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The District of Columbia Bar

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MEMORANDUM

TO: Board of Governors
Section Chairpersons

FROM: Lynne M. Lester *LM*
Manager, Sections Office

DATE: September 17, 1986

SUBJECT: EXPEDITED CONSIDERATION: Comments recommending New Rules 16.A and 16.B (adopting a local rule on motions for attorney's fees) for the local rules of the U.S. Court of Appeals for the District of Columbia Circuit

Pursuant to the Section Guidelines No. 13, Sections a and c, the enclosed public statement is being sent to you by Court Rules Committee, Courts, Lawyers and the Administration of Justice Section

a(iii): "No later than 12:00 noon on the seventh (7th) day before the statement is to be submitted to the legislative or governmental body, the Section will forward (by mail or otherwise) a one-page summary of the comments, (summary forms may be obtained through the Sections Office), the full text of the comments, and the full text of the legislative or governmental proposal to the Manager of Sections. The one-page summary will be sent to the Chairperson(s) of each Section steering committee and any other D.C. Bar committee that appear to have an interest in the subject matter of the comments. A copy of the full text and the one-page summary will be forwarded to the Executive Director of the Bar, the President and President-Elect of the Bar, the Section's Board of Governors liaison, and the Chairperson and Vice-Chairperson of the Council of Sections. Copies of the full text will be provided upon request through the Sections Office. Reproduction and postage expenses will be incurred by whomever requested the full text (i.e., Section, Bar committee or Board of Governors account). The

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Manager for Sections shall help with the distribution, if requested, and shall forward a copy of the one-page summary to each member of the Board of Governors. In addition, the Manager for Sections shall draw up a list of all persons receiving the comment or statement, and he/she shall ascertain that appropriate distribution has been made and will assist in collecting the views of the distributees. If no request is made to the Manager for Sections within the seven-day period by at least three (3) members of the Board of Governors, or by majority vote of any steering committee or committee of the Bar, that the proposed amendment be placed on the agenda of the Board of Governors, the Section may submit its comments to the appropriate federal or state legislative or governmental body at the end of the seven-day period.

c(ii): "The Board of Governors may request, pursuant to sub-section (a)(iv), that the Section comments on proposed court rules change be placed on the Board agenda only if (a) the proposed court rule is so closely and directly related to the administration of justice that a special meeting of the Bar's membership pursuant to Rule VI, Section 2, or a special referendum pursuant to Rule VI, Section 1, should be called or (b) the proposed rule affects the practice of law--generally, the admission of attorneys, their discipline, or the nature of the profession,"

a(v): "Another Section or committee of the Bar may request that the proposed set of comments by a Section be placed on the Board's agenda only if such Section or committee believes that it has greater or coextensive expertise in or jurisdiction over the subject matter, and only if (a) a short explanation of the basis for this belief and (b) an outline filed with both the Manager for Sections and the commenting Section's chairperson. The short explanation and outline or proposed alternate comments will be forwarded by the Manager for Sections to the Board members."

a(vi): Notice of the request that the statement be placed on the board's agenda lodged with the Manager for Sections by any Board member may initially be telephoned to the Manager for Sections (who will then inform the commenting Section), but must be supplemented by a written objection lodged within seven days of the oral objection."

c(iii): "If the comments of the Section on a proposed court rules change is placed on the agenda of the Board of Governors, the Board may adopt the comments and the Board's own views, in which case no mandatory disclaimer (see Guideline No. 14) need be placed on the comments. If the Board and the Sections differ on the proposal, each may submit its own views.

Please call me by 5:00 p.m., Friday, September 19 if you wish to have this matter placed on the Board of Governors' agenda for Tuesday, October 14, 1986

I may be reached at 331-3883.

REPORT OF SECTION IV OF THE DISTRICT OF COLUMBIA
BAR RECOMMENDING NEW RULES 16.A and 16.B FOR
THE LOCAL RULES OF THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Steering Committee
Section IV

Ellen Bass, Chair
Arthur B. Spitzer
Richard B. Hoffman
John T. Boese
Cornish Hitchcock
Jay A. Resnick
Thomas C. Papson

Members of the Committee
on Court Rules of Section IV
participating in this report

Randell Hunt Norton, Co-chair
Thomas C. Papson, Co-chair
Joel P. Bennett, Principal Author
Richard B. Nettler
Cornish Hitchcock
Richard Hoffman
Randall J. Bramer
Arthur B. Spitzer

STANDARD DISCLAIMER.

"The views expressed herein represent only those
of Section IV: Courts, Lawyers, and the Administration of
Justice of the D.C. Bar and not those of the D.C. Bar or of
its Board of Governors."

REPORT OF SECTION 4 OF THE DISTRICT
OF COLUMBIA BAR ON PROPOSED RULES 16.A. and 16.B.
FOR THE LOCAL RULES OF THE UNITED STATES COURT
OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The United States Court of Appeals for the District of Columbia presently has no local rule on motions for attorney's fees. Most other circuits (Second, Third, Fourth, Fifth, Sixth, Ninth and Tenth) have such a local rule with respect to the Equal Access To Justice Act but not with respect to attorney's fees generally.

The proposed rule is based on Eighth Circuit rule 17 and Federal Circuit rule 20. The committee believes that such a rule is needed, particularly on appeals from the United States District Court for the District of Columbia, because it is not clear whether a party should move for attorney's fees before the Court of Appeals or the District Court.

With respect to agency cases, proposed rule 16.A. provides that a motion for attorney's fees must be filed within thirty days after the entry of judgment unless the matter is remanded to the agency for determination of fees. Proposed rule 16.A.(e) provides the requirements for such an application, which generally follow the requirements in the Eighth and Federal Circuits, the case law of this circuit, and the United States Supreme Court.

In district court cases the presumption provided in rule 16.B. is that fees shall be determined by the district court, including fees on appeal, unless the court of appeals determines that it would be more appropriate to have attorney's fees on appeal determined at the appellate level.

PROPOSED D. C. CIRCUIT RULE

16.A. ATTORNEY'S FEES -- AGENCY CASES

(a) In any agency case in which attorney's fees may be recoverable under the law applicable to that case, a motion for attorney's fees shall be filed with the clerk, with proof of service, within 30 days after the entry of judgment. Objections to an allowance of fees must be filed within 14 days after service on the party against whom the award of attorney's fees is sought.

(b) On the court's own motion or at the request of the party seeking fees, a motion for attorney's fees on appeal may be remanded to the administrative agency for appropriate hearing and determination.

(c) On its own motion the court may grant an allowance of reasonable attorney's fees to a prevailing party as a sanction where authorized by law.

(d) The clerk shall prepare and certify an award of attorney's fees granted by the court for insertion in the mandate. The issuance of the mandate shall not be delayed for an award of attorney's fees. If the mandate has been issued before final determination of a motion for an award of attorney's fees, the award, and any amendments thereto, shall be added to the mandate by the clerk upon request.

(e) Each application for attorney's fees and expenses shall contain a citation to the statutory provision or other authority which authorizes an award, and shall indicate the manner in which the prerequisites for an award have been

fulfilled. In addition, each application shall contain a declaration or statement, under oath, which specifies:

- (i) the nature of each service rendered;
- (ii) the amount of time expended in rendering each type of service; and,
- (iii) the customary charge for each type of service rendered.

16.B. ATTORNEY'S FEES — DISTRICT COURT CASES

On all appeals from the United States District Court for the District of Columbia in which attorney's fees may be recoverable, a motion for said fees shall be filed with the District Court within 30 days after the mandate is entered unless the Court of Appeals on its own motion or at the request of the party seeking fees, determines that it would be more appropriate to have attorney's fees on appeal determined at the appellate level. In that case, the applicable time limits and procedures in Rule 16.A. shall apply.