

**THE PHI KAPPA TAU FRATERNITY**  
**CLAIM AND DISPUTE RESOLUTION**  
**PLAN AND RULES**

# **THE PHI KAPPA TAU FRATERNITY CLAIM AND DISPUTE RESOLUTION PLAN**

## **1. Purpose and Construction**

The Plan is designed to provide for the quick, fair, accessible, and inexpensive resolution of legal disputes between the Fraternity, and between any parent, affiliate, or successor of the Fraternity, or any of their officers, directors, new members, alumni, or members, and the Fraternity's present and former members, related to or arising out of a membership relationship with the Fraternity or participation in a Fraternity activity, expressly including, but not limited to, any legal disputes in which any present or former Phi Kappa Tau Fraternity member asserts a claim or dispute against the Fraternity, any parent, affiliate, or successor of the Fraternity, or any of their officers, directors, or members, and the Fraternity's present and former members. The Plan is intended to create an exclusive procedural mechanism for the final resolution of all disputes falling within its terms. It is not intended either to reduce or enlarge substantive rights available under existing law. The Plan should be interpreted in accordance with these purposes.

## **2. Definitions**

- A. "AA" means any federal or state-recognized Arbitration Association or a similar, local group of arbitrators selected by Sponsor to hear the member's claim or dispute in the area of the Chapter's location.
- B. "Sponsor" means The Phi Kappa Tau Fraternity.
- C. The "Act" means the Arbitration Act of the state in which the claim or dispute arises, or the Federal Arbitration Act if applicable.
- D. "Fraternity" means The Phi Kappa Tau Fraternity, house corporations, and every student chapter or alumni organization of The Phi Kappa Tau Fraternity and all of their officers, directors, members, and agents. "Fraternity" also includes every plan of benefits or foundation, whether or not tax-exempt, established or maintained by any such entity, and the fiduciaries, agents and members of all such entities. "Fraternity" also includes the successors and assigns or all such persons and entities.

- E. “Claim” means any legal or equitable claim, demand or controversy for any personal injury, equitable relief or property damage arising out of any tort, statute (local, state or federal) or breach of contract involving the Fraternity. This includes but is not limited to any type of allegation of negligence, intentional acts, defamation, discrimination, contribution or indemnity.
- F. “Dispute” means a claim, demand or controversy to which this Plan applies, between persons bound by the Plan or by an agreement to resolve disputes under the Plan, or between a person bound by the Plan and a person or entity otherwise entitled to its benefits.
- G. “Member” means any new member, initiate, existing member, alumni, or former member of The Phi Kappa Tau Fraternity.
- H. “Party” means a person bound by this Plan.
- I. “Plan” means this The Phi Kappa Tau Fraternity Claim and Dispute Resolution Plan, as amended from time to time.
- J. “Referee” means a person selected under this Plan to decide or mediate a Claim or Dispute, such as an arbitrator or mediator. “Decision by Referee” means resolution of a Claim or Dispute by arbitration or any other method selected by the Parties under this Plan.
- K. “Rules” means The Phi Kappa Tau Fraternity Claim and Dispute Resolution Rules, as amended from time to time.

### **3. Application and Coverage**

- A. Until revoked by Sponsor pursuant to this Plan, this Plan applies to and binds the Fraternity and each Member on or after the effective date of this Plan, and the heirs, beneficiaries and assigns of any such person. All such persons shall be deemed Parties to this Plan.
- B. Except as provided for herein, this Plan applies to any legal or equitable Claim, Dispute, demand or controversy, in tort, in contract,

under statute (local, state or federal), or alleging violation of any legal obligation, between persons bound by the Plan, or between a person bound by the Plan and any person or entity entitled to its benefits, which relates to, arises from, concerns or involves in any way any Claim or Dispute as defined, herein, arising out of or involving the Fraternity or any Fraternity activity. This includes any direct or indirect claims for contribution or indemnity.

- C. Notwithstanding anything to the contrary in this Plan, the Plan does not apply to claims for workers compensation benefits or unemployment compensation benefits.

#### **4. Resolution of Disputes**

All disputes not otherwise settled by the Parties shall be finally and conclusively resolved under this Plan and the Rules.

#### **5. Amendment**

- A. This Plan may be amended by Sponsor at any time with thirty (30) days notice. However, no amendment shall apply to a Dispute of which Sponsor had actual notice on the date of amendment.
- B. Sponsor may amend the Rules at any time with thirty (30) days notice. However, no amendment will be effective:
  - 1. until reasonable notice and acceptance of the amendments are made available on The Phi Kappa Tau Fraternity website to all members, or
  - 2. as to a Claim or Dispute of which Sponsor had actual notice (by notice of intent to arbitrate or otherwise) on the date of amendment.

#### **6. Termination**

This Plan may be terminated by Sponsor at any time. However, termination shall not be effective:

- A. until 10 days after reasonable notice and acceptance of termination is given to Members; or
- B. as to Claims or Disputes which arose prior to the date of termination.

## **7. Applicable Law**

- A. The Act shall apply to this Plan, the Rules, and any proceedings under the Plan or the Rules, including any actions to compel, enforce, vacate or confirm proceedings, awards, orders of a Referee, or settlements under the Plan or the Rules.
- B. Other than as expressly provided herein, or in the Rules, the substantive legal rights, remedies and defenses of all Parties are preserved. In the case of arbitration, the arbitrator shall have the authority to determine and implement the applicable law and to order any and all relief, legal or equitable, including punitive damages, which a Party could obtain from a court of competent jurisdiction on the basis of the claims made in the Dispute.
- C. Other than as expressly provided herein, or in the Rules, the Plan shall not be construed to grant additional substantive legal or contractual rights, remedies or defenses which would not be applied by a court of competent jurisdiction in the absence of the Plan.

## **8. Administrative Proceeding**

- A. This Plan shall apply to a Dispute pending before any local, state or federal administrative body unless prohibited by law.
- B. Participation in any administrative proceeding by the Fraternity shall not affect the applicability of the Plan to any such dispute upon termination of the administrative proceedings. A finding, recommendation or decision by an administrative body on the merits of a dispute subject to this Plan shall have the same legal weight or effect under the Plan as it would in a court of competent jurisdiction.

**9. Exclusive Remedy**

Proceedings under the Plan shall be the exclusive, final and binding method by which Disputes are resolved. Consequently, the institution of a proceeding under this Plan shall be a condition precedent to the initiation of any legal action (including action before an administrative tribunal with adjudicatory powers) against the Fraternity arising out of the membership or participation in Fraternity activities of a member by the Fraternity and any such legal action shall be limited to those under the Act.

**10. Effective Date**

The effective date of this Plan is August 1st, 2010.

**11. Severability**

The terms of this Plan and the Rules are severable. The invalidity or unenforceability of any provision therein shall not affect the application of any other provision. Where possible, consistent with the purposes of the Plan, any otherwise invalid provision of the Plan or the Rules may be reformed and, as reformed, enforced.

**12. Assent**

Accepting membership, becoming a new member or continued membership after the Effective Date of this Plan and any amendments constitutes consent by both the Member and the Fraternity to be bound by this Plan, both during the membership and after termination of membership.

# **THE PHI KAPPA TAU FRATERNITY CLAIM AND DISPUTE RESOLUTION RULES**

## **1. Definitions**

All definitions included in The Phi Kappa Tau Fraternity Claim and Dispute Resolution Plan apply to these Rules.

## **2. Application**

These Rules apply in the form existing at the time proceedings are initiated under them.

## **3. Initiation of the Process**

- A. A Party may initiate proceedings under these Rules at any time, subject to any defenses applicable to the timeliness of the claim, including limitations and laches.
- B. Proceedings may be initiated by a Member against the Fraternity and/or its Members by serving the Fraternity Dispute Resolution Program Administrator. In such a case, the Fraternity shall promptly forward any properly served notice it has received to an arbitrator. The Sponsor shall, within ten (10) days of receiving notice, select the AA.
- C. Parties on whom notice is served shall file an answering statement within 21 days of receiving notice of intent to arbitrate or a specification of claims, which shall include any counter-claims.

## **4. Administrative Conference**

As soon as possible after receipt of the answering statement, if any, the AA shall convene an administrative conference. The conference may be held in person or by telephone. At the conference, the AA will determine whether the Parties are in agreement on a method to resolve the dispute. If the

Parties agree on a procedure, including agreement on an Arbitrator, the AA will implement this agreement to the extent consistent with the AA's rules upon payment of any applicable fee. If the Parties cannot agree, or if the Parties have previously attempted and failed to resolve the Claim or Dispute, the Claim or Dispute shall be arbitrated under these Rules.

## **5. Appointment of Arbitrator**

Immediately after payment of the arbitration fee, the AA shall send simultaneously to each Party an identical list of names of persons chosen from a panel of qualified arbitrators which the AA shall select and maintain. Each Party to the Claim or Dispute shall have fourteen (14) days from the transmittal date to strike any names objected to, number the remaining names in order of preference, and return the list to the AA. If a Party does not return the list within the time specified, all persons therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the order of mutual preference, the AA shall invite the acceptance of the single arbitrator to serve.

## **6. Qualifications of the Arbitrator**

No person shall serve as an arbitrator in any matter in which that person has any financial or personal interest in the result of the proceeding. Prior to accepting appointment, the prospective arbitrator shall disclose any circumstance likely to prevent a prompt hearing or create a presumption of bias. Upon receipt of such information from the arbitrator or any other source, the AA will either replace that person or communicate the information to the Parties for comment. Thereafter, the AA may disqualify that person and its decision shall be conclusive.

## **7. Vacancies**

If a vacancy occurs for any reason or if an appointed arbitrator is unable to serve promptly, the appointment procedure in Section 5 shall apply to the selection of a substitute arbitrator.

## **8. Date, Time and Place of Hearings**

- A. The arbitrator shall set the date, time and place of the hearing in the county where the Fraternity has a local chapter to which the member belongs or where the involved Chapter was located at the time of the event in question.
- B. Notice of any hearing shall be given at least ten (10) days in advance, unless the arbitrator determines or the Parties agree that a shorter time is necessary.
- C. If one Party is a Member, the arbitrator shall make reasonable efforts, without unduly incurring expense, to accommodate the Member in the selection of a hearing location.

## **9. Mode of Hearings and Conferences**

In the discretion of the arbitrator or by agreement of the Parties, conferences and hearings may be conducted by telephone or by written submission as well as in person.

## **10. Pre-Hearing Discovery**

- A. On any schedule determined by the arbitrator, each Party shall submit in advance, the names and addresses of the witnesses it intends to produce and any documents it intends to present.
- B. The arbitrator shall have discretion to determine the form, amount and frequency of discovery by the Parties. However, the arbitrator cannot allow more than 20 hours per side of depositions, or more than 20 interrogatories, requests for production, and requests for admission per side, unless good cause is shown.

## **11. Representation**

Any Party may be represented by counsel or by any other authorized representative.

## **12. Attendance at Hearings**

The arbitrator shall maintain the privacy of the hearings to the extent permitted by law. Any person having a direct interest in the matter is entitled to attend the hearings.

The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a Party or other essential person, during the testimony of any other witness. The arbitrator shall determine whether any other person may attend the hearing. Upon the request of any Party, the arbitrator shall exclude any witness during the testimony of any other witness.

## **13. Postponement**

- A. The arbitrator, for good cause shown by a Party, or on agreement of the Parties, may postpone any hearing or conference.
- B. The pendency of court proceedings related to the same matter is not good cause for postponement.

## **14. Oaths**

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and if required by law or requested by any Party, shall do so.

## **15. Stenographic Record**

There shall be no stenographic record, tape recorded, or videotape record of the proceedings unless either requested by one of the Parties or the arbitrator rules otherwise. The Party requesting the record shall bear the entire cost of producing the same. Copies of the record shall be furnished to all other Parties on request and payment of the cost of reproduction.

## **16. Procedure**

The hearings shall be conducted by the arbitrator in whatever order and manner will most expeditiously permit full presentation of the evidence and arguments of the Parties.

## **17. Arbitration in the Absence of a Party**

The arbitrator may proceed in the absence of Parties or representatives who, after due notice, fail to be present or fail to obtain a postponement. An award shall not be made solely on the default of a Party. The arbitrator shall require any Party who is present to submit such evidence as the arbitrator may require for the making of an award.

## **18. Evidence**

- A. The arbitrator shall be the sole judge of the relevance, materiality and admissibility of evidence offered. Conformity to legal rules shall not be necessary.
- B. The arbitrator may subpoena witnesses or documents at the request of a Party or on the arbitrator's own initiative.
- C. The arbitrator may consider the evidence of witnesses by affidavit or declaration, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

## **19. Post-Hearing Submissions**

All documentary evidence to be considered by the arbitrator shall be filed at the hearing, unless the arbitrator finds good cause to permit a post-hearing submission. All Parties shall be afforded an opportunity to examine and comment on any post-hearing evidence. The arbitrator shall permit the filing of post-hearing briefs at the request of a Party and shall determine the procedure and timing of such filings.

## **20. Closing and Reopening of Hearing**

- A. When the arbitrator is satisfied that the record is complete, including the submission of any post-hearing briefs or documents permitted by the arbitrator, the arbitrator shall declare the hearing closed.
- B. The hearing may be reopened on the arbitrator's initiative or upon application of a Party, at any time before the award is made.

## **21. Waiver of Procedures**

Any Party who fails to object in writing after knowledge that any provision or requirements of these procedures has not been complied with, shall be deemed to have waived the right to object.

## **22. Service of Notices and Papers**

Any papers, notices, or process necessary or proper for the initiation of continuation of any proceeding under these Rules (including the award of the arbitrator; for any court action in connection therewith; or for the entry of judgment on an award made under these procedures) may be served on a Party by mail addressed to the Party or his representative at the last known address or by personal service. Service may be made at any place, provided that the Party served has had a reasonable opportunity to be heard with regard to service. The AA, the Parties, and the arbitrator may also use facsimile transmission, telex, telegram, or other written forms of electronic communication to give any notices required by these procedures.

## **23. Communications with the AA and the Fraternity**

- A. Any Party may notice, serve or communicate with the Fraternity by contacting:

Chief Operating Officer (Program Administrator)  
The Phi Kappa Tau Fraternity

5221 Morning Sun Rd  
Oxford, OH 45056-1521  
(513) 523-4193  
Fax: (513) 523-9325

**24. Communications with the Arbitrator**

There shall be no communication between the Parties and the arbitrator other than at any oral hearings or conferences. Any other oral or written communications from the Parties to the arbitrator shall be directed to the AA (and copied to the Parties) for transmission to the arbitrator, unless the Parties and the arbitrator agree otherwise.

**25. Time of Award**

The award shall be promptly made by the arbitrator and, unless otherwise agreed by the Parties or specified by applicable law, no later than thirty (30) days from the date of the closing of the hearing or the closing of a reopened hearing, whichever is later.

**26. Form of Award**

The award shall be in writing and shall be signed by the arbitrator. If any Party requests in its Notice or Answering Statement, the arbitrator shall write a summary of reasons for the decision. The award shall be executed in any manner required by applicable law.

**27. Modification of Award**

On order of a court of competent jurisdiction, or on agreement of the Parties, the arbitrator shall modify any award. The arbitrator may modify an award on the motion of a Party if the arbitrator finds that the award as rendered is ambiguous or defective in form, or if the award requires an illegal or impossible act. These are the only circumstances under which an arbitrator shall have jurisdiction to withdraw or modify an award.

## **28. Settlement**

If the Parties settle their dispute during the course of the arbitration, the arbitrator may set out the terms of the settlement in a consent award.

## **29. Scope of Arbitrator's Authority**

The arbitrator's authority shall be limited to the resolution of legal disputes between the Parties. As such, the arbitrator shall be bound by and shall apply applicable law including that related to the allocation of the burden of proof as well as substantive law. The arbitrator shall not have the authority either to reduce or enlarge substantive rights available under existing law. The arbitrator may also grant emergency or temporary relief which is or would be authorized by applicable law.

## **30. Judicial Proceedings and Exclusion of Liability**

- A. No arbitrator is a necessary Party in any judicial proceedings relating to proceedings under these Rules.
- B. No arbitrator shall be liable to any Party for any act or omission in connection with any proceedings within the scope of these Rules.
- C. Any court with jurisdiction over the Parties may compel a Party to proceed under these Rules at any place and may enforce any award made.
- D. Parties to these Rules shall be deemed to have consented that judgment upon the award of the arbitrator may be entered and enforced in any federal or state court having jurisdiction of the Parties.
- E. Initiation of, participation in, or removal of a legal proceeding shall not constitute waiver of the right to proceed under these Rules.
- F. Any court with jurisdiction over the Parties may issue any injunctive orders (including temporary restraining orders and preliminary injunctions) if the necessary legal and equitable requirements under applicable law are met pending the institution of proceedings under these Rules.

### **31. Fees and Expenses**

- A. The expenses of witnesses shall be borne by the Party producing such witnesses, except as otherwise provided by law or in the award of the arbitrator.
- B. All attorney's fees shall be borne by the Party incurring them except as otherwise provided by law, by the Plan, or in the award of the arbitrator.
- C. Member Parties: Except as provided in this Rule, Member parties shall not be responsible for payment of fees and expenses of proceedings under these Rules including required travel of an arbitrator, expenses of an arbitrator and the cost of any proof produced at the discretion of an arbitrator. If proceedings are initiated by a Member, the Member shall be responsible for the following fees:
  - i. \$500 if the Parties go to mediation or other non-binding means to resolve the Claim or Dispute requiring one neutral; and
  - ii. \$1,000 for arbitration initiated by a Member.All other fees for mediation or arbitration shall be paid by the National Fraternity.
- D. If the demand for mediation or arbitration is initiated by the Fraternity, all fees will be paid by the Fraternity.

### **32. Interpretation and Application of These Rules**

The arbitrator shall interpret and apply these Rules insofar as they relate to the arbitrator's powers and duties.

### **33. Applicable Law**

- A. These proceedings and any judicial review of awards under these Rules shall be governed by the The Act.
- B. Except where otherwise expressly provided in these Rules, the substantive law applied shall be state or federal substantive law which would be applied by the Federal Circuit Court of Appeals for the state where the event occurred.