

Bylaws
of the
Lawyer-Client Fee Dispute Resolution Committee
of the
Cleveland Metropolitan Bar Association

Enacted November 18, 2015

Preamble and Purpose

1.) **Background.** Under Rule V, Section 5 of the Rules for the Government of the Bar, the Supreme Court of Ohio (“Court”) has authorized Certified Grievance Committees to adopt and to utilize written procedures for handling allegations of client dissatisfaction that do not constitute violations of the Rules of Professional Conduct. In 1997, the Board of Professional Conduct (“Board”) established that fee disputes were a category of disputes eligible for referral to an alternative dispute resolution program requiring arbitration rather than mediation.

2.) **Purpose.** The purpose of the Lawyer-Client Fee Dispute Resolution Committee (“Committee”) is to carry out the functions envisioned by the Court and the Board by providing lawyers and their clients a prompt, fair, convenient and effective method of resolving fee disputes.

3.) **History of Bylaws.** These Bylaws were developed from a compilation of the previous Bylaws of the Cleveland and Cuyahoga County Bar Association Committees, the American Bar Association’s Model Rules for Fee Arbitration, the Toledo Bar Association’s Rules for Alternative Dispute Resolution, and the Columbus Bar Association’s Rules for Alternative Dispute Resolution.

Appointment of Committee Members

4.) **Terms.** The Committee shall consist of attorney and non-attorney Members to be appointed by the President and approved by the Board of Trustees of the Cleveland Metropolitan Bar Association (“Association”) to serve as Arbitrators for 2 year terms.

5.) **Conclusion of Duty at End of Term.** The term of any Member which expires while a fee dispute is pending before a hearing on the fee dispute has taken place shall be extended until the fee

dispute is concluded, but the extension shall not preclude the President's appointment of a successor to the Committee.

6.) **Appointment of Chair and Vice-Chair.** The President shall appoint the Chair and Vice-Chair of the Committee each year from among the attorney Members of the Committee.

7.) **Certified Grievance Committee Members.** No currently serving member of the Association's Certified Grievance Committee shall be appointed to the Committee.

Intake

8.) **Initiating Process.** At the earliest opportunity, the Association's Legal Staff ("Staff") will advise grievants who have problems potentially falling within the categories specified by the Board for ADR of the existence of this Committee and provide them with information as to how to initiate the fee dispute process. Forms and informational materials about the Committee will be made available to any persons who may wish to use the service.

9.) **Written Explanation.** Any person wishing to utilize the Committee will be asked to submit a petition form with a brief written explanation addressing the problem presented. If insufficient information is presented upon which to assess the nature of the problem, Staff may ask the client or a third party to provide the necessary facts.

10.) **Referral to Fee Dispute Resolution.** Staff may refer any matter which appears on its face to be appropriate for fee arbitration, or any matter in which fee dispute resolution is specifically requested, to the Committee.

Jurisdiction

11.) **Matters Involving Other ADR Processes.** When a written request for assistance from a client is a matter involving a fee dispute, excluding allegations of any illegal or clearly excessive fee, the matter shall be referred to mandatory fee arbitration under these Bylaws.

12.) **Lawyers or Disputes in Cuyahoga County.** The Committee may exercise jurisdiction over any fee dispute referred to it concerning the fee paid, charged, or claimed for legal services provided

in a matter principally centered in Cuyahoga County or provided by a lawyer who maintains an office or who resides in Cuyahoga County.

13.) **Lawyers with Prior Discipline or Allegations of Rule Violations.** If allegations of a violation of the Rules of Professional Conduct or Rules for the Government of the Bar exist and/or the respondent lawyer has been sanctioned by the Court in the last five years, the Committee shall not take jurisdiction over the matter and it shall be referred to the Certified Grievance Committee. The Committee may take jurisdiction over the matter after it has been reviewed and dismissed or prosecuted to a final resolution by the Certified Grievance Committee.

14.) **No Jurisdiction.** The Committee, acting through its Chair or his or her designee, shall not be required to exercise jurisdiction over any dispute and, ordinarily, will decline to exercise jurisdiction over a dispute or disagreement:

(a) which is principally centered outside Cuyahoga County and/or where the records or other materials applicable to the matter are not reasonably accessible;

or

(b) where the client seeks affirmative relief for damages against the lawyer based upon alleged malpractice, professional misconduct, or client dissatisfaction; or

(c) where entitlement to and the amount of the fees and/or costs charged or paid to a lawyer by the client or on the client's behalf have been determined by court order, rule or decision; or

(d) where a third person is responsible for payment of the fees and the client fails to join them in the request for arbitration; or

(e) where the request for arbitration is filed more than two years after the lawyer-client relationship has been terminated or more than two years after the final billing has been received by the client, whichever is later; or

(f) where the dispute appears to involve matters of unusual complexity or where the investigation and hearing would appear to call for an unusually large expenditure of time; or

(g) where for any other reason the Committee believes it would not be able to carry out its purposes effectively.

15.) **Written Notification of Declination of Jurisdiction.** If the Committee does not take jurisdiction over a matter, all parties shall be so notified in writing with the reason why jurisdiction was declined.

16.) **Pending Litigation.** If litigation is already pending between the parties regarding fee issues at the time the fee arbitration request is filed, the Committee shall not exercise jurisdiction over the matter unless or until the litigation is stayed or dismissed and the parties agree to arbitration in lieu of litigation.

17.) **Commencing Litigation.** Neither party should commence litigation after petitioning for or receiving notice of the filing of a fee dispute petition. Litigation commenced after a fee dispute petition has been filed with the Committee may be stayed pending arbitration. Once a party has consented to fee arbitration, that party may not initiate litigation.

18.) **Other Forum.** The Committee may not exercise jurisdiction over a matter if fee arbitration is required by another forum (e.g. Workers Compensation).

Processing Complaints

19.) **Petition and Consent Forms.** Once a request for fee arbitration has been received, Staff will ask the client to complete and sign petition and consent forms agreeing to binding arbitration. In the event the client does not execute such consent, the Committee shall not proceed further.

20.) **Request for Attorney Response and Consent.** Upon receipt of the client's consent to arbitration, a copy of the client's petition and consent form(s), these Bylaws, a request for a response, a copy of Rule V(9)(G), and an attorney consent form shall be sent to the attorney. The attorney shall be given 30 days to respond.

21.) **Attorney Requesting Fee Arbitration With Client.** An attorney may request fee arbitration with a client. No obligation exists on the client to consent.

22.) **Referral to Certified Grievance Committee For Attorney Non-Compliance.** Fee arbitration is mandatory for an attorney whose client consents. In the event that the attorney does not execute such consent, the Committee shall not proceed further and shall refer the matter to the Certified Grievance Committee for the attorney's failure to cooperate with a procedure governed by Gov. Bar R. V(9)(G).

Scheduling an Arbitration Hearing

23.) **Hearings.** Upon receipt of the signed petitions and consent forms from the parties to arbitration, Staff shall schedule an arbitration hearing and appoint a panel as follows:

- (a) If the amount in dispute is over \$2000, the panel shall consist of three Arbitrators.
- (b) If the amount in dispute is under \$2000, or in any case if the parties so stipulate, the panel shall consist of a sole Arbitrator.
- (c) If the amount in dispute is not clearly under \$2000, the panel shall consist of 3 Arbitrators.
- (d) If the panel consists of 3 Members, an attorney Member shall act as chair of the panel.
- (e) If the amount in dispute is clearly under \$1,000, a non-attorney Member may be selected as a sole Arbitrator.

24.) **Conflicts of Interest.** Within 5 days of the notification of appointment of a panel, an Arbitrator shall notify Staff of any conflict of interest with a party to the arbitration. Upon notification of the conflict, Staff shall appoint a replacement.

25.) **Challenges for Cause.** A party may challenge any Arbitrator for cause. A challenge for cause naming the Arbitrator and the reason for the challenge shall be filed within 5 days after service of

the notice of appointment. An Arbitrator shall accede to a reasonable challenge and Staff shall appoint a replacement. If the Arbitrator does not voluntarily accede, the Chair or his or her designee shall decide whether to appoint a replacement. The decision of the Chair or his or her designee on challenges shall be final.

26.) **Location of Hearings.** Hearings shall normally be held at the offices of the Cleveland Metropolitan Bar Association, but may be held at another location of the panel chair's choice if convenient for the parties.

27.) **Notice of Hearing.** The panel and parties must be given notice as to the time and place of the hearing at least 14 days prior to the hearing.

28.) **Continuances.** No hearing shall be continued except in exceptional circumstances with the approval of the panel chair.

Arbitration

29.) **Settlements.** Negotiated settlements and compromises are encouraged, and the parties may agree to settle their dispute at any time prior to the conclusion of the hearing. In the event the parties settle, the petition for arbitration shall be dismissed and the matter shall be closed.

30.) **Representation by Counsel.** Parties may have their own attorneys present at the hearing to assist them in presenting their positions, but it is not necessary and in fact not encouraged.

31.) **Panel Chair's Powers and Duties.** The panel chair shall have the following powers and duties:

- (a) to preside at the hearing;
- (b) to administer oaths and affirmations;
- (c) to rule on the admission and exclusion of evidence and questions of procedure;
- (d) to compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding, and to consider challenges to the validity of subpoenas; and

(e) to exercise all powers relating to the conduct of the hearing.

32.) **Introduction of Evidence.** At the hearing, the parties may introduce any testimony, documents, or other evidence supporting their positions. Any evidence other than testimony that will be presented at the hearing must be submitted at least 5 days prior to the hearing. All submissions must include a sufficient number of copies for each party and arbitrator. In exceptional or unusual circumstances, the panel chair in his or her discretion may admit evidence that has not been presented prior to the hearing.

33.) **Oaths and Affirmations.** The testimony of witnesses shall be by oath or affirmation.

34.) **Rules of Evidence.** There are no formal rules of evidence. The panel typically will consider all relevant information to give the panel a complete understanding of the nature of the dispute as it relates to fees charged and the disagreement between the parties. The hearing shall be conducted, insofar as practical, in accord with the Commercial Arbitration Rules of the American Arbitration Association.

35.) **Subpoena Requests by Parties.** If a party requests the panel issue a subpoena for witnesses or documents necessary to a resolution of the dispute, the party must show good cause for the subpoena. The requesting party shall be responsible for service of subpoenas.

36.) **Burden of Proof.** The burden of proof shall be on the lawyer to prove the reasonableness of the fee by a preponderance of the evidence.

Panel Report

37.) **Panel Report.** While each panel of 3 should strive to reach unanimous decision, after all reasonable attempts to do so have failed, a decision by a majority of 2 of the panelists shall be the decision of the panel. Each panel shall complete the Lawyer-Client Fee Dispute Resolution Committee Panel Report form (“Panel Report”) within 10 days after the conclusion of the hearing, except in a dispute with exceptional or unusual circumstances. The panel shall not state the reasons for its decision.

38.) **Service of Panel Report on Parties.** Staff shall provide a copy of the Panel Report to all parties as soon as is practicable after the conclusion of the hearing.

39.) **Compliance With Panel Report.** Compliance with the Panel Report shall be made within 30 days after receipt of the Report.

40.) **Collection of Award.** The Committee has no control over how the fee or refund is to be collected by the party to whom it is owed.

41.) **Effect of Panel Report.** The Panel Report has the legal effect of an account stated. This means that the Panel Report can be admitted in a court of law as a final determination of binding arbitration as to the amount owed by one party to the other in accord with Chapter 2711 of the Ohio Revised Code. Thereafter, a court normally would make no further inquiry into the background of the dispute. By signing the consent and agreement form the client is consenting to such a result.

42.) **Committee's Authority.** The authority of the Committee is limited to determining the amount of the fee or refund. The hearing panel may consider the quality of the services and anything else that impacts the fee. The Committee does not make decisions regarding possible legal malpractice.

43.) **Decision Final.** The Panel Report is final and conclusive. After the fee dispute process is complete, the client may not bring the matter to the Certified Grievance Committee.

Confidentiality

44.) **Files Confidential.** Pursuant to Gov. Bar R. V (8)(B), except for the award itself, the Board-approved ADR process shall be confidential.

45.) **Rule Violation.** If during the course of the resolution of any dispute under these Bylaws, evidence is received by the panel which tends to establish a rule violation under the Rules of Professional Conduct other than Rule 1.5, the Committee shall cease its proceedings and the matter shall be referred to the Certified Grievance Committee. Only information that relates to the rule violation shall be provided to the Certified Grievance Committee; other information acquired during the resolution of the matter through ADR shall be kept confidential.

Immunity

46.) **Parties and Witnesses.** Parties and witnesses shall have such immunity as is applicable in a civil action in the jurisdiction.

47.) **Committee Officers and Members, Arbitrators and Staff.** Members of the Committee, panels and Staff shall be immune from suit for any conduct in the course and scope of their official duties.

Reporting Requirements

48.) **Statistical Records.** Staff will maintain confidential statistical records of cases referred to arbitration in such form and detail as permit the Association to report all required information to the Board and the Court.

Retention of Records

49.) **Retaining Closed Files.** Fee arbitration files shall be retained for 10 years from the date the matter was closed. Files may be retained beyond 10 years after the matter was closed at the discretion of Staff.

Effective Date

50.) **Effective Upon Adoption.** These Bylaws and any amendments thereto shall be effective immediately upon adoption by the Association's Board of Trustees.

Periodic Review

51.) **Review of Bylaws.** These Bylaws and the effectiveness of the entire Committee shall be reviewed from time to time, by the Chair or his or her designee, who shall report to the Committee and make recommendations for amendments to these Bylaws, if any, for the Committee's consideration and action.