

NORTH DAKOTA ASSOCIATION OF
CRIMINAL DEFENSE
LAWYERS

September 14, 2012

Honorable Michael G. Sturdevant
District Judge
Bottineau County Courthouse
314 Fifth Street West, Suite 12
Bottineau, ND 58318-1200

RE: Joint Committee on Attorney Standards
"Nonrefundable" fee agreements

Dear Judge Sturdevant:

Thank you once again for the opportunity to provide comment to the Joint Committee on Attorney Standards (the Committee) regarding the issue of fee agreements.

Our Association has discussed this issue further and took into consideration the questions you raised in your August 28, 2012 correspondence regarding this topic.

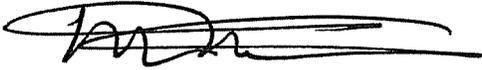
The first question posed inquired as follows: "Are you looking for acceptance of fee agreements that would treat "nonrefundable" advanced fees as "earned upon receipt" with no provisions for reimbursement, etc? Our Association is not requesting the Committee adopt or recommend where any disputed fee could never be subject to reimbursement. We are, however, requesting the Committee adopt or recommend that, by whatever name they are given (i.e., advanced fees; flat fees; minimum fees; or transactional billing fees), are an acceptable form of fee arrangements with clients and that such fees can be placed into the attorneys operating account when received by the attorney. We believe that Rule 1.5 and Rule 1.15(c) would need to be modified to provide guidance and clarification to attorneys in North Dakota.

The second question posed inquired as follows: "Are any of the state provisions in the enclosed materials something that you would support?" Our Association is not in favor of additional rules that can sometimes bring more complication rather than clarification. Our position is that again, Rule 1.15 (c) should be modified to provide guidance that transactional billing fees are acceptable and can be placed in an attorney's operating account. Additionally, Rule 1.5 should be modified by making Comment 9 of Rule 1.5 "Disputes over Fees", be a part of the actual Rule itself. Our thought is that the State Bar Association provides fee dispute resolution services and that service should be more widely

communicated and provided to members of the Bar when fee disputes arise with clients. The Rule from another jurisdiction that most closely resembles our request is Louisiana Rule 1.5(f).

Thank you for this consideration and the opportunity to comment. If allowed, we look forward providing further comment or discussion on this topic at the upcoming meeting on September 14th for the Committee.

Yours truly,

A handwritten signature in black ink, appearing to read "Nick Thornton", with a large, sweeping flourish underneath.

Nick Thornton
Past President
ND Association of Criminal Defense Lawyers