

Houston Bar Association
RULES AND REGULATIONS OF THE FEE DISPUTE COMMITTEE

Rule 1. General Principles

1.01 Establishment and Purpose. It is the policy of the Houston Bar Association (HBA) to encourage the informal resolution of fee disputes between lawyers who practice law in Texas and their clients and/or other attorneys and, in the event such informal resolution cannot be achieved, to provide for binding arbitration of such disputes. To that end, the Fee Dispute Committee (FDC) hereby establishes, through adoption of these Rules and Regulations of the Fee Dispute Committee, 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 fee arbitration 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 HBA shall annually appoint a FDC to administer the fee arbitration program. The President of the HBA shall designate a member(s) to serve as Chair(s) of the Committee (FDC Chair).

2.02 Composition. The FDC shall consist of lawyers and non-lawyers. Lawyer members of the FDC 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. Non-lawyers 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 FDC, acting through its Chair, shall have the following powers and duties:

- (a) to educate the public and the bar about alternatives to fee arbitration, 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 non-lawyer 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; and
- (g) to perform all acts necessary for the effective operation of the program.

Rule 3. Arbitrators

3.01 List of Arbitrators. The HBA shall maintain a list of arbitrators qualified under Rule 2.02.

3.02 Panels. The FDC Chair shall appoint panels from the list of arbitrators and designate a Panel Chair to preside over the arbitration. The panel shall consist of three (3) arbitrators of whom one shall be a non-lawyer member.

3.03 Conflicts of Interest. Within five (5) days of the notification of appointment to a panel, an arbitrator shall notify the FDC 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 with the Panel Chair within ten (10) days after service of the notice of appointment for forwarding to the HBA and the FDC Chair. An arbitrator shall accede to a reasonable challenge and the FDC Chair shall appoint a

replacement. If an arbitrator does not voluntarily accede, the FDC Chair shall decide whether to appoint a replacement. The decision of the FDC Chair on challenges shall be final. No more than two (2) challenges for cause shall be allowed by any party.

3.05 Duties. The panel shall have the following powers and duties:

- (a) to take and hear evidence pertaining to the fee arbitration;
- (b) to administer oaths and affirmations;
- (c) to issue decisions; and
- (d) to perform all acts necessary to conduct an effective arbitration hearing.

3.06 Limitations on Service. If any member of the FDC is the subject of a fee dispute filed with the HBA, he/she may not participate in any FDC meetings or serve as a fee dispute arbitrator until the file is closed by the HBA.

Rule 4. Definitions

4.01 “Complainant” means the person, firm, corporation, or other entity filing a Complaint to initiate a request for fee arbitration.

4.02 “Complaint” means those written matters received by the HBA to initiate a request for fee arbitration including, specifically, the completed Complaint on a form approved by the FDC which includes a consent provision, and supporting documents, if any.

4.03 “Respondent” means the person, firm, corporation, or other entity responding to a Complaint.

Rule 5. Commencement of Proceedings

5.01 Complaint. To initiate the fee arbitration process, the Complainant must mail, fax, or hand deliver a signed Complaint to the HBA.

5.02 Review. The HBA will review the Complaint to determine if it is properly completed and if the FDC has jurisdiction. If the Complaint is not properly completed, the HBA will return it to the Complainant and specify what clarification or additional information is required. If the FDC does not have jurisdiction, the Complainant shall be so advised.

5.03 Notice to Respondent. Within five (5) days of the receipt of a properly completed Complaint, the HBA will forward a copy of the Complaint to the Respondent along with an approved consent form to be executed and returned.

5.04 Respondent’s Consent. If the Respondent submits a response and signed consent form within forty-five (45) days from the date that the HBA forwarded the Complaint under Rule 5.03, the FDC Chair will be so notified and will appoint a panel to

hear the dispute. The FDC will not accept any consent that pre-dates the filing of the Complaint.

5.05 Respondent's Failure to Respond. If the Respondent fails to respond timely or declines to consent to fee arbitration, the HBA will close the file and the Complainant will be so notified.

5.06 Respondent's Counterclaim. The Respondent may also file a Complaint (counterclaim) against the Complainant, but it may only pertain to the amount of the fee in dispute. The counterclaim automatically becomes part of the fee arbitration.

5.07 Written Consent Required. The arbitration shall proceed only if all parties file a written consent.

5.08 Mediation. Regardless of the parties' consent to binding arbitration, the FDC 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 rules.

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

5.10 Third Parties. 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 by signing an approved consent form.

Rule 6. Hearing

6.01 Appointment of Panel. The FDC Chair shall appoint a panel preferably within ten (10) days after notified by the HBA of the parties' compliance with Rules 5.01 and 5.04. The FDC Chair may appoint a substitute panel member at any time prior to commencement of the hearing.

6.02 Hearing Date, Time and Place. Upon receipt of the appointment letter from the FDC Chair, the Panel Chair shall set the date, time and place for the arbitration hearing.

6.03 Notice of Hearing and Panel Assignment. The Panel Chair shall send a Notice of Hearing and Panel Assignment to the panel and parties by certified mail, fax, or hand delivery, no less than twenty (20) days before the hearing unless otherwise agreed by the parties. The notice shall include the date, time and place for the hearing, and a list of the names of the assigned panel members. The Panel Chair may arrange for a pre-hearing scheduling conference, by telephone, as necessary.

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

- 6.05 Dissemination of Information. Any communication sent by a party to the Panel Chair, must be contemporaneously sent to all other parties.
- 6.06 Recording of Proceedings. The hearing will not be recorded.
- 6.07 Continuances. For good cause shown, the Panel Chair may continue a hearing upon the request of a party or upon the panel's own motion. Such continuance shall be within the Panel Chair's sole and exclusive discretion.
- 6.08 Oaths and Affirmations. The testimony of witnesses shall be by oath or affirmation.
- 6.09 Panel Quorums. All three (3) arbitrators shall be required for a quorum. The panel may determine any question and render a final award by majority decision.
- 6.10 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.
- 6.11 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.
- 6.12 Telephonic Hearings. In its discretion, a Panel Chair 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.
- 6.13 Stipulations. Agreements between the parties as to issues not in dispute and the voluntary exchange of documents prior to the hearing are encouraged.
- 6.14 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.
- 6.15 Panel Deliberations. The deliberations, voting, and discussions of the panel are strictly confidential and not subject to discovery or production.

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

6.17 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.

6.18 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.

6.19 Time Limitations. Although these rules place no time limitation on the parties in the presentation of their respective case, a hearing normally should not last longer than two (2) hours. The Panel Chair will stop the hearing once the panel believes that all relevant facts have been presented.

Rule 7. Decision

7.01 Form of Decision. The panel's decision shall be in writing and signed by the arbitrators. Any dissent will be recorded. The decision shall include a clear statement of the amount in dispute and whether and to whom monies are due. Any money award shall be paid within thirty (30) days. If the award is not paid within thirty (30) days, the prevailing party shall be entitled to interest from the date of the decision at the rate provided for interest on judgments.

7.02 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 serve a copy of the decision on each party to the arbitration by registered or certified mail, return receipt requested. The Panel Chair shall send the original decision to the HBA and a copy to the FDC Chair.

7.03 Modification or Correction of Decision.

- (a) On application to the FDC Chair by a party to a fee dispute, the FDC Chair may modify or correct a decision, or reconvene the panel, only 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 as to the specific amount of money awarded or a time period prescribed within the award.
- (b) Any party may file an application for modification or correction with the FDC Chair 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 FDC Chair within ten (10) days after service of the application for modification or correction. No decision shall be made sustaining an application merely because of the failure of the responding party to object to the application. If the FDC Chair does not act upon the application within thirty (30) days after the date for filing an objection, the application shall be deemed to have been denied.

Rule 8. Effect of Decision and Enforcement

8.01 Compliance with Decision. Unless the FDC Chair modifies or corrects the panel's decision within the time provided by these rules, the decision becomes final and binding thirty (30) days from the date of service by the Panel Chair of the written decision.

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

- (a) The panel's decision may be reviewed by petition to a court having jurisdiction in accordance with the provisions of the Texas Arbitration Act.
- (b) The party obtaining judgment confirming, correcting, or vacating the decision shall be the prevailing party. Such a party shall under these Rules have the right to seek from the Court reasonable attorney's fees and costs including, if applicable, fees or costs on appeal, incurred in obtaining confirmation, correction, or vacating of the award.
- (c) The Committee Members, Arbitrators and the HBA may not be named as a party to any court proceeding.

Rule 9. Confidentiality

9.01 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.

9.02 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 10. Privilege and Immunity

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

10.02 Committee Members, Arbitrators, and the HBA. The parties agree that Committee Members, Arbitrators, and the HBA 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 the HBA, 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 11. Adoption and Effective Date

11.01 Adoption. The HBA Board of Directors has adopted the foregoing Rules and Regulations of the Fee Dispute Committee on May 13, 2008.

11.02 Effective Date. These rules are effective as of June 1, 2008, and shall apply to all Complaints filed on or after that date.

Rule 12. Document Retention

12.01 Guidelines for Document Retention. The HBA has established the following guidelines for document retention:

- (a) If forms are sent to a potential Complainant but not returned timely to the HBA, the file will not be retained.
- (b) If the Complainant returns the forms timely and forms are sent to a potential Respondent, but the case does not proceed to arbitration, the file will be maintained until the end of the HBA's fiscal year or for six (6) months, whichever is longer.
- (c) If a panel is appointed and issues a decision, the file (consisting only of each party's last filed Complaint and reply [excluding all unnecessary exhibits and attachments thereto], each party's consent to arbitration, and the panel's decision) will be maintained for fifty (50) months following the date of the decision.

Submitted by:



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