

**RULES GOVERNING
THE FEE ARBITRATION COMMITTEE
OF THE AKRON BAR ASSOCIATION**

PREAMBLE AND PURPOSE

Background: Under Rule V, Section 3(C)(3) of the Rules for the Government of the Bar, the Supreme Court of Ohio has authorized Certified Grievance Committees to adopt and to utilize written procedures for handling allegations of client/petitioner dissatisfaction that do not constitute disciplinary violations. The Board of Commissioners on Grievances and Discipline (“Board”) established that fee disputes were a category of disputes eligible for referral to an alternative dispute resolution program requiring arbitration rather than mediation.

Purpose: The purpose of the Fee Arbitration Committee is to carry out the functions envisioned by the Supreme Court of Ohio and the Board by providing attorneys and their client/petitioners a fair and effective method of resolving fee disputes.

History of By-Laws: These By-Laws were developed and approved by the Executive Committee (now known as the Board of Trustees) on September 12, 1989, and subsequent amendments were approved by the Board of Trustees on September 9, 1993, March 25, 1997, October 30, 2002, May 25, 2005, and November 26, 2014.

I. APPOINTMENT OF COMMITTEE MEMBERS

- 1.1 Terms:** The Fee Arbitration Committee (“Committee”) shall consist of attorney members of the Akron Bar Association and non-attorney laymembers to be appointed by the President for one year terms.
- 1.2 Attorney Members:** The Committee shall consist of attorneys who have at some time actively engaged in the practice of law in the State of Ohio for at least five (5) years and are not judges or permanent full or part-time referees or magistrates in the State of Ohio. The members of the Committee shall be selected to provide representation from as broad a spectrum of the Bar as possible from the standpoint of both firm organization (i.e., large firms, small firms, and solo practitioners) and types of practice (i.e., general practice, litigation practice, corporate practice, patent practice, criminal practice, etc.).
- 1.3 Laymembers:** Laymembers shall be appointed by the President from as broad a spectrum of the general public as possible and shall be approved by the Board of Trustees.
- 1.4 Appointment of Chair and Vice-Chair:** The President shall appoint the Chair and Vice-Chair of the Committee to a two-year term from among the attorney members of the Committee.

II. INTAKE OF FEE ARBITRATION PETITIONS

- 2.1 **Forms:** Forms and information materials about the Fee Arbitration process will be made available on the Akron Bar Association's website or mailed to a party upon request.
- 2.2 **Written Explanation:** Any party wishing to utilize the Fee Arbitration process will be asked to submit their request in writing, using either the Petition for Fee Arbitration or the Grievance Statement of Facts forms. If insufficient information is presented upon which to assess the nature of the problem, Bar staff may ask the petitioner to provide the necessary facts or documentation.
- 2.3 **Initial Review:** Bar Counsel will review the initial petition or documentation submitted to ascertain if there are allegations of ethical misconduct which should be investigated, and to determine jurisdiction over the matter. Allegations of ethical misconduct will be referred to the Certified Grievance Committee for investigation prior to the commencement of Fee Arbitration.

III. JURISDICTION

- 3.1 **Attorneys in Summit County:** The Fee Arbitration Committee shall have jurisdiction over any disagreement with a client or third party concerning the fees paid, charged, or claimed for legal services rendered or to be rendered in the State of Ohio by an attorney who maintains his/her office, or who resides, in Summit County. When a written request for assistance 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 By-Laws.
- 3.2 **Attorneys in the Lawyer Referral & Information Service ("LRIS"):** The Fee Arbitration Committee shall have jurisdiction over any disagreement of fees for legal services resulting from a referral to an attorney through the LRIS, regardless of the location of the office or residence of the attorney. When a written request for assistance 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 By-Laws and the LRIS contract signed by the attorney.
- 3.3 **Disputes between Attorneys:** Disputes between attorneys, where they have represented a client/petitioner(s) in a particular legal matter, whether together or in succession, as to how their attorney fees are to be divided between them are subject to the provisions of Ohio Rule of Professional Conduct 1.5(f) and shall be referred to mandatory Fee Arbitration under these By-Laws.
- 3.4 **No Jurisdiction:** Under the following circumstances, the Committee, acting through Bar Counsel or Committee Chair, shall not be required to exercise jurisdiction over any dispute and, ordinarily, may decline to take jurisdiction over a dispute or disagreement:

- a. where the services of the attorney were performed outside of the State of Ohio and/or where the records or other materials are not reasonably accessible; or
- b. where the client/petitioner seeks affirmative relief for damages against the attorney based upon alleged malpractice or professional misconduct; or
- c. where entitlement to and the amount of the fees and/or costs charged or paid to a attorney by the client/petitioner or on the client/petitioner's behalf have been determined by court order, rule or decision; or
- d. where the dispute which involve fees which appear to constitute a violation of the Ohio Rules of Professional Conduct; or
- e. where a third person is responsible for payment of the fees and the client/petitioner fails to join them in the request for arbitration; or
- f. where a third person who has made payment, or is responsible for payment, of the fees and has failed to join or obtain the consent of the client; or
- g. where the request for arbitration is filed more than two years after the attorney-client relationship has been terminated or more than two years after the final billing has been received by the client/petitioner, whichever is later; or
- h. where the request for arbitration involves the disputed amount of \$250.00 or less charged or paid; or
- i. where the matter appears to involve matters of unusual complexity or where the investigation and hearing would appear to require an unusually large expenditure of time; or
- j. where a Fee Dispute Committee of another county Bar Association has already agreed to accept jurisdiction; or
- k. where, for other reasons, the Committee believes it may not be able to carry out its purposes effectively.

3.5 Written Notification of Denial of Jurisdiction: If the Committee does not take jurisdiction over a matter, all parties shall be notified in writing with the reason why jurisdiction was denied.

3.6 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.

3.7 Commencing Litigation: Neither party shall commence litigation with respect to fees after petitioning for or receiving notice of a Fee Arbitration petition. Litigation commenced after a fee arbitration petition has been filed shall be stayed pending arbitration. Once a party has consented to Fee Arbitration, that party may not initiate litigation.

3.8 Other forum: The Committee may not exercise jurisdiction over a matter if Fee Arbitration is required by another forum (e.g. Workers' Compensation), or if a court or other administrative agency has jurisdiction to determine the fees.

IV. PROCESSING FEE ARBITRATION REQUESTS

- 4.1 Petition and Consent Forms:** Bar Staff shall secure a copy of the Agreement to Arbitrate Form from the client/petitioner. In the event that the client/petitioner does not execute such consent, the Committee shall not proceed further and the matter will be closed.
- 4.2 Client/petitioner Obligation to Consent to Fee Arbitration:** An attorney may request Fee Arbitration with a client/petitioner. No obligation exists on the client/petitioner to consent.
- 4.3 Request for Attorney Response and Consent:** Upon receipt of the client/petitioner's consent to binding arbitration, a copy of the client/petitioner's petition, consent form and Committee By-Laws shall be mailed to the attorney. The attorney shall be asked to submit a written response within fourteen (14) days.

The Committee Chair will review the written response and make a determination if the Committee will accept jurisdiction over the dispute of the fees charged or paid. If the Committee accepts jurisdiction, the attorney will be asked to consent to binding arbitration. If the Committee declines jurisdiction over the dispute, both parties shall be notified. Bar Staff will provide the client/petitioner with the attorney's written response.

- 4.4 Attorney Duty To Cooperate:** Attorneys have a duty to cooperate as the Fee Arbitration process is considered an ADR procedure governed by Gov. Bar R. V (3)(C) and (4)(G).

V. SCHEDULING AN ARBITRATION HEARING

- 5.1 Hearing Panel:** Bar Staff shall schedule an Arbitration Hearing. In selecting a Panel, Bar Staff shall strive to rotate the selection of Panels, Panel Chair, and Panel Members in as equitable manner consistent with the nature of the problem involved.

For matters involving less than \$1,000.00, one attorney member Arbitrator shall be assigned to conduct the hearing. For matters involving more than \$1,000.00, a Panel ("Panel") consisting of two attorneys from the Committee, one of which shall be designated the Panel Chair, and one laymember of the Committee shall be appointed. Parties may agree to proceed with only one arbitrator should they wish.

- 5.2 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 in writing within five days after 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/her designee shall decide whether to appoint a replacement. The decision of the chair or his/her designee on challenges shall be final.
- 5.3 Scheduling Hearings:** Fee Arbitration Hearings shall be scheduled not less than thirty (30) nor more than (90) days from the receipt of the Petition for Arbitration.

- 5.4 Location of Hearings:** All hearings before all Panels will be held at the offices of the Akron Bar Association, unless the parties and the Panel agree to meet elsewhere, with notice of the time and place of the hearing being given to all members of the Panel at least fourteen (14) days prior to the actual hearing.
- 5.5 Time Allotted for Hearings:** Unless otherwise requested in writing to the Arbitrator/Panel, each side will have a maximum of 1.5 hours to present its case.
- 5.6 Continuances:** Either party may request a continuance in writing at least fourteen (14) days prior to the hearing. No hearing shall be continued except for good cause shown with the approval of the panel chairperson. Hearings shall not be stopped or continued once commenced except for good cause shown with the approval of the panel chairperson.

VI. ARBITRATION HEARING PROCEDURES

- 6.1 Panel Chair Powers and Duties:** The sole Arbitrator or Chair of the Panel shall preside at the hearing and shall determine all questions of procedure and exercise all powers relating to the conduct of the hearing.
- 6.2 Recording of Proceedings:** A party to the proceedings may make arrangements to have the hearing recorded at the party's own expense, provided notice is given to the other parties and the panel at least five (5) days prior to the scheduled hearing. If a party orders a transcript, that party shall provide a copy of the transcript to the panel free of charge. Any other party is entitled at his or her own expense to acquire a copy of the transcript by making arrangements directly with the reporter. A panel, in its discretion, may make arrangements to have a hearing recorded and the parties may obtain a copy at their own expense.
- Parties may not use their own personal recording devices, including but not limited to, cellphones, cameras, or laptop computers or tablets.
- 6.3 Oaths and Affirmations:** The testimony of witnesses shall be by oath or affirmation administered by the sole arbitrator or Panel Chair.
- 6.4 Panel Quorums:** All three arbitrators shall be required for a quorum where the Panel consists of three members. A panel of three arbitrators shall act with the concurrence of at least two arbitrators. Any dissenting positions must be filed with the majority reason.
- 6.5 Appearance; Failure of a Party to Appear:** Appearance by a party at a scheduled hearing shall constitute waiver by said party of any deficiency with respect to the giving of notice of hearing. The panel shall proceed in the absence of any party or representative who, after due notice, fails either to be present or to obtain a continuance. A decision shall be made on the basis of the petition, response, testimony of the party in attendance and other materials presented, and not based on the default of a party. The panel shall

require parties who are present to submit such evidence as the panel may require to issue a decision. A decision may be made in favor of a party who is absent if the evidence so warrants. If neither party appears, the panel will issue a decision based on the petition, response, and other materials presented prior to the arbitration.

- 6.6 Waiver of Personal Appearance:** Any party may waive personal appearance and submit testimony and exhibits by written declaration under oath to the panel. Such declarations shall be filed with the panel at least ten (10) days prior to the hearing. If all parties, in writing, waive appearances at a hearing, the matter may be decided on the basis of written submissions. If the panel concludes that oral presentations are necessary, the panel may schedule a hearing.
- 6.7 Telephonic Hearings:** In its discretion, a panel may permit a party to appear or present witness testimony at the hearing by telephonic conference call.
- 6.8 Stipulations:** Agreements between the parties as to issues not in dispute and the voluntary exchange of documents prior to the hearing are encouraged.
- 6.9 Evidence:** The panel shall accept such evidence as is relevant and material to the dispute and request additional evidence as necessary to understand and resolve the dispute. The rules of evidence [of the jurisdiction] need not be strictly followed. The parties shall be entitled to be heard, to present evidence and to cross-examine parties and witnesses. The panel shall judge the relevance and materiality of the evidence.
- 6.10 Subpoenas:** Upon request of a party and for good cause shown, or on its own initiative, the panel may issue subpoenas for witnesses or documents necessary to a resolution of the dispute. The requesting party shall be responsible for service of the subpoenas.
- 6.11 Death or Incompetency of a Party:** In the event of death or incompetency of a party, the personal representative of the deceased party or the guardian or conservator of the incompetent may be substituted.
- 6.12 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.
- 6.13 Order of Proof:** The parties shall present their evidence in a manner determined by the Panel.
- 6.14 Settlements:** Negotiated settlements and compromises are encouraged and the parties may agree to settle their disputes at any time prior to the conclusion of the hearing. In the event the parties settle, a settlement agreement will be drafted by the panel chair and signed by both parties. The petition for arbitration will be dismissed. The settlement agreement is enforceable in any court of competent jurisdiction.

VII. DECISIONS

- 7.1 Determination:** The Panel shall render its decision as to the reasonableness or unreasonableness of the fee as billed by the attorney to the client/petitioner. If the Panel determines the fee is not reasonable, then it shall determine that a reasonable fee should not exceed a specified amount. In determining the reasonableness of any fee in any dispute, the Panel shall take into account the following considerations:
- a. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - b. The likelihood, if apparent to the client/petitioner, that the acceptance of the particular employment will preclude other employment by the attorney;
 - c. The fee customarily charged in the locality for similar legal services;
 - d. The amount involved and the result obtained;
 - e. The time limitations imposed by the client/petitioner or by the circumstances;
 - f. The nature and length of the professional relationship with the client/petitioner;
 - g. The experience, reputations, and ability of the attorney or attorneys performing the services; and
 - h. Whether the fee is fixed or contingent.
- 7.2 Written Decision:** Decisions by the Panel shall be made in writing by the Panel Chair within thirty (30) days of the conclusion of the hearing, except in the case of exceptional or unusual conditions. Bar staff will obtain the signature of the panelists on the written decision.
- 7.3 Service of Decision on Parties:** A copy of the written decision shall be provided to all parties by Bar staff as soon as practicable after the submission of the decision.
- 7.4 Compliance with Decision:** Compliance with the arbitration decision or settlement shall be made within thirty days after receipt of the panel decision or the date the stipulation of settlement was signed by the parties.
- 7.5 Effect of Arbitration Decision:** In the event of any timely proceedings by either party to enforce such decision as an arbitration award, an attorney member of the Panel shall testify or take any other appropriate action in support of the decision of the Panel.
- 7.6 Effect of failure to comply with Settlement or Arbitration Decision:** If, within thirty (30) days, the lawyer fails to comply with a Settlement Agreement or Arbitration Decision, the matter may be referred to the Certified Grievance Committee to investigate whether the lawyer has violated any of the Ohio Rules of Professional Conduct.
- 7.7 Collection of Award:** Except as hereinafter stated, it shall not be the responsibility of the Panel or the Panel or the Committee to enforce a Panel decision. The responsibility for enforcement shall rest with the party or parties involved.
- 7.8 Decision Final:** The arbitration decision is final and conclusive. After the fee arbitration process is complete, neither party may appeal the decision, except as provided in Chapter

2711 of the Ohio Revised Code, nor submit the matter to the Grievance Committee for further consideration.

VIII. CONFIDENTIALITY

- 8.1 Files:** Pursuant to Gov. Bar R. V(11)(E), with the exception of the award itself, all records, documents, files, proceedings and hearings pertaining to arbitrations of any fee dispute under these rules in which both the parties have consented to, 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.
- 8.2 Rule Violations:** The Panel shall notify the Certified Grievance Committee of a potential violation of the Ohio Rules of Professional Conduct should any such violation be discovered during the Fee Arbitration.

IX. EFFECTIVE DATE

- 9.1 Effective Upon Adoption:** These By-Laws and any amendments thereto shall be effective immediately upon adoption by the Board of Trustees of the Akron Bar Association.

X. PERIODIC REVIEW

- 10.1 Review:** The By-Laws of the Fee Arbitration Committee and the effectiveness of its programs shall be reviewed periodically, by the President of the Akron Bar Association, or his/her designee, who shall report concerning the same and make his recommendations for change, if any, to the Board of Trustees for their consideration and action.