

## **FEE DISPUTE RESOLUTION COMMITTEE RULES OF PROCEDURE**

### **I. APPOINTMENT AND ORGANIZATION OF THE COMMITTEE**

- A. This Committee, and its Chair, shall consist of Attorneys who are trained in Mediation, and/or Arbitration, and who are appointed by the President of the Mississippi Bar Association each year to serve as Mediators or Arbitrators or both.
- B. General Counsel (hereinafter this term means General Counsel or his or her designated staff person) will serve as Bar Liaison and act as procedural advisor. General Counsel shall facilitate the clerical and procedural aspects of the Committee's work.
- C. The list of Committee members shall be maintained by the General Counsel of the Bar, and made available to the President, the Board of Bar Commissioners, and the general membership of the Bar. The Chair and Committee members will agree to serve on a Mediator Panel, Arbitrator Panel, or both, and this list will include their choice of panels.

### **II. EXECUTIVE COUNCIL**

- A. The President shall appoint one member of the Committee from each of the Supreme Court Districts, who, along with the Chair, shall constitute the 4 member Executive Council of the Committee.
- B. Responsibilities of the Executive Council shall include, but not be limited to the following:
  - 1. Review results of mediations and arbitrations.
  - 2. Encourage maximum participation of the public and members of the Mississippi Bar Association.
  - 3. Propose new rules and rules changes to be approved or disapproved by the Board of Bar Commissioners.
  - 4. Develop forms and letters to implement the procedures herein.

### **III. JURISDICTION**

- A. The Committee shall have jurisdiction over all fee disputes, excluding those in the following paragraph, sent to the Committee by clients or attorneys where the attorneys are licensed to practice in this state and

there is an express or implied contract establishing an attorney-client relationship.

- B. Specifically excluded from the jurisdiction of this Committee are disputes over which a court has jurisdiction to fix the fee, or which involve violations of the Rules of Professional Conduct.
- C. It shall be the duty of the Committee to encourage the amicable resolution of fee disputes falling within its jurisdiction.

#### **IV. PROCESSING COMPLAINTS**

- A. Requests for Committee consideration of fee disputes shall be submitted to the General Counsel at the Mississippi Bar Center at 643 North State Street, or mailed to General Counsel, Mississippi Bar Association, P.O. Box 2168, Jackson, MS 39225-2168.
- B. The request should be in the form provided by General Counsel, should state clearly the facts according to the Petitioner with respect to the fee dispute, and the names and addresses of the interested parties to the dispute.
- C. Upon receipt of the request for Committee consideration, the request shall be immediately acknowledged and such acknowledgement forwarded to the Petitioner. Such acknowledgement should include a copy of these rules, if such has not been previously furnished to the Petitioner, together with a request that the Petitioner execute a consent to either Mediation or Binding Arbitration.
- D. If the Petitioner fails to execute the consent to Mediation or Binding Arbitration within fifteen days, the matter shall be closed because of lack of jurisdiction.
- E. Upon receipt of the consent to Mediation or Binding Arbitration form Petitioner, Respondent will also be furnished with a copy of the dispute, a copy of these rules, and a copy of Petitioner's consent to Mediation or Binding Arbitration, with a request that the Respondent execute a consent to Mediation or Binding Arbitration corresponding with Petitioner's choice.

- F. If any Respondent selects the opposite of Petitioner's choice, the Chair will attempt to reconcile the choices. If the Chair fails to reconcile the choices, or if the Respondent fails to return an executed agreement to submit to either Mediation or Binding Arbitration within fifteen days, the matter shall be closed because of lack of jurisdiction.
- G. From the Mediator and Arbitrator Panels, the General Counsel will assign requests to the respective panel members, considering geographic location and rotation of panel members to the extent feasible.
- H. The assigned panel member shall, within fifteen days of receipt of the assignment, review the complaint and if necessary obtain additional information. If the panel member is disqualified because of a conflict of interest or for any other reason, he or she will promptly notify the General Counsel who will select another panel member.

## V. MEDIATION

- A. Mediation is a process by which the Petitioner and Respondent explain the facts of their fee dispute to a neutral third party, the Mediator, selected by the General Counsel to help resolve the dispute. The Petitioner and Respondent are requested to fully disclose their viewpoints during the Mediation.
- B. The Mediator reviews all the facts and assists the Petitioner and Respondent in attempting to resolve the dispute without resorting to Binding Arbitration. It is the Mediator's neutrality and objectivity which often leads to a satisfactory settlement.
- C. Unlike Binding Arbitration, in a Mediation the Petitioner and Respondent are in control of the solution, rather than an Arbitrator. The Mediator does not decide the dispute. The Mediator just facilitates the process by assessing the varying interests of the Petitioner and Respondent and reviewing alternatives to help reach agreement.
- D. Mediation is a voluntary process, and can be discontinued by either the Petitioner or Respondent if agreement is not reached. The entire process is strictly Confidential, and the Mediator cannot be required to testify in court.

- E. Mediation is a non-binding process, unlike Binding Arbitration, unless both the Petitioner and Respondent reach a written agreement, signed by both, in which case the agreement can be enforced in court.
- F. The Mediation should be conducted within 30 days from the date the Mediator is selected, and upon conclusion of the Mediation, the Mediator will send the results to the General Counsel's office.
- G. If agreement is not reached in Mediation, the Petitioner and Respondent may agree to participate in a Binding Arbitration, in which case the General Counsel will select a different panel member to arbitrate the dispute.

## **VI. BINDING ARBITRATION**

- A. Arbitration is a process by which the Petitioner and Respondent prove the facts of their fee dispute to a neutral third party, the Arbitrator, who acts as a private judge in weighing the evidence and deciding the outcome. Binding Arbitration usually proceeds to a conclusion somewhat like a trial, except that it is private and informal. The Arbitrator is not bound by the ordinary rules of evidence or civil procedure. The decision ordinarily is not announced at the hearing, but it is reported afterward in writing to the parties and may be enforced in state court if necessary.
- B. Within fifteen (15) days of assignment, the Arbitrator shall determine whether a legitimate complaint has been stated. If the Arbitrator finds that (a) the petition should be dismissed without further action, either because there appears to be no just ground for the complaint or dispute, or the matter is moot or clearly a matter of alleged violation of the Mississippi Rules of Professional Conduct, or (b) for some other reason deemed adequate, jurisdiction is or becomes unwarranted, the Arbitrator shall submit a brief written report to General Counsel. The report shall set forth a recommendation justifying dismissal, which shall be submitted to the next meeting of the Executive Council. If the Council concurs, the matter shall be closed. If the Council disagrees, the matter will be assigned to another arbitrator.
- C. If the Arbitrator determines that a legitimate complaint has been stated, the Arbitrator shall (a) immediately notify the parties that the Committee has assumed jurisdiction and (b) as soon as possible confer with the parties by telephone or in person in an attempt either to reach an

amicable resolution of their dispute or to reach agreement on a time, place and date for a hearing.

- D. If the parties do not settle within thirty (30) days from the date of assignment, the Arbitrator shall serve written notice upon both parties, setting a formal Binding Arbitration hearing at a time, place, and date certain, preferably within sixty (60) days of the assumption of jurisdiction, and requesting that the Respondent immediately send to the Arbitrator and the Petitioner a written answer to the petition. The notice shall be served personally or by registered or certified mail at least ten (10) days before the hearing date. A party may waive the requirement for such service by submitting a signed statement to that effect at or before the hearing.
- E. Upon request of the first assigned Arbitrator, General Counsel may appoint two additional Arbitrators, who shall be sent a copy of the Rules, the petition, and any responses on file. If recusal is necessary, replacements will be appointed as necessary to form a three Arbitrator Panel. The first assigned Arbitrator shall be the Chair and shall set the case for hearing as provided above.
- F. When a Panel of three Arbitrators is assigned, if at the time of the hearing all three are not present, the first assigned Arbitrator shall decide either to proceed as the sole arbitrator or postpone the hearing. If the first assigned Arbitrator is not present, the Arbitrator who has served on the Committee the longest shall make this decision. Arbitration shall not proceed with two Arbitrators. If any member of a Panel dies or cannot continue at any time before the final decision, the hearing shall be dismissed and the petition reassigned by General Counsel, unless the parties consent to proceed with one other remaining members of the Panel chosen by the parties.
- G. If a party dies or becomes incompetent before the close of the hearing, the matter shall be dismissed without prejudice. If death or incompetence occurs after the hearing is closed, the decision shall be binding upon the estate of the deceased or incompetent party.
- H. If all parties agree in writing to proceed without oral testimony, they may submit their contentions in written form together with any exhibits. However, the Arbitrator or Panel may require oral testimony of any party

or witness by serving notice personally or by registered or certified mail at least ten (10) days before the hearing.

- I. Arbitrators are vested with all duties and powers set forth in Mississippi Code of 1972, Sections 11-15-1 *at seq, as amended*.
- J. No one who has not executed a consent to Binding Arbitration shall be deemed a party entitled to notice of or participation in any hearing.
- K. Parties may be represented by counsel and are entitled to be heard, present evidence, and cross-examine witnesses. Any party who desires a Certified Court Reporter for the hearing shall arrange for this at the expense of the party and shall give the Arbitrator and other party at least three (3) days notice of the name of the reporter. Any party may acquire a copy of a reporter's transcript by arrangement made directly with the reporter. When no party requests a reporter, the Arbitrator may arrange for electronic recording of proceedings, or may give the parties notice of intent to employ a reporter with consent of General Counsel. The expense of a reporter employed without agreement from either party shall be assigned against the unsuccessful party by order of the Arbitrator.
- L. If a Binding Arbitration hearing is not completed on the first scheduled day, the Arbitrator may set later dates, times and place as required. Upon a showing of good cause by a party, the Arbitrator may postpone any hearing but shall immediately reset the matter and give notice to the parties as set forth above.
- M. The burden of proof concerning the reasonableness of the fee in dispute shall be upon the attorney, or if the dispute is between attorneys, upon the Petitioner.
- N. If either party should fail to appear at a duly noticed hearing, the Arbitrator shall consider whatever admissible evidence is or has been provided and may enter a binding decision.
- O. If during Arbitration the parties decide to settle the matter, the Arbitrator shall enter an agreed order to that effect, which shall be signed by the parties and may contain the terms of the settlement if the parties agree.
- P. Before closing the hearing, the Arbitrator shall specifically inquire of the parties present whether they have further evidence to submit. When

there is no further evidence offered, the Arbitrator shall declare the hearing closed and set the date for submission of additional information or argument desired by the Arbitrator, if any. In the discretion of the Arbitrator or a majority of Panel, the hearing may be reopened (a) at any time before the decision is signed or (b) after the decision is signed, upon request of the parties.

## **VII. THE DECISION OF THE ARBITRATOR**

- A. The single Arbitrator or a majority of the Panel shall render and sign the decision within fifteen (15) days after the close of the hearing. Any written dissent shall be signed and attached to the decision.
- B. The decision should recite the jurisdictional facts, state the nature and amount of the dispute, describe the opportunity given the parties to present evidence and cross-examine witnesses, and set forth the decision with specific terms of any award. The Arbitrator shall, upon the request of any party prior to his or her decision, and may not at any time based on his or her discretion, list the findings of the Arbitrator on all questions submitted which were necessary to reach the decision. The decision may also include directions for payment of fees and expenses related to the proceedings but not for any Arbitrator or Counsel for any party. The decision should not divulge any matters or communications between attorney and client that remain confidential or privileged.
- C. The single Arbitrator or chairman or the panel shall send a copy of the decision to General Counsel who will serve a copy on each party personally or by registered or certified mail. A party may waive the requirement for registered or certified mail by submitting a signed statement to that effect.

## **VIII. ENFORCEMENT OF A BINDING ARBITRATION AWARD**

- A. Any binding arbitration award may be enforced by any court of competent jurisdiction in the manner prescribed by law. The arbitrator or panel chairman shall file the award with the appropriate court upon written request from either party if necessary for the reasonably prompt compliance with the award.
- B. If the award should determine that an attorney is not entitled to any portion of an uncollected fee or expense in dispute, service of a copy of

such award on the attorney shall terminate all claim and interest of the attorney against the client or the opposing attorney with respect to the dispute.

- C. If the award should be in favor of any attorney, it shall fix the amount to which the attorney is entitled. Payment of that amount to that attorney shall constitute complete satisfaction of all claims and interest of that attorney against the client or the opposing attorney with respect to the dispute.
- D. If the award should determine that an attorney is entitled to all disputed fees and expenses already collected from the client but no more, service of a copy of such award on that client shall terminate all claim and interest of the client against the attorney with respect to the dispute.
- E. If the award should be in favor of the client being entitled to a refund of all or part of monies previously paid to the attorney, it shall fix that amount to which the client is entitled. Payment of that amount to the client shall constitute complete satisfaction of all claims and interest of the client against the attorney with respect to the dispute.

## **IX. CONFIDENTIALITY**

- A. All Mediators and Arbitrators, Committee members, General Counsel, support personnel, court reporters, clerks, witnesses and parties are strictly enjoined to keep confidential all matters under Mediation or fee Arbitration and all communications and proceedings under these rules, except as provided otherwise by law.
- B. Filing a Binding Arbitration decision with a court at the request of a party shall not constitute a breach of confidentiality.