter, the attorney is also bound.

(b) No application will be accepted from an attorney unless accompanied by the client's written consent to jurisdiction and consent to be bound by the final decision of the Board. Thereafter, both parties are bound.

(c) Upon consent of the client-applicant to be bound by the final decision of the Board, exclusive jurisdiction over the fee dispute vests in the Board.

Amended by Order dated September 7, 2007.

RULE 10. COMMENCEMENT OF PROCEEDINGS

All proceedings hereunder shall be commenced by filing an application in the Office of the Bar, on forms provided by the Bar. The application shall include a written statement of the facts and circumstances surrounding the dispute, furnishing complete names and addresses.. If the materials submitted exceed twenty-five (25) pages, the client-applicant shall submit three additional sets of the materials.

If the applicant is a client, but is not the person who paid for the lawyer's services, the third party payer, with the written consent of the client-applicant may jointly file with the client-applicant with both signatures affixed to the application.

If the responding party is an attorney, the Bar shall forward the completed application, as filed, to the attorney by electronic mail, with confirmation of delivery. If the responding party is not an attorney, the Bar shall forward the completed application, as filed, to the responding party by certified mail, return receipt requested. A copy shall be sent by regular mail or email to the circuit chair in the circuit where the principal place of practice of the attorney is located. If the application involves attorneys in more than one circuit, a copy of the completed application shall be sent to the chair of the Executive Council, who shall designate which of these circuit chairs shall have jurisdiction and shall proceed with the matter.

If the amount in dispute exceeds \$7,500, the circuit chair may appoint a hearing panel without assignment of the matter to an assigned member.

After the initial correspondence, all other correspondence will be sent by regular mail or, with the written consent of the client and lawyer, by email. Such written consent may be withdrawn by written notice served on all other parties or attorneys. If served by regular mail, correspondence will be deemed served upon deposit in the U.S. Mail with proper postage affixed. If served by email, service is complete upon transmission, unless the party making service learns that the attempted service did not reach the person to be served. All parties have the duty to inform the circuit chair of any change of address.

Amended by Order effective August 7, 2015

RULE 11. INVESTIGATION BY ASSIGNED MEMBER

Upon receipt of the completed application, the circuit chair shall promptly appoint the assigned member. The assigned member shall conduct an investigation sufficient to enable the rendering of an informed recommendation. The assigned member's recommendation shall be written and contain the reasons for it. This report shall be submitted to the circuit chair, with a copy to the Bar office, as soon as possible and not later than ninety (90) days after appointment of the assigned member, unless the time is extended by the circuit chair pursuant to Rule 12. The circuit chair shall send a copy of the report to each of the parties and notification of the circuit chair's concurrence or nonconcurrence with the recommendations of the assigned member.

The attorney shall respond to the issues raised in the application within thirty (30) days of being contacted by the assigned member. The assigned member may extend the period for response once and by no more than 30 days.

The parties to the dispute and any witnesses on their behalves shall make themselves available for interview at a time and place designated by the assigned member within the time required for the assigned member to make a report. If a party or a witness cannot, for any reason, be present at the designated time and place, that witness or party shall submit a written response to the assigned member within fourteen (14) days of the date the assigned member designated as the interview date, unless the assigned member grants the party or witness an extension. The party or witness may also submit a statement in writing, provided such statement is delivered to the assigned member on or before the date designated for the interview of that party or witness. The response to questions along with the written statement, if any, together shall constitute the complete statement of the party or witness concerning the dispute. In the event a party fails to respond, then the assigned member must render a decision based upon the available materials.

The assigned member may encourage resolution of the dispute by compromise where the circumstances warrant such effort. Efforts at compromise may include mediation of the dispute by the assigned member. Compromise or consent agreements, whether written or oral, become the final decision of the Board fifteen (15) days after the date of a letter from the circuit chair to the parties confirming the agreement.

If the amount in dispute does not exceed \$1,000, in lieu of appointment of an assigned member, the circuit chair may assign the dispute to the staff of the Bar for an expedited investigation and recommendation. The staff in its discretion may make findings based on written submissions by the parties or on such other information as may be necessary to render an informed recommendation. In the event of such assignment, the staff shall have the same powers and be governed by the same duties and procedures as would an assigned member.

Amended by Order effective December 6, 2011.

RULE 12. SCHEDULE OF PROCEEDINGS

(a) All fee disputes should be resolved within six (6) months. The assigned member's report should be completed within thirty (30) to ninety (90) days after being forwarded by the circuit chair. A fee dispute may not exceed six (6) months without the written consent of the circuit chair for good cause shown. Any extension of time granted by the circuit chair must be for a specified period of time which shall be the least amount of time deemed necessary to resolve the dispute.

(b) If an assigned member does not respond to reminders from the Bar office, the Bar office will notify the circuit chair.

(c) If a fee dispute has been assigned and is pending, without an extension approved by the circuit chair,

(1) more than ninety (90) days, then the circuit chair may, at his or her discretion:

(A) reassign the fee dispute;

(B) if the amount exceeds \$7,500, appoint a hearing panel, which shall schedule a hearing within thirty (30) days

(2) more than six (6) months, then the circuit chair shall, with the concurrence of the Executive Council Chair:

(A) reassign the fee dispute;

(B) if the amount exceeds \$7,500, appoint a hearing panel, which shall schedule a hearing within thirty (30) days; or

(C) return all investigative notes and application to the designated Bar staff member for investigation as the assigned member.

In these events, the original assigned member shall immediately turn over notes and files to the circuit chair.

(d) If the circuit chair is delinquent, then the case may be reassigned to the Executive Council Chair or the Executive Council Chair's designee.

Last Amended by Order effective December 6, 2011.

RULE 13. PROCEEDINGS OF THE BOARD

If the amount in dispute is \$7,500 or less, the decision of the assigned member or Bar staff, with the concurrence of the circuit chair, shall be the final decision of the Board.

If the amount in dispute is more than \$7,500, the decision of the assigned member with the concurrence of the circuit chair shall be served on the parties by first class mail, with proper postage affixed, or by email, provided the parties have consented to services by email in accordance with Rules 10. The decision is final unless a written request for a hearing panel is made by filing such request with the circuit chair within thirty (30) days after the date of mailing written notification of the decision. (For Hearing Panel Decision, see Rule 17.)

If the chair does not concur with the decision of the assigned member, a hearing panel will be appointed.

Amended by Order effective December 6, 2011.

RULE 14. APPOINTMENT OF HEARING PANEL

When appropriate, a hearing panel of three (3) members shall be appointed by the circuit chair from the circuit panel in the judicial circuit where the principal place of practice of the attorney is located. A hearing panel should be appointed within ten (10) days of the date a written request for a hearing panel is filed with the circuit chair. The procedure for appointing hearing panel members shall be established by the Executive Council. One (1) member of the hearing panel shall be designated by the circuit chair as chair of the hearing panel. Upon appointment of the hearing panel, the parties to the proceeding shall be notified in writing by the circuit chair of the appointment of the hearing panel, giving the names and addresses of the members, including the identity of the chair, and further informing the parties involved that the hearing panel will resolve the dispute. Each party may proceed without counsel or be represented by counsel of the party's choosing and at the party's own expense. The Board is not required by law to appoint an attorney to represent a party; however, upon request of a party, a member of the Board may be appointed to represent the party before the hearing panel if, in the discretion of the circuit chair, good cause is shown. Good cause may include but is not limited to (1) the income level of the party, (2) the educational level of the party, or (3) interests of parity and justice.

Last Amended by Order dated July 18, 2002, effective September 1, 2002.

RULE 15. PANEL HEARINGS

The chair of the hearing panel shall convene a hearing at a place within the circuit within forty-five (45) days of assignment by the circuit chair and at least thirty (30) days after giving notice to the parties by first class mail, with proper postage affixed, unless otherwise agreed by all parties and the panel members. The notice shall inform the parties that the hearing is *de novo* and that no reports or other information from the assigned member will be considered. The notice also shall inform the parties that they may have witnesses present and may present documentary evidence and should present all evidence they expect to present at the hearing.

If the circuit chair determines that a hearing panel or panel member is delinquent in scheduling or attending a hearing, the circuit chair has the authority to reassign the whole panel or reassign one or more panel members.

If a party or a witness cannot, for any reason, be present at the hearing, a written statement shall be submitted which shall be the complete statement of the party or witness. If a party fails to appear, then the hearing panel shall render its decision based on the available testimony and documentation.

Conduct of the hearings shall be pursuant to such rules and procedures as the Executive Council may prescribe. While it is not necessary to follow strictly the rules of evidence as generally applied in circuit court, hearings should be conducted in conformance generally with them. If the hearing cannot be completed within the allotted time, it may be adjourned by the panel chair and reconvened with no less than ten (10) days notice, unless the parties and panel members otherwise agree to a date and time certain.

A party to a fee dispute may, at the party's own expense, cause any hearing by the panel to be recorded and transcribed. The tape recording of the hearing shall be the property of the Board. If a party has a hearing transcribed, the party shall, at the party's own expense, provide a copy of the transcript to the Board.

Amended by Order effective September 7, 2007.

RULE 16. VOLUNTARY TERMINATION

Prior to the final decision of the Board, the party who initiated the process may terminate the process. Termination of the process takes effect upon receipt in the Bar office of written acknowledgement from the initiating party.

This written acknowledgement of withdrawal will have the effect of ending the availability of the procedure with prejudice to the initiating party as to that dispute so that a party who initially filed an application with the Board may not make a second filing on the same dispute after withdrawing the first filing. Should that party fail to make a written acknowledgement of the withdrawal, the Board shall proceed to resolve the matter without delay.

Nothing herein is to be construed as limiting a party from filing an amended or supplemental form pertaining to the dispute, if requested or if needed, under such conditions as the hearing panel may provide or as may be established by the Executive Council.

Amended by Order effective, September 7, 2007.

RULE 17. HEARING PANEL

Upon conclusion of the panel hearing, the hearing panel members shall forthwith proceed to reach a decision and shall, within fifteen (15) days of the hearing, issue a written decision, including a factual statement of the controversy and the reasons for the decision reached. A decision of the majority of the hearing panel shall constitute a final decision of the Board. The written decision shall be filed with the Bar, and a copy sent to the circuit chair and each party to the dispute by first class mail, with proper postage affixed, or by email, provided the parties have consented to service by email in accordance with Rule 10. Service by mail is complete upon mailing.

Amended by Order effective, September 7, 2007.

RULE 18. CONFLICTS OF INTEREST

In case of a conflict of interest or disqualification of a circuit chair and any co-chair in a given case, the circuit chair shall request assistance from the chair in another circuit and transfer the case to that circuit

In extraordinary cases where members of the circuit panel are disqualified for any reason, either voluntarily or involuntarily, in a specific dispute, and there do not remain enough members of the circuit panel to comprise the hearing panel, the chair of the Executive Council, or, in the event of the disqualification of the chair of the Executive Council, the President shall appoint the requisite number of members from the Board to the hearing panel.

Should any member of the circuit panel in a judicial circuit fail or refuse to discharge the duties of a member of the Board, the chair of the Executive Council shall appoint a substitute member from members of the Board.

Amended by Order effective, March 30, 2016.

RULE 19. COMPLIANCE

The decision of the Board shall be final and binding upon the parties and shall be enforceable in any court of competent jurisdiction. The parties shall comply with the terms of the final decision within thirty (30) days after mailing.

In case of non-compliance by either party, the circuit chair shall issue a Certificate of Non-Compliance which may be entered as a judgment pursuant to Rule 58(a), SCRCP. If the certificate is issued against a lawyer, it shall be forwarded by the Circuit chair to the Bar and then forwarded to the Commission on Lawyer Conduct under Rule 8.3 of the Rules of Professional Conduct, Rule 407, SCACR.

Last Amended by Order effective August 7, 2015

RULE 20. APPEALS

(a) A party aggrieved by the final decision of the Board may appeal the decision to the circuit court in the county where the principal place of practice of the attorney is located.

(b) To confer jurisdiction of an appeal on the circuit court, the appealing party must commence the appeal within thirty (30) days after the final decision is mailed to the appealing party, except that if based upon corruption, fraud, or other undue means, it must be commenced within thirty (30) days after such grounds are known or should have been known.

(c) In order to commence an appeal, the appealing party must:

(1) file with the clerk of the circuit court a notice of appeal along with a signed document certifying the names and addresses to which the appealing party mailed copies of the notice and the date the copies were mailed. The notice of appeal must contain (i) the names of all parties to the dispute, (ii) an indication that the appealing party is appealing from a final decision of the Resolution of Fee Disputes Board, (iii) a detailed statement of the grounds for the appeal and (iv) the name, current mailing address, and telephone number of the appealing party;

(2) pay the required filing fee to the clerk of court;

(3) mail each other party to the dispute a copy of the notice of appeal; and

(4) mail a copy of the notice to the South Carolina Bar Resolution of Fee Disputes Board.*

A notice of appeal is sufficient if it is in writing, is signed by the appealing party, and contains the information required in sub-paragraph (c)(1).

(d) Filing an appeal does not stay the issuance of a Certificate of Non-Compliance. However, if, upon the filing of a notice of appeal, a party pays the disputed sum to the Bar to be held in trust pending resolution of the appeal, no Certificate of Non-Compliance shall be issued. The Bar shall remit the disputed sum to the prevailing party within ten (10) days of the final disposition of the dispute.

(e) The Board shall supply to the circuit court a record on appeal, which shall include such of the following materials as were involved in the proceedings of the Board: the application, the decision of the assigned member, the concurrence or non-concurrence of the circuit chair, and the decision of the hearing panel.

(f) The court shall affirm or vacate the final decision of the Board. The court may vacate only where:

(1) the decision was procured by corruption, fraud, or other undue means;

(2) there was evident partiality or corruption in an assigned member or hearing panel member, or misconduct prejudicing the rights of any party;

(3) the assigned member or hearing panel members exceeded their powers;

(4) the hearing panel members refused to postpone the hearing, if any, upon sufficient cause being shown therefore, or the assigned member or hearing panel members refused to hear evidence material to the controversy, or otherwise conducted the proceeding so as to substantially prejudice the rights of a party; or

(5) the hearing panel chair did not provide notice of the hearing as required under Rule 15.

(g) In vacating the final decision, the court may order a reconsideration by a new assigned member appointed by the circuit chair or, if vacating the decision of a hearing panel, a rehearing before a new hearing panel appointed by the circuit chair. Any reconsideration or rehearing shall be de novo, and no reports or decisions of any prior assigned member or hearing panel shall be considered. When a final decision of the Board is vacated, any judgment which may have been entered pursuant to that decision also is vacated.

(h) The parties and the circuit court shall provide the Board notice of all proceedings on appeal and the final disposition of the appeal.

* The current address of the Board is Post Office Box 608, Columbia, SC 29202.

Last Amended by Order effective, December 6, 2011.

RULE 21. PROCEEDINGS CONFIDENTIAL

All proceedings shall be confidential, except that where a party to a proceeding subsequently resorts to legal proceedings in a court of record to appeal or to enforce the final decision of the Board, compliance with these Rules concerning appeal or enforcement does not constitute a violation of the confidentiality of the proceeding.

RULE 22. AMENDMENTS TO RULES

Upon approval by the Bar's House of Delegates, amendments to these Rules shall be submitted to the Supreme Court of South Carolina for approval. Any amendment to these rules is effective as to any fee dispute filed after the date of approval by the Supreme Court.

Amended by Order effective, December 6, 2011.