
**RULES FOR THE
STANDING COMMITTEES
ON THE
RESOLUTION OF
FEE DISPUTES**

*Bar Association of
Montgomery County, Maryland*

Changes Adopted October 7, 2013

Effective October 8, 2013

PREAMBLE

It is the purpose and function of the Committee on the Resolution of Fee Disputes to encourage the amicable resolution of disputes between attorneys and clients or former clients involving legal fees and costs paid, charged or claimed, and to provide to clients or former clients a fair and efficient method of determining such disputes through either mediation or binding arbitration when such disputes cannot be amicably resolved. These Rules shall become effective on September 15, 2008, for all disputes submitted to the Committee on or after that date.

DEFINED TERMS

The following terms shall have the meanings indicated:

"Assigned Investigator" shall refer to the member of a Sub-Committee assigned by the Chair to investigate a Complaint to determine whether a bona fide dispute exists over which the Committee has jurisdiction, and, where appropriate under these Rules mediate and/or attempt to resolve the dispute. The Assigned Investigator shall not be called as a witness or be required to testify on behalf either the Complainant or the Respondent or both the Complainant and Respondent. Neither the Complainant nor the Respondent shall subpoena the Assignment Investigator or any document prepared for or in connection with the fee dispute resolution process unless it is otherwise admissible or discoverable independent of the fee dispute resolution process.

"Chair" or shall refer to the chairperson of a Committee.

"Committee" shall refer to one or more (as the context requires) of the Sub-Committees on the Resolution of Fee Disputes.

"Complainant" shall refer to a client or former client who has submitted a Complaint to the Committee regarding a bona fide dispute over which the Committee has jurisdiction.

"Complaint" shall refer to the request by a client, former client, or a court of competent jurisdiction, to a Committee for consideration of a fee dispute, made in writing, identifying the parties to the dispute, and stating with brevity and clarity the facts with respect to the dispute.

"President" shall refer to the President of the Bar Association of Montgomery County, Maryland.

"Respondent" shall refer to an attorney (or law firm) against whom a Complaint has been submitted to a Committee.

APPOINTMENT OF COMMITTEE MEMBERS AND CHAIRS

1. The Committee on the Resolution of Fee Disputes shall be comprised of one (1) or more separate Sub-Committees, as the President deems necessary, to carry out the work of the Committee. Each Sub-Committee shall have its own Chair and membership, selected as provided in these Rules. Each Sub-Committee shall be governed by these Rules, but shall work independently of the other.

The fee dispute caseload burden shall be evenly distributed amongst the Sub-Committees to reduce the burden on any chair or Sub-Committee and to allow for the resolution of a dispute by a Sub-Committee of which the Respondent is neither the Chair nor a member.

ESTABLISHMENT OF THE COMMITTEES

2. Each Sub-Committee shall be comprised of at least twelve (12) members appointed by the President for three (3) year terms. As each member's term of office on the Committee expires, his or her successor shall be appointed for a period of three (3) years. The term of any member which expires while an arbitration is pending before him or her or while the member is acting as Assigned Investigator shall be extended until either the mediation is concluded or a final award is made or the arbitration is otherwise concluded, but shall not interfere with the President's power to appoint a successor to the Committee. The President shall appoint the Chair of each Committee from amongst the members who shall serve for a three (3) year term, unless earlier terminated by the President.

3. Members of the Committee shall be selected to provide representation from a broad spectrum of the Bar from the standpoint of both firm organization (i.e. large firms, small firms and sole practitioners) and types of practice (i.e. general practice, litigation practice, patent and admiralty practice, criminal practice, etc.). Committee members shall be experienced in the practice of the law and shall have practiced for at least five (5) years.

4. There shall be a combined meeting of the Sub-Committee(s) not less often than once each year to review the practices and procedures of the Sub-Committees and to recommend to the President any needed changes in these Rules.

5. The President shall determine a method and manner for dividing the dispute caseloads between the Sub-Committee(s): No dispute involving an attorney serving as a Chair or member of one of the Sub-Committees, shall be referred to that Sub-Committee or any member of his or her firm.

JURISDICTION

6. The Committee shall have jurisdiction over any dispute submitted by a client or former client concerning a fee (and/or costs) paid, charged or claimed with respect to legal services rendered by an attorney licensed to practice in the State of Maryland who rendered services to the client or former client in a Montgomery County court or administrative proceeding, or who rendered services to the client or former client from the attorney's law office located in Montgomery County where the amount in controversy is \$1,000.00 or greater. Excluded from the Committee's jurisdiction are: (a) disputes where litigation concerning the fee dispute has commenced and is pending between the parties, except where the complaint is referred to the Committee by a court of competent jurisdiction as provided for in paragraph 8 or the parties to a Court case agree to have the dispute heard by the Committee; (b) disputes over which a court has, in the first instance, jurisdiction to determine

the fee; (c) disputes involving services which are alleged to constitute a violation of the Rules of Professional Conduct and for which a complaint is pending, unresolved, before the Attorney Grievance Commission; and (d) disputes wherein the Complainant seeks damages or a return of fees paid based on allegations of legal malpractice, for which the statute of limitations for same has not run. The latter subsection (d) is not intended to exclude or prevent the Committee from exercising jurisdiction over, or having the authority to grant, a request for a refund of fee based on a claim that the fee is excessive. Where a Chair or any member of a Sub-Committee obtains knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, the Chair or member, as the case may be, shall inform the appropriate professional authority, consistent with the Rules of Professional Conduct.

7. The Committee will endeavor to encourage the mediation and amicable resolution of fee disputes falling within its jurisdiction and, in the event such resolution is not achieved, to arbitrate and finally determine such disputes as set forth in Paragraphs 13, 14 and 15

PROCESSING COMPLAINTS

8. A request for a Committee consideration of a fee dispute shall be submitted in writing to the Committee by a client, former client, or by a court of competent jurisdiction. The request, referred to as the "Complaint," need not be in any particular form, but shall be made in writing, identify the parties to the fee dispute, and state the facts with respect to the dispute. The Committee shall send a Waiver and Acknowledgement to the Complainant. If the terms of said Waiver and Acknowledgement are acceptable to him or her, then the Complainant shall sign the Waiver and Acknowledgement and submit the executed form to the Committee.

9. Upon receipt of the Waiver and Acknowledgement signed by the Complainant, the Chair will promptly acknowledge receipt of the Complaint and forward it to a member of his or her Committee for investigation, who is then designated as "Assigned Investigator." Assigned Investigator shall review the Complaint to ensure that the Committee has jurisdiction over the matter as provided in paragraph 6, and shall notify the Respondent of the complaint and that the Committee has jurisdiction, and shall send to him/her the Waiver and Acknowledgement for signature. If the terms of said Waiver and Acknowledgement are acceptable to him or her, then the Respondent shall sign the Waiver and Acknowledgement and submit the executed form to the Assigned Investigator. Upon receipt of the Waiver and Acknowledgment signed by both parties, the Assigned Investigator shall contact the "Complainant," and obtain such additional information from the Complainant as necessary to determine, in the judgment of the Assigned Investigator, that a bona fide dispute exists over which the Committee has jurisdiction. The Assigned Investigator will endeavor to make the determination within sixty (60) days of receipt of the Complaint. If the Respondent refuses to execute the Waiver and Acknowledgment, the Assigned Investigator shall notify the Chair and the Committee shall close its file.

10. Upon the completion of his or her preliminary investigation, the Assigned Investigator will report to the Chair in writing his or her determination as to whether a bona fide dispute exists over which the Committee has jurisdiction. If the Assigned Investigator has determined either that a bona fide dispute does not exist, or that the Committee lacks jurisdiction, or both, the Assigned Investigator shall state this determination in his or her report to the Chair. If the Chair concurs with the determination of the Assigned Investigator, based upon a review of the Complaint and the report of the Assigned Investigator, the Chair shall dismiss the Complaint. If the Chair does not concur, the Chair shall forward the Complaint to another member of the Committee for investigation in the same manner as set forth in Paragraphs 9 and 10.

11. If the Assigned Investigator has determined that a bona fide dispute exists over which the Committee has jurisdiction, the Assigned Investigator shall contact Complainant or Complainant's counsel, and Respondent or Respondent's Counsel to discuss the matter and make efforts to mediate the dispute. If such efforts are not successful, then the Assigned Investigator will inform the Chair that the matter could not be resolved. The Chair should request, in all cases where the amount in controversy exceeds \$5,000.00 that the Complainant sign a written consent to binding arbitration in a form approved by the Committee. If the Complainant fails or refuses to sign a written consent to binding arbitration within sixty (60) days after request from the Chair, the Chair shall dismiss the Complaint.

12. Where the amount in controversy is less than \$5,000.00, the Assigned Investigator shall contact the parties and make good faith efforts to arrange for mediation at a time and place convenient to the parties. The mediation may be conducted by telephone or other means that the Assigned Investigator believes conducive to a resolution of the matter. The Assigned Investigator shall endeavor to conduct and conclude the mediation sessions and/or settlement negotiations within 90 days of the determination that a bona fide dispute exists. The Assigned Investigator should advise the Chair of any settlement of the matter, or if after good faith efforts to resolve the dispute have been made, that the dispute cannot be resolved. In either event, upon the Chair receiving satisfactory recommendation from the Assigned Investigator to close the case, the file will be closed.

13. Upon receipt of the Complainant's written consent to binding arbitration, the Chair shall send to the attorney (hereinafter "the Respondent") involved a copy of the Complaint, the report of the Assigned Investigator, and shall request the attorney consent to binding arbitration. If the Respondent fails to consent to arbitration within sixty (60) days after the request by the Chair, the Chair shall notify the Complainant and close the case.

ARBITRATION

14. In all cases subject to binding arbitration, upon receipt of the Complainant's and Respondent's consent to binding arbitration, the matter shall be assigned to an arbitrator selected by the Chair.

15. It shall be the obligation of any member designated to serve as an arbitrator to disclose to the Chair any reasons why he or she cannot ethically or conscientiously serve. In the event that a member designated to serve declines or is unable to serve, the Chair shall

select another Sub-Committee member who may be eligible. In designating the arbitrator, the Chair shall strive to rotate selection of arbitrators in an equitable manner.

16. If all the parties to a controversy so agree, they may waive oral hearings and may submit their contentions in writing, together with exhibits, to the arbitrator or arbitrators assigned, who may then determine the controversy on the basis of such documents. However, the arbitrator may nevertheless require oral testimony of any party or witness, after due notice to all parties.

17. The member of the committee selected as the arbitrator of any dispute shall be vested with all the powers, and shall assume all the duties, granted and imposed upon arbitrators by the Annotated Code of Maryland, Courts and Judicial Proceedings Article, Section 3-201 et seq., to the extent that such procedures are not in conflict with these Rules.

18. The arbitrator shall endeavor to hold a hearing within ninety (90) days after the receipt of both Consents, and shall endeavor to render an award within fifteen (15) days after the close of the hearing.

19. The arbitrator shall fix a time and place for the hearing and will issue written notice thereof to the parties to the arbitration not less than fifteen (15) days before the hearing. A party's appearance at a scheduled hearing shall constitute a waiver on his or her part of any deficiency in respect to the giving of notice of the hearing.

20. The term "party," as used in these Rules to refer to a party to mediation or binding arbitration and shall include all parties who have executed a consent to binding arbitration.

21. The arbitrator shall determine any material issues raised or claims made regarding fees and/or costs by any party at any time up to the time of a hearing provided there has been adequate notice to all parties of all such issues or claims prior to the hearing so that no prejudice to any party or delay in the proceedings will result.

22. The parties to the arbitration are entitled to be heard, to present evidence material to the dispute, and to cross-examine witnesses appearing at the hearing. Any party to the arbitration has the right to be represented by an attorney at the hearing or at any stage of the arbitration proceedings. Any party may also have a hearing reported by a Court Reporter at his or her expense by written request presented to the Committee Chair at least three (3) days prior to the date of the hearing. In the event of such request, any other party to the arbitration shall be entitled to acquire at his or her own expense a copy of the reporter's transcript of the testimony by arrangement made directly with the reporter. When no party to the arbitration requests that the hearing be reported, and where the arbitrator deems it necessary to have a hearing reported, the arbitrator may employ a Court Reporter for such purpose if authorized to do so by the Chair. The costs of the Court Reporter selected by the arbitrator shall be assessed by the arbitrator and included in the Award.

23. All parties shall have an absolute right to attend all hearings. The exclusion of other persons or witnesses waiting to be heard shall rest in the discretion of the arbitrator.

24. Adjourned dates for the continuation of any hearings which cannot be completed on the first day shall be fixed for such times and places as the arbitrator may select with due regard to the circumstances of all the parties and the desirability of a speedy determination. Upon request of a party to the arbitration for good cause, or upon its own determination, the arbitrator may postpone the hearing from time to time.

25. The arbitrator shall preside at the hearing. The arbitrator shall rule on the admission and exclusion of evidence and on questions of procedure and shall exercise all powers relating to the conduct of the hearing. The arbitrator shall not be bound by the technical rules of evidence.

26. The arbitrator may request opening statements and may prescribe the order of proof. In any event, all parties shall be afforded full and equal opportunity for the presentation of any material evidence.

27. On request of any party to the arbitration or the arbitrator, the testimony of witnesses shall be given under oath. Where so requested, the arbitrator shall administer oaths to witnesses testifying at the hearing.

28. If any party to arbitration who has been duly notified fails to appear at the hearing, the arbitrator may hear and determine the controversy upon the evidence produced, notwithstanding such failure to appear, and enter a binding award.

29. Before closing the hearing, the arbitrator may specifically inquire of all parties whether they have further evidence to submit in whatever form. If the answer is negative, the hearing shall be declared closed and a notation to that effect made by the arbitrator as well as the date for submission of memoranda or briefs, if requested by the arbitrator.

30. The hearing may be reopened by the arbitrator on his or her own motion or on application of a party at any time before the award is signed and forwarded to the Chair of the Committee.

31. In the event of the death or incompetency of a party to the arbitration proceeding prior to the close of the hearing, the proceeding shall be abated without prejudice to either party to proceed in a court of proper jurisdiction to seek such relief as may be warranted. In the event of death or incompetency of a party after the close of the hearing but prior to a decision, the decision rendered shall be binding upon the principles, agents, heirs, administrators or executors of the deceased and on the estate or guardian of the incompetent.

THE AWARD

32. The decision of the arbitrator shall be expressed in a written award.

33. While the award need not be in any particular form, it may consist of a preliminary statement reciting the jurisdictional facts (i.e., that the hearing was held upon notice pursuant to a written agreement to arbitrate, that the parties were given an opportunity to testify and to cross-examine, etc.), a brief statement of the dispute, the findings, and the award. It shall include a determination of all the material questions submitted to the arbitrator necessary to determine the controversy.

34. The arbitrator may include in the award a direction for payment of other expenses related to the proceedings but not for fees to either the arbitrators or the parties' counsel, unless the parties have agreed otherwise.

35. The original and four (4) copies of the award shall be signed by the arbitrator who shall forward said award to the Chair of the Committee and, at the same time, serve a copy of the award on each party to the arbitration.

36. The preliminary award shall become final fifteen (15) days after service of the award on the parties. Absent the filing of Exceptions based on an irregularity in any procedural aspect of the proceedings rendering a determination of the dispute unfair to any party. Upon receipt of Exceptions, the Chair may remand the case to the arbitrator for further proceedings or, if justice requires, assign it to a new arbitrator for a rehearing, or may deny the Exceptions and send notice to the parties that the award is Final.

37. The award shall be accompanied by a written notice advising each party to the arbitration of his, her or its further right to apply in accordance with § 3-201, et. Seq., Courts and Judicial Proceedings Article, Annotated Code of Maryland, to the arbitrator for a modification or correction of the award and to petition the Circuit Court for Montgomery County, Maryland, to correct, modify or vacate the award.

ENFORCEMENT OF THE AWARD

38. In any case in which both the Complainant and the Respondent signed a consent to binding arbitration, any final award rendered may be enforced by any court of competent jurisdiction.

39. If the final award shall determine that the Respondent is not entitled to any portion of the disputed fees or costs, service of a copy of such award on said Respondent shall:

- (a) terminate all claim and interest of the Respondent against the Complainant with respect to the subject matter of the arbitration;
- (b) promptly return to Complainant any documents, records or other properties of the Complainant pertaining to the subject matter of the arbitration then held under claim of attorney's lien or for other reasons;

40. If the final award shall be in favor of the Respondent for any amount unpaid to the Respondent, it shall fix the amount to which he, she or they are found to be entitled. Payment of that amount shall:

- (a) constitute a complete satisfaction of all claims and interest of the Respondent against the Complainant in respect to the subject matter of the arbitration;
- (b) promptly return to Complainant any documents, records or other properties of the Complainant pertaining to the subject matter of the arbitration then held under claim of attorney's lien or for other reasons;

41. If the subject matter of a final award in favor of a Respondent involves pending litigation and a Complainant for good reason shall be unable to promptly pay in full the amount of any award rendered against him, her or it, application may be made to the court having jurisdiction for a determination of a means deemed to adequately secure payment. If such a determination shall be made and

the terms thereof be promptly fulfilled by the Complainant, such compliance shall entitle the Complainant to the relief specified in subdivision (a) or (b) of the foregoing paragraph.

CONFIDENTIALITY

42. Except as otherwise provided herein, all records, documents, files, proceedings and hearings, including the final award itself, pertaining to the arbitration of any fee dispute under these Rules in which both the Complainant and the Respondent have consented to binding arbitration, shall not be opened to the public or any person not involved in the dispute, except by order of the Court or as may be required by law. In the event suit is instituted, the final award may be introduced into evidence.