

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**In Re: PROPOSED ADOPTION OF SUPREME COURT RULE 47 –
FEE DISPUTE RESOLUTION**

No. M2005-00197-SC-RL1-RL - Filed: June 13, 2006

ORDER

The Court, pursuant to its supervisory role over the judicial system of this State, proposes to adopt a new Supreme Court Rule establishing a program and procedure for fee dispute resolution. The new proposed Rule 47 is attached hereto as Exhibit 1.

In the interest of providing prompt and fair consideration of this important public policy issue, the Court solicits written responses from the bench, the bar, the court clerks, and the public. Comments should be addressed to:

Michael W. Catalano, Clerk
Re: Proposed Rule 47 Comments
Tennessee Supreme Court
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

The deadline for written comments is July 31, 2006.

The Clerk is directed to provide a copy of this order to the media, the president of the Tennessee Judicial Conference, the Tennessee Trial Judges Association, the Tennessee General Sessions Judges Conference, the Tennessee Council of Juvenile and Family Court Judges, the Tennessee Clerks of Court, and the bar associations of this State.

IT IS SO ORDERED.

PER CURIUM

TENNESSEE RULE FOR FEE DISPUTE RESOLUTION

SECTION 1. DEFINITIONS, GENERAL PRINCIPLES AND JURISDICTION

A. **Establishment; Purpose.** It is the policy of the Tennessee Supreme Court to encourage the informal resolution of Fee Disputes between Lawyers and their Clients and, in the event such informal resolution cannot be achieved, to provide a system for Fee Dispute Resolution. To that end, the Tennessee Supreme Court hereby establishes, through adoption of this rule, a program and procedure for Fee Dispute Resolution.

B. **Definitions.** In this rule, the following definitions shall apply:

1. “Client” means a person who or entity which directly or through an authorized representative consults, retains or secures legal services or advice from a Lawyer in the Lawyer’s professional capacity.
2. “Commission” means the Fee Dispute Resolution Commission.
3. “Decision” means a determination made by the Panel in a Fee Dispute Resolution.
4. “Fee” means any and all fees, expenses or costs claimed, charged or collected for professional services by a Lawyer.
5. “Fee Dispute Resolution” means the procedure by which a Fee Dispute is resolved pursuant to this rule and any procedure adopted by the Commission.
6. “Lawyer” means a person admitted to the practice of law in the State of Tennessee, or any other person who appears, participates or otherwise engages in the practice of law in the State of Tennessee, regardless of the status of his or her license.
7. “Panel” means the arbitrator(s) assigned to hear a Fee Dispute and to issue a Decision.
8. “Party“ or “Parties” means the Client, Lawyer and any third person who or entity that has been joined by the Client or Lawyer in the proceeding.
9. “Petition” means a written request for Fee Dispute Resolution on a form approved by the Commission.
10. “Petitioner” means the Party requesting Fee Dispute Resolution.

11. “Respondent” means the Party with whom the Petitioner has a Fee Dispute.
12. “Response” means a written response to a Petition on a form approved by the Commission.

C. Jurisdiction.

1. **Personal Jurisdiction.** If the Client commences a Fee Dispute proceeding in conformity with this rule, the Lawyer shall participate. If the Lawyer commences a Fee Dispute proceeding, the Client is bound by Section 4(F) of this rule.
2. **Subject Matter Jurisdiction.** This rule does not apply to the following:
 - a. Disputes where the Lawyer is not admitted to practice law in the State of Tennessee, maintains no office in the State of Tennessee, and did not render legal services in the State of Tennessee;
 - b. Disputes where the Client seeks affirmative relief for damages against the Lawyer based upon alleged malpractice or professional misconduct;
 - c. Disputes where entitlement to and the amount of the Fees are to be or have been determined by order, rule or decision of a court or tribunal;
 - d. Disputes where a third person or entity is responsible for payment of the Fee and the Parties fail to join that third person or entity in the request for Fee Dispute Resolution; or
 - e. Disputes where a civil action concerning the Fee would be barred by the applicable statute of limitations.

D. Effect of Fee Dispute Resolution.

1. Fee Dispute Resolution is binding upon all Parties, subject to the provisions of the appeal/review process set forth in Section 6 of this rule.
2. A Party may not withdraw from Fee Dispute Resolution unless all Parties agree to the withdrawal in writing.

SECTION 2. FEE DISPUTE RESOLUTION COMMISSION

- A. **Appointment of Commission.** The Tennessee Supreme Court shall appoint a Fee Dispute Resolution Commission to administer this rule, and shall designate one member to serve as chair of the Commission.

- B. **Composition.** Subject to modification in accordance with the Duties and Powers of the Commission, the Commission shall consist of 11 members. The Court shall appoint one (1) Lawyer from each of the seven (7) Commission Districts as defined below, three (3) non-Lawyers chosen at large and a chair. Members shall hold office for three (3) years, and shall not serve more than two (2) consecutive full terms. Members appointed for less than a full term (either originally or to fill a vacancy) may serve two (2) full terms in addition to such part of a term. Appointments shall be on a staggered basis so that no more than four (4) terms shall expire in the same year, nor more than one (1) non-Lawyer term shall expire in the same year.

- C. **Commission Districts.** The Commission Districts consist of the following groupings of counties:

District 1	District 2	District 3	District 4	District 5	District 6	District 7
Shelby	Benton	Cheatham	Bedford	Anderson	Bradley	Carter
	Carroll	Clay	Bledsoe	Blount	Hamilton	Greene
	Chester	Cumberland	Cannon	Campbell	McMinn	Hamblen
	Crockett	Davidson	Coffee	Claiborne	Monroe	Hancock
	Decatur	DeKalb	Franklin	Cocke	Polk	Hawkins
	Dyer	Dickson	Giles	Grainger		Johnson
	Fayette	Fentress	Grundy	Jefferson		Sullivan
	Gibson	Houston	Hickman	Knox		Unicoi
	Hardeman	Humphreys	Lawrence	Loudon		Washington
	Hardin	Jackson	Lewis	Meigs		
	Haywood	Macon	Lincoln	Morgan		
	Henderson	Montgomery	Marion	Roane		
	Henry	Overton	Marshall	Scott		
	Lake	Pickett	Maury	Sevier		
	Lauderdale	Putnam	Moore	Union		
	Madison	Robertson	Perry			
	McNairy	Smith	Rhea			
	Obion	Stewart	Rutherford			
	Tipton	Sumner	Sequatchie			
	Weakley	Trousdale	Van Buren			
		White	Warren			
		Wilson	Wayne			
			Williamson			

- D. **Participation of Local Fee Dispute Resolution Programs.** The Commission shall provide for the participation of local Fee Dispute Resolution programs that are willing to meet the standards of this rule as well as any guidelines adopted by the Commission.

- E. **Duties and Powers of the Commission.** The Commission shall have the following duties and powers:
1. To appoint, remove and provide appropriate training for arbitrators and arbitration Panel members;
 2. To interpret this rule;
 3. To approve forms;
 4. To establish written procedures that afford a full and equal opportunity to all Parties to present evidence;
 5. To issue an annual report and periodic policy recommendations, as needed, to the Tennessee Supreme Court regarding the Fee Dispute Resolution program;
 6. To maintain all records of the Commission;
 7. To educate the public and the bar about the Fee Dispute Resolution program;
 8. To institute an evaluation procedure which shall include a survey of all participants in the Fee Dispute process, including Lawyers, Clients and Panel members, which evaluation shall be compiled and reported as part of the annual report to the Court;
 9. To hire, terminate and evaluate such staff as necessary for administration of the Fee Dispute Resolution program;
 10. To evaluate the composition of the Commission Districts and the number of Commissioners constituting the Commission, and to make recommendations to the Tennessee Supreme Court for modification as deemed appropriate; and
 11. To perform all acts necessary for the effective operation of the program.

SECTION 3. ARBITRATORS

- A. **List of Approved Arbitrators.** The Commission shall maintain a list of approved arbitrators, and shall adopt written standards for their appointment. Such standards shall ensure appropriate training and experience, as well as diversity in the background and experience of the arbitrators. Arbitrators shall be appointed for terms of three (3) years and may be reappointed. For good cause, the Commission may remove an arbitrator from the list and appoint a replacement to serve the balance of the term.
- B. **Panels.** The Commission or a local bar organization pursuant to authority delegated by the Commission (“Appointing Authority”) shall appoint Panels from the list of approved arbitrators. For disputes involving five thousand dollars (\$5,000) or more, the Panel shall consist of three arbitrators. For disputes involving less than five thousand dollars (\$5,000), the Panel shall consist of a single arbitrator. In any dispute, the Parties may stipulate to have the matter heard by a single arbitrator. If the Panel consists of three arbitrators, the Appointing Authority shall designate one to act as chair of the Panel and to preside at the Fee Dispute Resolution hearing.
- C. **Conflicts of Interest/Disqualification.** Within five (5) business days following the notification of appointment to a Panel, the appointed arbitrator(s) shall review the matters at issue and notify the Appointing Authority of any disqualifying interest, as defined in Canon 3, Section (E) of the Tennessee Code of Judicial Conduct. Upon notification of a disqualifying interest, the Appointing Authority shall appoint a replacement from the list of approved arbitrators.
- D. **Challenges for Cause.** A Party may challenge an arbitrator for cause. A challenge for cause and the reason for the challenge shall be filed with the Appointing Authority within fifteen (15) days after service of the notice of appointment. An arbitrator shall accede to a reasonable challenge. If the arbitrator does not grant the request, the Appointing Authority shall decide within ten (10) days whether to disqualify the arbitrator and appoint a replacement. The decision of the Appointing Authority on challenges shall be final.
- E. **Duties and Powers of the Panel.** The Panel shall have the following duties and powers:
1. To take and hear evidence pertaining to the Fee Dispute;
 2. To administer oaths and affirmations;
 3. To issue written Decisions; and
 4. To perform all acts necessary to conduct an effective Fee Dispute Resolution, including such duties as may be adopted by the Commission.

SECTION 4. COMMENCEMENT

- A. **Petition for Fee Dispute Resolution.** A Lawyer or Client shall commence a Fee Dispute Resolution by filing a Petition on a form approved by the Commission and paying a filing fee of not less than thirty-five dollars (\$35) for amounts in controversy up to ten thousand dollars (\$10,000) plus an additional ten dollars (\$10) per one thousand dollars (\$1,000) or part thereof above ten thousand dollars (\$10,000). The Petitioner shall sign the Petition under oath. Any person who is not the Client of the Lawyer, but has paid or may be liable for the Lawyer's Fee, may consent to be joined by the Client as a Party to the Fee Dispute Resolution.
- B. **Commission Review.** The Commission or its designee shall review the Petition to determine if it is properly completed and if the Commission has jurisdiction. If the Petition is not properly completed, the Commission shall return it to the Petitioner(s) and specify what clarification or additional information is required. If the Commission does not have jurisdiction or the dispute is not subject to Fee Dispute Resolution, the Commission shall so advise the Parties.
- C. **Notice of Right to Fee Dispute Resolution; Stay of Proceeding; Waiver by Client.**
1. Prior to or at the time of service of a summons in a civil action against a Client for the recovery of a Fee, the Lawyer shall serve upon the Client a written notice of the Client's right to participate in Fee Dispute Resolution. Notice, on a form approved by the Commission, must be included with service of the summons in the Fee collection action or given by certified mail, return receipt requested. If the Lawyer provides the Client with written notice in the manner required by this rule, on the date of the Client's initial appearance in the case or twenty (20) days from the date of service, whichever occurs first, the Client shall provide notice to the court or the Lawyer of the intent to proceed with Fee Dispute Resolution.
 2. The court presiding over the Lawyer's Fee collection action shall stay the proceeding pending the completion of the Fee Dispute Resolution if:
 - a. The Client gives notice to the court or the Lawyer that the Client filed a Petition with the Commission no later than twenty (20) days after providing the notification required in Section 4(C)(1); or
 - b. The Lawyer has actual notice that the Client filed a Petition with the Commission no later than twenty (20) days after providing the notification required in Section 4(C)(1). A Lawyer with such notice shall so advise the court.
 3. After the Client files a Petition, the Lawyer shall refrain from any collection activities related to the Fee in dispute pending the outcome of the Fee Dispute Resolution.
 4. Unless all Parties agree in writing, the right of the Client to file a Petition or maintain a Fee

Dispute Resolution is waived if:

- a. The Client fails to give timely notice pursuant to Section 4(C)(1) or timely file a Petition pursuant to Section 4(C)(2); or
- b. The Client commences or maintains a civil action or files any pleading seeking judicial resolution of the Fee Dispute or seeking affirmative relief against the Lawyer for damages based upon alleged malpractice.

- D. **Service of Petition; Response.** Within ten (10) days of the receipt of a properly completed Petition, the Commission shall serve a copy of the Petition, along with a Fee Dispute Resolution Response Form, on each Respondent. Within twenty (20) days after service, the Respondent(s) may file the completed Fee Dispute Resolution Response Form with the Commission, which shall forward a copy to all other Parties. If the Respondent is a Lawyer, the Respondent shall set forth in the Response the name of any other Lawyer or law firm the Respondent claims is responsible for all or part of the Client's claim; failure to do so shall constitute a waiver of such defense. Within ten (10) days of receipt of the Response, the Commission shall serve on any additional Lawyer(s) or law firm(s) named in the Response a Fee Dispute Resolution Response Form for completion, as well as a copy of the Petition and any previously-filed Response(s). Within twenty (20) days after service, the Lawyer(s) or law firm(s) may file the completed Fee Dispute Resolution Response Form with the Commission, which shall forward a copy to all other Parties.
- E. **Lack of Response.** The lack of a Response shall not delay the scheduling of a hearing.
- F. **Client Consent Required.** If a Lawyer files a Petition, the Fee Dispute Resolution shall proceed only if (a) the Client files a written consent within thirty (30) days of service of the Petition, or (b) the Client has otherwise agreed in writing to participate in Fee Dispute Resolution, including but not limited to the Client's Fee Agreement with the Lawyer.
- G. **Settlement of Disputes.** If the dispute giving rise to the Petition has been settled, the matter shall be dismissed by the Commission, or by the Panel if one has been assigned, upon reasonable demonstration that a settlement has occurred.
- H. **Appointment of Panel and Location of Hearing.** The Commission shall do the following within ten (10) days after the due date of the final authorized Response:
1. Appoint a Panel and select the location of the hearing. The location of the hearing shall be within the county of residence of the Client, if within Tennessee; and, if not, in the county of residence of the Lawyer. If neither Party resides in Tennessee, the hearing shall be conducted at a convenient location determined by the Commission; and
 2. Notify the Parties of the location of the hearing and the name(s) of the Panel member(s) assigned to hear the Fee Dispute Resolution.

SECTION 5. HEARING

- A. **Scheduling and Notice of Hearing Date.** Within ten (10) days after the due date of the final authorized Response, the Commission shall notify the Parties of the date and time of the hearing. The hearing shall be scheduled not less than thirty (30) nor more than ninety (90) days from the date of the notice.
- B. **Continuances.** For good cause shown, a Panel may continue a hearing upon the request of a Party or upon the Panel's own motion.
- C. **Panel Quorums.** All three arbitrators shall be required for a quorum where the Panel consists of three arbitrators. A Panel shall act with the concurrence of at least two (2) arbitrators.
- D. **Appearance; Failure of a Party to Appear.** The Panel may proceed in the absence of any Party or representative who, after due notice, fails either to be present or to obtain a continuance. A Decision shall not be made based solely upon the default of a Party. The Panel shall require any Party present to submit such evidence as the Panel may require to render a Decision.
- E. **Waiver of Personal Appearance.** Any Party may request waiver of personal appearance, and may submit testimony and exhibits by written declaration under oath to the Panel. Such declarations shall be filed with the Panel at least ten (10) days prior to the hearing. If all Parties, in writing, waive appearances at a hearing, the matter may be decided on the basis of written submissions; provided, however, that the Panel may, in its discretion, request oral testimony.
- F. **Conduct of Hearing.** The Panel shall conduct the hearing according to the date, time and location included in the Notice given to the Parties. The Panel, after acceptance by the Parties, shall conduct the hearing. The Panel shall allow for opening statements, if requested, and shall take evidence from the Parties, from other witnesses provided by the Parties, and from any other source the Panel deems appropriate and necessary. Once the hearing is conducted, the Panel shall confer and render a Decision.
- G. **Telephonic Hearing.** In its discretion, a Panel may permit a Party to appear or present witness testimony at the hearing by telephonic or other electronic means. The costs of the alternate means of appearance shall be paid by the requesting Party.
- H. **Subpoena.** Upon application to the Commission at least two (2) weeks prior to the hearing, and upon a showing of the relevance and materiality of the evidence sought, the Commission may issue a subpoena compelling the attendance of a witness or the production of documents.
- I. **Evidence.** The Panel shall accept evidence it deems relevant and material to the dispute, and may request additional evidence as necessary to understand and resolve the dispute. The Tennessee Rules of Evidence are not necessarily applicable and the Panel, in its sole discretion, may give whatever weight to any evidence it deems appropriate under the circumstances. The Parties shall be entitled to be heard, to present evidence and to cross-examine Parties and witnesses. The Panel shall judge the relevance and materiality of the evidence.

- J. **Reopening of Hearing.** For good cause shown and in its discretion, the Panel may reconvene a concluded hearing at any time before a Decision is rendered.
- K. **Standard of Proof.** Decisions shall be based on the preponderance of the evidence.

SECTION 6. DECISION

- A. **Form of Decision.** The Panel's Decision shall be in writing and shall include a clear statement of the findings of the Panel. If deemed appropriate by the Panel, these findings shall succinctly set forth the amount in dispute, the amount awarded and the name(s) of the Party or Parties to whom the amount is owed.
- B. **Issuance of Decision.** The Decision shall be rendered within thirty (30) days after the close of the hearing or from the end of any time period permitted by the Panel for the filing of supplemental briefs or other materials. The Panel chair shall forward the Decision to the Commission, which shall date and serve a copy of the Decision on each Party.
- C. **Modification of a Decision.**
1. Upon application to the Panel by a Party to a Fee Dispute Resolution, the Panel may modify or correct a Decision if:
 - a. There was an error in the computation of figures or a mistake in the description of a person or property referred to in the Decision;
 - b. The Decision is imperfect as a matter of form, and not as to content; or
 - c. The Decision needs clarification.
 2. A Party may file an application for modification with the Panel within twenty (20) days after the receipt of the Decision and shall serve a copy of the application on all other Parties. Any objection to the application for modification shall be filed with the Panel within ten (10) days after receipt of the application for modification.
 3. An application for modification shall extend the time period to seek review of the Decision in accordance with Tennessee Code Annotated section 29-5-313.
- D. **Retention of Files.** The Commission shall maintain all Fee Dispute Resolution files for a period of three (3) years from the date of the final Decision.

SECTION 7. FINALITY, EFFECT AND ENFORCEMENT

- A. **Compliance with Decision.** The Parties shall have thirty (30) days from the date of issuance of the final Decision or, if applicable, the date of the stipulated settlement by the Parties to comply with the final Decision or settlement.

- B. **Confirmation and Enforcement of Decision.** The final Decision of a Panel shall be subject to confirmation pursuant to the provisions of and in the manner provided by Tennessee Code Annotated section 29-5-312. The confirmed Decision is subject to entry and enforcement in the manner provided by Tennessee Code Annotated section 29-5-315. Confirmation of a Decision or enforcement of a Decision shall be submitted to a court of record in the county of the Client's residence unless the Client has a residence out of state, in which event submission shall be to a court of record in the county of residence of the Lawyer.

SECTION 8. CONFIDENTIALITY

- A. **Confidentiality of Proceedings.** Except as may be otherwise necessary for compliance with this rule or to take ancillary legal action with respect thereto, all records, documents, files, proceedings and hearings pertaining to the Fee Dispute Resolution under this rule shall be confidential and shall be closed to the public, unless ordered open by the Tennessee Supreme Court upon good cause shown, except that a summary of the facts, without reference to the Parties by name, may be publicized in all cases once the proceeding has been formally closed.

- B. **Confidentiality of Information.** To the extent permitted by the Tennessee Rules of Professional Conduct, a Lawyer may reveal information relating to the representation of the Client if necessary to establish his or her Fee claim. In no event shall such disclosure be deemed a waiver of the confidential character of such matters for any other purpose.

SECTION 9. IMMUNITY

- A. **Parties and Witnesses.** Parties and witnesses shall have such immunity as is applicable in a civil action in the courts of the State of Tennessee.

- B. **Commissioners; Panels; Staff.** Members of the Commission, Panels and staff shall be immune from suit for any conduct in the course and scope of their official duties.

SECTION 10. SERVICE

- A. **Method.** Service shall be accomplished by certified mail, return receipt requested, or as provided in the Tennessee Rules of Civil Procedure.
- B. **Official Address of Lawyer.** Service on an individual Lawyer shall be at the latest address shown on the official membership records at the Board of Professional Responsibility of the Tennessee Supreme Court or at any other place where service may be accomplished.

SECTION 11. ADMINISTRATION

Commission Staff Responsibilities. The responsibilities of the Commission staff shall include:

1. Providing information about Fee Dispute Resolution, including approved forms, instructions, helpful hints, answers to frequently asked questions, examples and guidelines;
2. Coordinating implementation of this program with local Fee Dispute Resolution programs pursuant to guidelines established by the Commission;
3. Receiving and reviewing all Fee Dispute Resolution Petitions and Responses filed and making an initial recommendation as to jurisdiction and appropriateness of the Fee Dispute Resolution Petition;
4. Assisting in scheduling Fee Dispute Resolutions;
5. Receiving and serving any Decision, settlement or other disposition of matters;
6. Preparing such reports as directed by the Commission; and
7. Performing all other duties and responsibilities as assigned by the Commission.