

BYLAWS AND RULES OF THE DIVISION OF FEES MEDIATION AND ARBITRATION COMMITTEE OF THE CLEVELAND METROPOLITAN BAR ASSOCIATION

ARTICLE I

INTRODUCTION

The purpose of the Division of Fees Mediation and Arbitration Committee (“Committee”) of the Cleveland Metropolitan Bar Association (“CMBA”) is to implement the provisions of Rule 1.5(f) of the Rules of Professional Conduct as adopted by the Supreme Court of Ohio, by providing the means of resolving disputes between or among lawyers not in the same firm as to division of fees for the representation of a client.

ARTICLE II

COMMITTEE MEMBERSHIP

Section 1: The Committee shall not exceed 40 members of the CMBA to be approved for 3-year terms by the CMBA Board of Trustees (“Board”). One third of the terms shall expire each year but members may be reappointed to serve additional 3-year terms on the Committee upon the recommendation of the Chair and approval by the Board.

Section 2: The term of any member which expires while a mediation or arbitration is pending before him or her or a panel of which he or she is a member shall be extended until the mediation or arbitration is concluded but only for the purpose of completing the mediation or arbitration. The extension shall not interfere with the power of the Board to appoint a successor to the Committee.

Section 3: The Board shall approve a Chair and Vice Chair of the Committee each year from among the members of the Committee.

Section 4: In selecting persons for membership on the Committee, the Chair and Vice Chair should attempt to recommend a Committee membership representing a cross-section of the CMBA in terms of age, race, experience, and types or practice. Members shall be appointed without regard to race, color, national origin, religion, sex, age, or disability. Members shall be lawyers admitted to practice law in Ohio for at least 10 years and should have some experience with contingent fee agreements.

Section 5: Bar Counsel of the CMBA shall work with the Chair and Vice Chair and provide administrative support.

ARTICLE III

JURISDICTION

Section 1: The Committee shall have jurisdiction over any disagreement concerning the division between or among lawyers not in the same firm concerning the fees paid, charged, or claimed for legal services rendered to a client represented by such lawyers in accordance with the requirements of Rule 1.5(e) of the Ohio Rules of Professional Conduct.

Section 2: The Committee, acting by decision of either its Chair or Vice Chair and Bar Counsel, may decline to take jurisdiction over a dispute where:

- (a) there is a dispute with the client over the amount of the fee or the services rendered;
- (b) the matter is outside the Greater Cleveland area and the records are not accessible, or where for other reasons the Committee believes it may not be able to carry out its purpose;
- (c) the matter is deemed not to be a current dispute or where the passage of time renders it inappropriate for action;
- (d) the matter involves complex business questions, or where the investigation of facts and the conducting of a hearing would appear to require an excessive amount of time;
- (e) a court has jurisdiction to fix the fee; or
- (f) the underlying legal services may constitute a violation of the Rules of Professional Conduct.

Section 3: When appropriate, Bar Counsel may refer the matter to the Ohio State Bar Association for proceedings in accord with Rule 1.5(f).

ARTICLE IV

PROCESSING PETITIONS

Section 1: When a lawyer as a Petitioner alleges, in a writing submitted to the CMBA, that there is a dispute with another lawyer or lawyers over the division or allocation of legal fees paid, charged or claimed in the representation of a client, the Petitioner shall be referred to Bar Counsel.

Section 2: If, upon completion of a preliminary investigation, Bar Counsel and the Chair or Vice Chair determine that a prima facie dispute under Rule 1.5(f) has been stated and is within the jurisdiction of the Committee, Bar Counsel shall recommend to the Petitioner that a formal petition be filed. Bar Counsel shall do so by sending a petition form to the Petitioner, together with a copy of these Bylaws and Rules and an invoice for the filing fee of \$250.00.

Section 3: If Bar Counsel determines that the Petitioner has not established a prima facie dispute, the petition shall be logged with a brief reason for the rejection and kept with the records of Bar Counsel for future reference. Bar Counsel shall advise the Petitioner of the reason for rejection.

Section 4: Upon receipt of the petition and the filing fee, Bar Counsel shall promptly choose from the Committee membership list a number of potential mediators/arbitrators. Unless the disputed amount is \$5,000 or less, the number of persons on the list shall be the greater of (i) nine or (ii) the product of the number of parties times three plus one. If the disputed amount is \$5,000 or less, Bar Counsel shall designate one arbitrator. After making the list of potential mediators/arbitrators, or after choosing a sole arbitrator, Bar Counsel shall send to the lawyers involved a copy of the petition, the response from the Respondent, the list of potential mediators/arbitrators or the name of the sole arbitrator, a copy of these Bylaws and Rules and an invoice for that party's share of the arbitration fee provided in Article VI. At the same time, Bar Counsel shall send the Petitioner the list of potential mediators/arbitrators or the name of the sole arbitrator and an invoice for the balance of the Petitioner's share of the arbitration fee. Unless, within 15 days after the date of Bar Counsel's transmittal letters to the parties forwarding the list of potential mediators/arbitrators or the name of the sole arbitrator, all parties agree in writing to mediate the dispute, the matter shall be determined by arbitration.

Section 5: Each party to the mediation/arbitration shall be asked to rank the names on the list in order of preference. Upon completion of the rankings, each party will deliver his or her preference list to Bar Counsel. Bar Counsel will draw one party's list at random and strike the least preferred name on that list from consideration. Bar Counsel will then strike that same name from the corresponding list(s) of the other party or parties. Bar Counsel will then take the corresponding list of the other party (or another party, if there are more than two parties to the proceeding) and strike the least preferred remaining name from that list. Bar Counsel will then strike the corresponding name from the list of the first party (and the list of any other party). This process will continue until 3 names remain and Bar Counsel shall designate those persons as the arbitration panel. If all parties have agreed to mediation, then the process shall continue until one name remains and such person shall be the mediator.

Section 6: If any party fails to return a preference list to Bar Counsel within 15 days after the date of Bar Counsel's transmittal letter, Bar Counsel shall designate 3 arbitrators giving such preference to the requests on the list or lists delivered as Bar Counsel deems appropriate. If the parties fail to return the lists, Bar Counsel shall choose 3 names from the list of potential arbitrators and designate those persons as the arbitration panel.

Section 7: Once the arbitration panel or mediator has been designated, Bar Counsel shall promptly notify the parties and arbitrators or mediator of the designation.

Section 8: For fee disputes involving claims of \$5,000.00 or less, Bar Counsel shall promptly choose one arbitrator from the Committee membership list who is believed to be impartial. Bar Counsel shall endeavor to select persons on a rotating basis but may choose a person whose field of expertise, in the sole judgment of Bar Counsel, appears to put him or her in a better position to decide a particular fee dispute than a person chosen otherwise. Once the sole arbitrator has been designated, Bar Counsel shall promptly notify the parties and arbitrator of the designation.

Section 9: No person shall serve as a mediator, sole arbitrator or member of an arbitration panel if a conflict of interest exists or appears to exist by either the standards stated in the Ohio Code of Judicial Conduct or due to a professional relationship with any of the parties within the past 5 years. Bar Counsel shall screen obvious conflicts. If any mediator, arbitrator or member of an arbitration panel cannot serve, that member shall so notify Bar Counsel who shall forthwith select another Committee member.

Section 10: Following the designation of a mediator, a sole arbitrator or arbitration panel, Bar Counsel shall refer the matter to the mediator, sole arbitrator or panel to hear the controversy in accordance with these Bylaws and Rules.

Section 11: The parties may be represented by counsel.

ARTICLE V

MEDIATIONS AND ARBITRATIONS

Section 1: Unless the parties and the mediator, sole arbitrator or arbitration panel members agree otherwise, for each mediation or arbitration there shall be a single hearing before the mediator, sole arbitrator or arbitration panel at the CMBA offices with notice of the time and place of such hearing being given to the mediator, sole arbitrator or all members of the panel and all parties by Bar Counsel at least 14 days prior to the scheduled hearing.

Section 2: No continuances shall be granted except for extraordinary circumstances.

Section 3: Bar Counsel shall select for matters before an arbitration panel, a panel Chair who shall preside at the hearing, rule on the admission and exclusion of evidence and questions of procedures, and exercise all powers relating to the conduct of the hearing. The mediator or sole arbitrator in other matters shall have all of the same powers as a panel chair.

Section 4: Insofar as practical, the Commercial Arbitration Rules of the American Arbitration Association will apply for those matters arbitrated.

Section 5: Each mediation agreement, sole arbitrator's decision or panel decision shall be reduced to writing and, except in a case of exceptional or unusual complexity, delivered to Bar Counsel by the mediator, sole arbitrator or panel chair along with the entire file within 30 days after the conclusion of the hearing.

Section 6: Any matter that cannot be resolved through mediation shall be referred to Bar Counsel as a matter to be arbitrated by an arbitration panel pursuant to these Bylaws and Rules and subject to the additional fees in Article VI.

Section 7: Any agreement reached by the parties before a mediator and any decision rendered by a sole arbitrator or an arbitration panel is final and binding. The award may be enforced by any court of competent jurisdiction.

Section 8: Upon the failure of any party to comply with these Bylaws and Rules including the failure to pay when due the required fees or to participate in proceedings provided for in these Bylaws and Rules, Bar Counsel may refer the matter to the CMBA's Certified Grievance Committee or the Office of Disciplinary Counsel for investigation.

ARTICLE VI

FEES AND REFUNDS

Section 1: Mediation Fees: A fee of \$600.00 will be charged and payable by the parties in equal shares for all mediations. Each party's share of the fee is due and payable as of the date each party's preference list is due to be filed with Bar Counsel. The mediator will receive \$500.00 for his or her services. The CMBA will receive \$100.00 to cover administrative expenses. If any mediation hearing exceeds the anticipated 2 hours, then the parties will be charged equal shares at the rate of \$150.00/hour for payment to the mediator, for each hour, or material part thereof, beyond 2 hours.

Section 2: Sole Arbitrator Fees: For claims \$5,000.00 or less, a fee of \$250.00 will be charged and payable by the parties in equal shares. A party's share of the fee is due and payable within 15 days after the date of Bar Counsel's invoice to the party. The sole arbitrator will receive \$200.00 for his or her services. The CMBA will receive \$50.00 to cover administrative expenses. The arbitration hearing before the sole arbitrator is anticipated to last no more than one hour. If any such hearing exceeds the anticipated one hour then the parties will be charged equal shares at the rate of \$150.00/hour for payment to the arbitrator, for each hour, or material part thereof, beyond one hour.

Section 3: Arbitration Panel Fees: A fee of \$1,600.00 will be charged and payable by the parties in equal shares. Each party's share of the fee is due and payable as of the date each party's preference list is due to be filed with Bar Counsel. Each arbitrator will receive \$500.00 for service on the panel. The CMBA will receive \$100.00 to cover administrative expenses. If any arbitration hearing

exceeds the anticipated 2 hours then the parties will be charged equal shares at the rate of \$450.00/hour for payment at the rate of \$150.00/hour to each arbitrator, for each hour, or material part thereof, beyond 2 hours.

Section 4: Refunds for Matters Before a Mediator or Sole Arbitrator: If a mediation or matter before a sole arbitrator is resolved by the parties, no refund will be made unless Bar Counsel is notified at least 3 full business days in advance of the scheduled hearing. In that event, the amount refunded will be two-thirds the amount paid. The amount retained will be distributed as follows: \$100.00 to the mediator or sole arbitrator and the balance to the CMBA.

Section 5: Refunds for Matters Before an Arbitration Panel: If an arbitration is resolved by the parties, no refund will be made unless Bar Counsel is notified at least 3 full business days in advance of the scheduled hearing. In that event, the amount refunded will be \$1,200.00. The \$400.00 retained will be distributed as follows: \$100.00 to each arbitrator and \$100.00 to the CMBA.

ARTICLE VII

CONFIDENTIALITY AND REVIEW OF BYLAWS AND RULES

Section 1: With the exception of the award itself, all records, documents, files, proceedings and hearings pertaining to a mediation or arbitration of any dispute under these Bylaws and Rules shall not be opened to the public or any person not involved in the dispute unless one of the parties has made the matter public.

Section 2: These Bylaws and Rules shall take effect immediately upon approval by the Board.

Section 3: These Bylaws and Rules and the effectiveness of the entire fee mediation and arbitration program shall be reviewed periodically by the Chair and Bar Counsel who shall report concerning its effectiveness and make recommendations for change, if any, to the Board for its consideration and action.

Approved by the CMBA Board of Trustees of the Cleveland Metropolitan Bar Association on October 18, 2017.