

**THE NATIONAL FRATERNITY OF KAPPA  
DELTA RHO, INC.**

**CLAIM AND DISPUTE RESOLUTION PLAN  
AND RULES**

**THE NATIONAL FRATERNITY OF KAPPA DELTA RHO, INC.  
CLAIM AND DISPUTE RESOLUTION PLAN**

**1. Purpose and Construction**

This Claim and Dispute Resolution 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 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. Any Dispute or Claim, as those terms are used and defined in this document, relating to or arising out of a membership relationship with the Fraternity or participation in a Fraternity activity shall be exclusively resolved by binding arbitration upon a Party's submission of the dispute to arbitration. This Claim and Dispute Resolution Plan is intended to apply to any claims brought by the heirs, successor and assigns of any Party to the Plan, unless otherwise prohibited by law.

3. All Parties to the Plan expressly waive their rights to initiate a lawsuit against a Party to the Plan before any state or federal court that involves a Dispute or Claim covered by the Plan.

**4. Definitions**

- A. "Sponsor" means The National Fraternity of Kappa Delta Rho, Inc.
- B. "Fraternity" means The National Fraternity of Kappa Delta Rho, Inc., any affiliated house corporations, and every student colony, chapter or alumni organization affiliated with the Fraternity and all of their officers, directors, members, volunteers, and agents. "Fraternity" also includes every associated foundation and wholly owned subsidiary,

whether or not tax-exempt, and the fiduciaries, agents, staff, directors, and members of all such entities. “Fraternity” also includes the successors and assigns of all of the aforementioned persons and entities.

- C. “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.
- D. “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.
- E. “Member” means any new member, pledge, initiate, existing member, alumni, or former member of The National Fraternity of Kappa Delta Rho, Inc. and the heirs, beneficiaries and assigns of any such person, including the personal representative of the estate of the Member.
- F. “Party” means a person bound by this Plan.
- G. “Plan” means the National Fraternity of Kappa Delta Rho, Inc. Fraternity Claim and Dispute Resolution Plan, as amended from time to time.
- H. “Decision by Arbitrator” means resolution of a Claim or Dispute by arbitration under this Plan.
- I. “Rules” means The National Fraternity of Kappa Delta Rho, Inc. Claim and Dispute Resolution Rules, including any subsequent amendments thereto.

## **5. Application and Coverage**

- A. 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. By continuing membership in the Fraternity, members agree to the terms of the Plan and its application to any Claims and Disputes described in the Plan, until such time as the Plan is revoked by Sponsor.
- C. 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 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.
- D. Notwithstanding anything to the contrary in this Plan, the Plan does not apply to claims for workers compensation benefits or unemployment compensation benefits.

## **6. Amendment**

- A. The Plan and Rules may be amended by Sponsor from time to time as may be deemed necessary. Sponsor must provide written notice of the proposed amendment to all Members thirty (30) days before the effective date of the amendment. Notice may be achieved by posting the proposed amendment on the Fraternity's website and making it available to all Members, or otherwise using electronic means of distributing notice of the amendment. A Member's decision to continue his membership in the Fraternity will be considered consent to any such Amendment. No amendment will be applied retroactively or to a Dispute or Claim of which Sponsor had actual notice on the effective date of the amendment.

## **7. Termination**

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

- A. until 10 days after written notice is given to Members and assented to

in the manner described in paragraph 12; or

- B. as to Claims or Disputes which arose prior to the date of termination.

## **8. Applicable Law and Venue**

- A. The Federal Arbitration 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 an arbitrator, 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.
- C. Venue of the arbitration shall be the County determined by paragraph 8A of the Rules.

## **9. 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.

## **10. Exclusive Remedy**

Proceedings under the Plan shall be the exclusive, final and binding method by which Claims and 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 or members.

## **11. Effective Date**

The effective date of this Plan IS August 1, 2021

**12. 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.

**13. Assent**

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

**THE NATIONAL FRATERNITY OF KAPPA DELTA RHO, INC.  
CLAIM AND DISPUTE RESOLUTION RULES**

**1. Definitions**

All definitions included in The National Fraternity of Kappa Delta Rho, Inc. 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. A demand for arbitration shall be initiated by sending a registered or certified letter to each named Party against whom the claim is made, which provides notice of the existence and nature of the claim, the amount claimed, and specific demand for arbitration. Service upon The National Fraternity of Kappa Delta Rho, Inc. shall be made on the Executive Director/Chief Executive Officer at Fraternity headquarters.
- C. Within 21 days of receipt of the certified letter demanding arbitration, the responding Parties shall serve an Answering Statement in response to the demand for arbitration on all Parties. The Statement shall include respondent's contact information, the contact information of its representative (if any), its preliminary comments on the dispute, its response to the relief sought by the claimant, its proposals for choice of arbitrators and any counterclaims the respondent may be making against the claimant or any other Party to the arbitration. The respondent's Statement in response is not intended to be a full reply of all of the particular issues involved in the case.

#### **4. Appointment of an Arbitrator**

- A. Within 30 days after service of the demand for arbitration, the Parties shall agree on an arbitration service from which an arbitrator may be chosen, or shall agree on a panel of arbitrators from which an arbitrator shall be chosen. If the parties cannot agree on a panel of arbitrators or an arbitrator within 30 days after service of the demand for arbitration, then the arbitration service from which an arbitrator or panel of arbitrators will be chosen shall be that of JAMS Mediation, Arbitration and Dispute Resolution or another arbitration service located in the venue where the arbitration will be held.
- B. The Parties may mutually agree upon the use of a single arbitrator or a panel of arbitrators. If the Parties cannot agree upon the panel number, the default will be a panel of two arbitrators, unless the amount sought in controversy is less than \$25,000. If a Party is seeking less than \$25,000 in monetary damages and the Parties cannot agree upon the panel number, then the default will be one arbitrator.

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

The arbitrator shall have experience in the area of law that is involved in the Claim or Dispute for which arbitration is demanded and shall also have served as an arbitrator for a minimum of five years.

#### **7. Fees and Expenses**

- A. All attorney's fees incurred in connection with arbitration shall be borne by the Party incurring them except as otherwise provided by law or in these Rules.
- B. Active undergraduate Members shall not be responsible for payment of fees and expenses of proceedings under these Rules, unless the proceedings are initiated by the active undergraduate member. If proceedings are initiated by an active undergraduate Member, the Member shall be responsible for the payment of \$1,000 for initiating the arbitration. All other fees associated with arbitration initiated by an active undergraduate Member shall be paid by the National Fraternity.



- C. The expenses of witnesses shall be borne by the Party producing such witnesses, except as otherwise provided in these Rules or by law.

**8. Date, Time and Place of Arbitration**

- 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, where the involved Chapter is/was located at the time of the event in question, or in the county where the transaction or incident occurred that forms the basis of the Claim or Dispute.
- B. If a Party to the arbitration is an active undergraduate Member, the arbitrator shall make reasonable efforts, without unduly incurring expense, to accommodate the Member in the selection of a convenient location and time for the hearing.

**9. Pre-Arbitration Hearing Submissions**

Ten (10) days before the arbitration hearing, the Parties shall exchange copies of all exhibits it intends to submit during the hearing and shall identify each witness who will testify at the hearing, with a summary of the anticipated testimony of each witness.

**10. Mode of Pre-Arbitration Hearings and Conferences**

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

**11. Discovery**

- A. Limited discovery shall be permitted. Discovery may not exceed 3 witness depositions per Party, not to exceed 6 hours of testimony per deposition. Any Party shall also be entitled to depose any expert witness that will testify at the arbitration hearing. Written discovery may not exceed 20 interrogatories, 20 requests for production and 10 requests for admission per Party.
- B. The arbitrator(s) may subpoena witnesses or documents at the request of a Party or on the arbitrator's own initiative.

- C. Any Party may petition the arbitrator for additional discovery. The arbitrator shall not permit additional discovery absent a showing of good cause.
- D. The arbitrator shall resolve any discovery disputes submitted by any Party, including entry of protective orders or other discovery orders that may be required to protect a Party's rights.

## **12. Dispositive Motions**

The arbitrator may decide dispositive motions. The arbitrator shall set a reasonable date in advance of the arbitration hearing by which all dispositive motions shall be heard. The Parties shall be provided with notice and a reasonable opportunity to respond.

## **13. Representation**

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

## **14. Confidentiality**

- A. 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 may exclude any non-party from the hearing.
- B. Neither the Parties nor the arbitrator may disclose the substance of the arbitration proceedings or award except as required by law or as necessary to file a motion regarding the award pursuant to the Federal Arbitration Act and in that event, the Parties shall take all appropriate measures to file any documents related to the arbitration under seal.

## **15. Procedure**

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

## **16. Oaths**

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.

## **17. Evidence**

- A. The arbitrator(s) shall be the sole judge of the relevance, materiality and admissibility of evidence offered.
- C. The arbitrator(s) may consider the evidence of witnesses by affidavit or declaration but shall give it only such weight as the arbitrator(s) deems it entitled to after consideration of any objection made to its admission.

## **18. 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 orders 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.

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

The arbitrator(s) 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(s) shall require any Party who is present to submit such evidence as the arbitrator(s) may require for the making of an award.

## **20. Post-Hearing Submissions**

All documentary evidence to be considered by the arbitrator(s) shall be submitted at, or prior to the hearing, unless the arbitrator(s) 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(s) shall permit the filing of post-hearing briefs at the request of a Party and shall determine the procedure and timing of such filings.

**21. Closing and Reopening of Hearing**

- A. When the arbitrator(s) is satisfied that the record is complete, including the submission of any post-hearing briefs or documents permitted by the arbitrator(s), the arbitrator(s) 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.

**22. Waiver of Hearing**

The Parties may agree to waive the oral hearing and submit the dispute to the arbitrator for an award based on written submissions and other evidence as the Parties may agree.

**23. 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 Parties, and the arbitrator may also use facsimile transmission or e-mail to give any notices required by these procedures.

**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(s) 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 in the case of a waived hearing, no later than thirty (30) days after receipt by the arbitrator(s) of all materials specified by the Parties.

## **26. Form of Award**

The award shall be in writing and shall be signed by the arbitrator(s). The award shall be executed in any manner required by applicable law. Unless the Parties agree otherwise, the award shall contain a concise written statement for the reasons for the award.

## **27. Modification of Award**

On order of a court of competent jurisdiction, or on agreement of the Parties, the arbitrator(s) shall modify any award. The arbitrator(s) may modify an award on the motion of a Party if the arbitrator(s) 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(s) 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 in the same manner as a court of general jurisdiction in the venue. This includes but is not limited to determination of jurisdiction and dispositive motions. As such, the arbitrator(s) 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(s) shall not have the authority either to reduce or enlarge substantive rights available under existing law. The arbitrator(s) may also grant emergency or temporary relief

which is or would be authorized by applicable law.

### **30. Waiver**

If a Party becomes aware of a violation of or failure to comply with these Rules and fails to promptly object in writing, the objection will be deemed waived unless the arbitrator determines that waiver will cause substantial injustice.

### **31. 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.

### **32. Applicable Law**

- A. These proceedings and any judicial review of awards under these Rules shall be governed by the Federal Arbitration 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.