

NEW HAMPSHIRE BAR ASSOCIATION
Ethics Committee Advisory Opinion #1987-88/17
Fees: Responsibility of Attorney to Participate in Fee Dispute Resolution Process
May 10, 1988

RULE REFERENCES:

*Rule 1.4(a)
*Rule 1.5

SUBJECTS:

*Fees
*Attorney-Client Relationship

CODE REFERENCES:

*EC2-23

ANNOTATION:

The ABA Model Code Comments were not adopted or approved by the NH Supreme Court and are therefore only aspirational, and the suggestion that the attorney "conscientiously consider" participation in a fee dispute resolution procedure is a partial retreat from the EC 2-23. (Terminology, Rule 1.5)

An attorney is not required under the Rules to participate under the NHBA's Fee Dispute Resolution Committee. Because the Committee is **not** the client, an attorney is not required to provide the Committee with requested information. (Rule 1.4)

QUESTIONS:

1. Regarding New Hampshire Rule for Professional Conduct No. 1.5, does the ABA Model Code Comment which pertains to "disputes over fees" apply to New Hampshire? More particularly, does the ABA requirement that an attorney "conscientiously consider" participation in an established fee dispute resolution procedure apply to New Hampshire lawyers dealing with the New Hampshire Bar Association's Fee Dispute Resolution Committee?
2. What effect, if any, does Rule No. 1.4 (a) (duty to keep client reasonably informed and to promptly comply with reasonable request for information) have on the attorney's duty to provide information to the Fee Dispute Resolution Committee?

RESPONSE:

1. The New Hampshire Supreme Court stated explicitly in its order adopting the Rules of Professional Conduct that it was "...not adopting or approving the ABA Comments..." The comments are therefore only aspirational in character.
2. Since the Fee Dispute Resolution Committee is not the client, Rule No. 1.4 (a) would seem to be inapplicable. The Fee Dispute Resolution process is an attempt at getting voluntary mediation or arbitration between the attorney and client. The New Hampshire Rules of Professional Conduct do not prescribe disciplinary sanctions for failure to participate in the process. In fact, the ABA comment alluded to above which suggests that an attorney "conscientiously consider" participation seems to be a partial retreat from the old code. EC 2-23 stated that a lawyer should be zealous in efforts to avoid controversies over fees with clients and should attempt to resolve amicably any differences on the subject, and that the attorney should not sue a client for a fee unless necessary to prevent fraud or gross imposition by the client.

Obviously, the client can always complain to the Professional Conduct Committee if it is felt that the fee or fee arrangement violates Rule 1.5.