



Fee Arbitration Rules and Procedures

The procedures of the Fee Arbitration Committee are consistent with Part 137 of the Rules of the Chief Administrator “Fee Dispute Resolution Program” with the Association acting as an impartial administrator.

A. Designation

The Executive Director of the Association is designated Administrator of dispute settlement procedures under these rules and may delegate duties to such officers, members and employees of the Association as he or she may direct. The chair of the Fee Arbitration Committee shall preside over the Fee Arbitration Committee and be selected by the President of the Association.

B. Arbitrations Panels

The Association shall establish and maintain a sufficient number of arbitrators to meet the caseload of the tribunal. Disputes involving a sum of less than \$6,000.00 shall be submitted to one attorney arbitrator. Disputes involving a sum of \$6,000.00 or more shall be submitted to a panel of three arbitrators, which shall include at least one non-lawyer.

1. Attorney members – The Chair shall appoint attorney arbitrators. The attorney shall serve as chair of a three-member panel. Attorney members shall be appointed to provide representation from as broad a spectrum of the Bar as possible from the standpoint of both firm organization (i.e., non-profit, large, small or sole practitioners) and practice (i.e., general, litigation, corporate, domestic, criminal, non-profit, public sector, etc.) Attorney panel members as a whole shall constitute and function as the Fee Arbitration Committee and serve as a resource for the operation of the arbitration program.
2. Lay Members – Lay member arbitrators shall be appointed by the Chair from as broad a spectrum of the general public as possible, i.e., business, labor, commerce, industry, education, religion, homemakers, etc.

C. Jurisdiction

Effective January 1, 2002, the program shall have jurisdiction over every disagreement concerning a fee paid, charged or claimed for legal services in civil matters in which the majority of the legal services were performed in Monroe County despite the residence of the client or the office location of the attorney. The program will not handle disputes arising from domestic relations matters, as those matters will remain, subject to approval by the Board of Governors, with the

7th Judicial District Arbitration Program. Excluded from tribunal jurisdiction are disputes over which the court has jurisdiction to fix fees and matters involving substantial legal questions, including professional malpractice or misconduct. In addition, the program shall not cover the following matters; claims against an attorney for damages or affirmative relief other than adjustment of the fee; disputes where no attorney's services have been rendered for more than two years; disputes where the attorney is admitted to practice in another jurisdiction and maintains no office in the State of New York; and disputes where the request for arbitration is made by a person who is not the client of the attorney or the legal representative of the client. The program will also provide arbitration services in disputes arising from criminal representation and in civil matters when the amount in dispute is less than \$1,000.00, upon the consent of the complainant and the attorney.

D. Scope

The program has a dual component of settlement investigation and arbitration. All incoming complaints are first assigned to a committee member for settlement investigation, unless the party has declined settlement investigation services. If settlement is unsuccessful, arbitration follows.

E. Procedure

Each complaint is reviewed by the chair of the Fee Arbitration Committee for a determination of whether or not a complaint exists within the purview of the program's jurisdiction. Complaints rejected by the Chair shall be logged with the Association, together with a brief reason for rejection and maintained with the records of the Association for further reference if necessary. The Chair of the Fee Arbitration Committee will assign an investigating attorney or a lay member for a settlement attempt. Each complaint is assigned a file number by the MCBA Liaison, who then sends a copy of it to the respondent attorney with a cover letter explaining the procedures and the name of the investigating attorney (assigned by the chair). A receipt acknowledgment letter is sent to the complainant explaining the procedures. The investigating attorney, or lay member, upon receipt of the information, will assure that the respondent attorney responds to the complainant's letter within 10 days and will then forward the attorney's response to the complainant who will have 10 days in which to respond. The investigator will also immediately forward to the respondent attorney an Agreement to Arbitrate in cases outside of Part 137 to be executed and returned to the investigator. For cases outside of Part 137, complainants must submit an Agreement to Arbitrate with their request for arbitration. The investigator attempts to complete settlement within 30 days of the date the complaint was assigned to the investigator. No investigation is to exceed 30 days.

When settlement is successful, the terms of the settlement must be reduced to writing and disseminated to the complainant and the attorney.

When settlement fails, the Agreements to Arbitrate, where applicable, and the file are immediately returned to the MCBA Liaison by the investigator for assignment to an arbitration panel. A single Arbitrator will sit for matters where the fee in dispute is up to \$6,000.00. For disputes \$6,000.00 and above a panel of three, including one non-attorney member is formed. Adjournments should be discouraged but may be arranged by the parties through the panel chair. One adjournment is allowed after which the arbitration is rescheduled according to the availability of the parties involved. The arbitration will be held, and a determination made on the documentation submitted, if both parties are not able to be present. The panel chair (or sole arbitrator) must notify the parties of the time and place of the hearing in writing.

The panel is empowered to find facts, decide questions of law and to fashion an award. The decision must state the amount of and the basis for the award. Promptly upon reaching a decision, the panel chair must prepare three (3) original Decisions including facts and conclusions. The Decision must state the amount of and the basis for the Award. All must bear original signatures, be notarized, and be returned to the MCBA Liaison for distribution with a cover letter to the parties. The Decision and Award is to be distributed by the MCBA liaison within thirty (30) days of the Arbitration Hearing. The Decision shall be binding upon the parties only when the parties have consented in advance to binding arbitration. In all other cases, the Decision shall be subject to trial de novo.

The file is closed and sent to MCBA by the chair of the panel. "Dispute Docket" matters are matters referred by Grievance. Inquiry Docket matters are matters that came directly to MCBA from complainants. The files on the Inquiry Docket will remain with the Bar Association if the problem is resolved either by investigative settlement or by arbitration. The MCBA will send those files on the Dispute Docket back to the Grievance Committee with a copy kept in the Bar closed file if the complaint came to the MCBA from the Grievance Committee.

F. Oaths of Service

All arbitrators must sign a written oath or affirmation to faithfully and fully arbitrate all disputes that come before them, which written oath or affirmations shall be kept on file by the local program. All arbitrators must conduct a conflict of interest check prior to accepting a case.

G. Disqualification of Arbitrators and Investigators

An arbitrator or settlement investigator shall disclose any circumstances likely to create a presumption of bias that might disqualify him or her as an impartial arbitrator or investigator or whenever an arbitrator or investigator cannot in his or her opinion ethically or conscientiously serve. No person shall serve as an arbitrator or investigator if he or she has any financial or personal interest in the case. Either party may advise the Chair of the Fee Arbitration Committee of any reason why an arbitrator or investigator should withdraw or be disqualified or be declared unable to perform his or her duties. Such request must be made no later

than five (5) day prior to a hearing. The Association shall have the final decision on the removal of an investigator/arbitrator. The chair shall appoint arbitrators to fill panel vacancies. A settlement investigator may not serve as an arbitrator in a subsequent arbitration involving the parties to the settlement investigation.

H. Hearing

The Arbitration Panel Chair (single arbitrator if less than \$6,000.00) shall fix a time and place for the hearing and notify the parties in writing personally or by regular mail not less than 15 days before the hearing. The Arbitrator may adjourn or postpone hearings as indicated in Section E above.

(See attached Arbitration Hearing Procedures & Arbitrator's Opening Statement)

I. Interpretation of Rules

Where there is more than one arbitrator, differences arising among them concerning the meaning or application of these rules shall be decided by majority vote. If that is unobtainable, either an arbitrator or party may refer the question to the Chair for final decision. All other rules shall be interpreted and applied by the Administrator.

J. Serving of Notices

The initial notice of client's right to arbitrate shall be served by certified mail or personal service. All papers, notices or process necessary or proper for the continuation of the arbitration under these rules and for any court action in connection therewith or for the entry of judgment of any award may be served upon a party by regular mail direct to that party at his or her last known address, or to his or her attorney, or by personal service within or without the State of New York.

K. Confidentiality

All records, documents, files, proceedings and hearings pertaining to settlement investigation or arbitration of disputes under these rules may not be open to the public or any person not involved in the dispute, except to the extent necessary in connection with ancillary legal action with respect to a fee matter.

L. Trial De Novo

A party aggrieved by the arbitration award may commence an action on the merits of the fee dispute in a court with jurisdiction over the amount in dispute within 30 days after the arbitration award has been mailed. If no action is commenced within 30 days of the mailing of the arbitration award, the award shall become final and binding. Each party seeking de novo review must send the MCBA a notice of intent to do so simultaneously with or prior to the commencement of an

action for de novo review. Any party who fails to participate in the arbitration hearing shall not be entitled to a trial de novo absent good cause for such failure to participate. Arbitrators shall not be called as witnesses nor shall the arbitration award or record of the proceedings be admitted in evidence at the trial de novo action.

M. Fee Policies

In order for the bar association to provide arbitration and investigative settlement services to the public, it is necessary to charge an administrative processing fee. The following fees will be charged by the bar association in the form of user fees to complainants; \$50.00 for matters where the amount in dispute is up to and including \$3,500.00; \$150.00 for matters where the amount is over \$3,500.00 and up to and including \$10,000.00; \$250.00 for matters where the amount in dispute is over \$10,000.00 and up to and including \$20,000.00; and \$500.00 for any matter where the amount in dispute exceeds \$20,000.00. These fees are nonrefundable by the bar association and must accompany any application for investigative settlement or arbitration services. If settlement is unsuccessful, there is no additional charge for arbitration. These same fees apply to matters initiated by attorneys for settlement services and will be charged against the attorney in those instances. A separate fee will be charged for each complaint or dispute. Investigators and arbitrators retain the right to shift the payment of these fees as part of their efforts to settle and as part of their authority to determine arbitration awards and decisions. The complaint application form shall clearly state the above fee structure. It shall also contain a statement as to the association's fee waiver policy. The association will waive fees to individuals who can demonstrate that payment of the requested fee would be a financial hardship. As part of its criteria for review of hardship cases, the staff administrator will consider the income of the individual's household and any other circumstances the individual wishes to present to the association. As a general consideration, those individuals whose household income is at or less than the poverty level established by the federal government for their household size, or who are on public assistance or other public benefit programs will be exempt from payment of a fee.

N. Periodic Review

The functioning of the tribunal shall be reviewed periodically from reports submitted by the Administrator to the President. The President shall then report any recommendations for change to the Board of Directors.

O. Effective Date

These rules shall take effect immediately upon approval by the Board of Directors of the Association. These rules and any amendments shall apply in the form in effect at the time arbitration is initiated.