

**Approved by BOD on June 22, 2005**

**State Bar of Texas**

**FEE DISPUTES COMMITTEE MODEL RULES FOR FEE ARBITRATION**

**Rule 1: General Principles**

1.01. Establishment and Purpose. It is the policy of the (name of bar committee or organization) to encourage the informal resolution of fee disputes between lawyers who practice law in Texas and their clients and, in the event such informal resolution cannot be achieved, to provide for binding arbitration of such disputes. To that end, the (name of bar committee or organization) hereby establishes, through adoption of these rules, a program and procedure for the arbitration of disputes concerning any and all fees and/or costs paid, charged, or claimed for professional services by lawyers.

1.02. Voluntary Arbitration. Fee arbitration pursuant to these rules is voluntary for both clients and lawyers. Although participation in the Fee Arbitration Program is strictly voluntary, all lawyers should conscientiously consider submitting to it.

1.03. Effect of Arbitration.

- (a) Fee arbitration is binding where all parties have agreed in writing that it will be binding.
- (b) After all parties have agreed in writing to be bound by an arbitration decision, a party may not withdraw from that agreement unless all parties agree to the withdrawal in writing.

1.04. Disputes Not Subject to Arbitration. These rules do not apply to the following:

- (a) Disputes where the client has a pending lawsuit or counterclaim for damages against the lawyer based upon alleged malpractice or professional misconduct.
- (b) Disputes where the client has a pending grievance with any state or local Grievance Committee against the lawyer based upon alleged professional misconduct.
- (c) Disputes where the request for arbitration is filed more than four (4) years after the lawyer-client relationship has been terminated or more than four (4) years after the final billing has been received by the client, whichever is later.
- (d) Disputes where the lawyer is also admitted to practice in another jurisdiction, the lawyer maintains no office in Texas, and no portion of the legal services was rendered in Texas.
- (e) Disputes 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.

1.05. Liberal Construction. These rules shall be liberally construed to promote their underlying purpose.

**Rule 2: Fee Disputes Committee**

2.01. Appointment of Committee. The (name of bar committee or organization) shall annually appoint a Fee Disputes Committee to administer the Fee Arbitration Program. The President of the (name of bar committee or organization) shall designate one member to serve as Chair of the Committee.

2.02. Composition. The Committee shall consist of lawyers and nonlawyers. Lawyer members of the Committee shall have been licensed to practice law for at least five (5) years and shall be in good standing with the State Bar of Texas. All members should have completed ABA-approved mediation/arbitration training. Nonlawyers may not have, other than as consumers, any financial interest, direct or indirect, in the practice of law.

2.03. Duties of the Committee. The Committee, acting through its Chair, shall have the following powers and duties:

- (a) to educate the public and the bar about alternatives to the Fee Arbitration Program, including the Texas attorney discipline and disability system;
- (b) to encourage the use of non-binding mediation in an effort to settle disputes prior to binding arbitration;
- (c) to appoint and provide appropriate training for lawyer and nonlawyer arbitrators and arbitration panels;
- (d) to interpret these rules;
- (e) to approve forms;
- (f) to determine challenges for cause where an arbitrator has not voluntarily acceded to a challenge;
- (g) to maintain all records of the Fee Arbitration Program; and
- (h) to perform all acts necessary for the effective operation of the program.

### **Rule 3: Arbitrators**

- 3.01. List of Arbitrators. The Committee shall maintain a list of arbitrators qualified under Rule 2.02.
- 3.02. Panels. The Committee shall appoint panels from the list of arbitrators. The panel shall consist of three arbitrators of whom one shall be a nonlawyer member. The Committee shall designate one member to act as Chair of the panel and to preside at the arbitration hearing.
- 3.03. Conflicts of Interest. Within five (5) days of the notification of appointment to a panel, an arbitrator shall notify the panel Chair of any conflict of interest with a party to the arbitration as generally defined in Rule 1.06 of the Texas Disciplinary Rules of Professional Conduct.
- 3.04. Challenges for Cause. A party may challenge any arbitrator for cause if a district judge would under similar circumstances be disqualified or recused pursuant to Rule 18b of the Texas Rules of Civil Procedure. A challenge for cause naming the arbitrator and the reason for the challenge shall be filed within fifteen (15) days after service of the notice of appointment. An arbitrator shall accede to a reasonable challenge and the Committee shall appoint a replacement. If an arbitrator does not voluntarily accede, the Committee shall decide whether to appoint a replacement. The decision of the Committee on challenges shall be final. No more than two (2) challenges for cause shall be allowed.
- 3.05. Duties. The panel shall have the following powers and duties:
- (a) to take and hear evidence pertaining to the proceeding;
  - (b) to administer oaths and affirmations;
  - (c) to oversee certain limited discovery in large cases;
  - (d) to issue decisions; and
  - (e) to perform all acts necessary to conduct an effective arbitration hearing.

### **Rule 4: Commencement of Proceedings**

- 4.01. Petition to Arbitrate. A fee arbitration proceeding shall commence with the filing of a Petition for Fee Arbitration on a form approved by the Committee. Any person who is not the client of the lawyer but who has paid or may be liable for the lawyer's fees may consent to be joined by the client as a party to the arbitration. The Petition for Fee Arbitration must be signed by the client and any other party included by the client.
- 4.02. Committee Review. The Committee will review the Petition to determine if it is properly completed and if the Committee has jurisdiction. If the Petition is not properly completed, the Committee will return it to the petitioner and specify what clarification or additional information is required. If the Committee does not have jurisdiction, the petitioner shall be so advised and will be directed to contact appropriate alternative mediation/arbitration services.
- 4.03. Service of Petition and Response. Within five (5) days of the receipt of a properly completed Petition, the Committee shall serve on the respondent a copy of the Petition, along with a Fee Arbitration

Response form. Within twenty (20) days after service, the respondent may file the completed Fee Arbitration Response form with the Committee which shall forward a copy to all other parties. If the respondent fails to respond, the panel may, in its discretion, refuse to consider evidence offered by the respondent at the hearing which would reasonably be expected to have been disclosed in the response.

4.04. Consent Required. The arbitration shall proceed only if all parties file a written consent within twenty (20) days of service of the Petition or if all parties have previously agreed, in writing, to arbitration as part of the original fee agreement. Absent the required consent from all parties, the petitioner will be referred to other alternative programs, if appropriate.

4.05 Mediation. Regardless of the parties' consent to binding arbitration, the Committee will encourage the use of non-binding mediation, through an appropriate alternative mediation service, in an effort to settle the dispute. Mediation is intended to be an available option, but not a requirement, under these arbitration rules.

4.06. Appointment of Panel. The Committee shall, within ten (10) days after receipt of the Fee Arbitration Response form, appoint a panel and mail to the parties written notification of the names of the panel members assigned to hear the matter.

4.07. Settlement of Disputes. If the dispute giving rise to the Petition has been settled, upon reasonable confirmation of that settlement, the matter shall be dismissed by the Committee, or the panel, if one has been assigned.

#### **Rule 5: Hearing**

5.01. Notice of Hearing. The panel shall set the date, time and place for the hearing. The panel shall send notice of the hearing by registered or certified mail, return receipt requested, or by personal service, to the parties not less than thirty (30) but no more than sixty (60) days in advance of the hearing date, unless otherwise agreed by the parties. The notice of the hearing shall also inform the parties that they may request a brief explanation of the panel's decision within five (5) days of the hearing, but that this request will only be allowed if requested by all parties. The panel Chair may arrange for a pre-hearing scheduling conference, by telephone, as necessary.

5.02. Representation by Counsel. Any party may be represented by counsel, but the fees for such counsel shall not be collectable in the arbitration.

5.03. Recording of Proceedings. A party to the proceedings may make arrangements to have the hearing recorded, stenographically or as otherwise agreed to by the parties and panel Chair, at the party's own expense, provided written notice is given to the other parties and the panel at least five (5) days prior to the scheduled hearing. Any other party is entitled at his or her own expense to acquire a copy of the recording by making arrangements directly with the reporter.

5.04. Continuances. For good cause shown, a panel may continue a hearing upon the request of a party or upon the panel's own motion. Such continuance shall be within the panel's sole and exclusive discretion.

5.05. Oaths and Affirmations. The testimony of witnesses shall be by oath or affirmation.

5.06. Panel Quorums. All three arbitrators shall be required for a quorum. The panel may determine any question and render a final award by majority decision.

5.07. Appearance or Failure of a Party to Appear. Appearance by a party at a scheduled hearing shall constitute waiver by that party of any deficiency with respect to the giving of notice of hearing. The panel may 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 not be made solely 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.

5.08. 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 submission. If the panel concludes that oral presentations are necessary, the panel may schedule a hearing.

5.09. Telephonic Hearings. In its discretion, a panel may permit a party to appear or present witness testimony at the hearing by telephonic conference call. The costs of the telephone call shall be paid by the party.

5.10. Stipulations. Agreements between the parties as to issues not in dispute and the voluntary exchange of documents prior to the hearing are encouraged.

5.11. Evidence. The panel may receive such evidence as the panel in its sole discretion finds appropriate for purposes of understanding and resolving the dispute. The Texas Rules of Evidence need not be strictly followed. The panel in its sole discretion shall judge the relevance and materiality of the evidence. The deliberations, voting, and discussions of the panel are strictly confidential and not subject to discovery or production.

5.12. Discovery. In cases where the amount of the fee in dispute exceeds \$50,000, the parties may engage in limited discovery, but only as agreed to by the parties and approved by the panel Chair.

5.13. Reopening of Hearing. For good cause shown, the panel may reopen the hearing at any time before a decision is issued.

5.14. 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.

5.15. Reasonableness of Fees. Factors that may be considered by the panel in determining the reasonableness of a fee include, but are not limited to, the following:

- (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, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (c) the fee customarily charged in that geographic area for similar legal services;
- (d) the amount involved and the results obtained;
- (e) the time limitations imposed by the client or by the circumstances;
- (f) the nature and length of the professional relationship with the client;
- (g) the experience, reputation, and ability of the lawyer or lawyers performing the services;
- and
- (h) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

## **Rule 6: Decision**

6.01. Form of Decision. The panel's decision shall be in writing and signed by the arbitrators and shall include a clear statement of the amount in dispute, whether and to whom monies are due, and, if requested in writing by all parties at least five (5) days prior to the scheduled hearing, a brief explanation for the decision. Any award of money in the decision shall accrue interest at the rate provided for interest on judgments.

6.02. Issuance of Decision. The decision should be rendered within thirty (30) days of the close of the hearing or from the end of any time period permitted by the panel for the filing of supplemental briefs or other materials. The panel Chair shall forward the decision to the Committee which shall serve a copy of the decision on each party to the arbitration by registered or certified mail, return receipt requested.

6.03. Modification or Correction of Decision.

(a) On application to the panel by a party to a fee dispute, the panel may modify or correct a decision if:

- (1) there was an evident error in the computation of figures or an evident mistake in the description of a person, thing, or property referred to in the decision;
- (2) the decision is imperfect in a matter of form not affecting the merits of the proceeding; or
- (3) the decision needs clarification.

(b) Any party may file an application for modification or correction with the panel within twenty (20) days after service of the decision and shall serve a copy of the application on all other parties. An objection to the application must be filed with the panel within ten (10) days after service of the application for modification or correction.

**Rule 7: Effect of Decision and Enforcement**

7.01. Compliance with Decision. Unless the panel modifies or corrects its decision as provided by these rules, the decision becomes final and binding thirty (30) days from the date of service by the Committee of the written decision.

7.02. Petition to Confirm, Correct, or Vacate the Decision.

(a) The panel's decision may be confirmed, corrected, or vacated by petition to the court having jurisdiction over the amount of the decision in accordance with the Texas General Arbitration Act.

(b) A court confirming, correcting, or vacating a decision under these rules may award to the prevailing party reasonable fees and costs including, if applicable, fees or costs on appeal, incurred in obtaining confirmation, correction, or vacation of the award. The party obtaining judgment confirming, correcting, or vacating the decision shall be the prevailing party.

**Rule 8: Confidentiality**

8.01. Confidentiality of Proceedings. All records, documents, files, proceedings and hearings pertaining to the mediation or arbitration of any dispute under these rules shall be confidential and will be closed to the public.

8.02. Confidentiality of Information. A lawyer may reveal information relating to the representation of the client to the extent necessary to establish his or her fee claim. In no event shall such disclosure be deemed a waiver of the confidential character of such matters for any other purpose.

**Rule 9: Privilege and Immunity**

9.01. Parties and Witnesses. Parties and witnesses shall have such privileges and immunities as are applicable in a civil action in Texas.

9.02. Committee Members, Arbitrators, and Staff. The parties agree that Committee Members, Arbitrators, and Staff are immune from suit for any conduct in the course and scope of their official duties under these Rules. The parties agree that no arbitrator or mediator may be called as a witness in any subsequent legal proceeding arising from or related to the dispute being arbitrated or mediated. In the event a party, in contravention of this paragraph, threatens to sue or files suit against a Committee Member, Arbitrator, or Staff, that party shall indemnify the person or persons sued in contravention of this paragraph for all legal fees and expenses incurred by that person or persons defending against such threat of suit or suit.

**Rule 10: Adoption and Effective Date**

10.01. Adoption. The (name of bar committee or organization) has adopted the foregoing Rules for Fee Arbitration on \_\_\_\_\_ .

10.02. Effective Date. These rules are effective as of \_\_\_\_\_, and shall apply to all Petitions filed on or after that date.

Submitted by: \_\_\_\_\_