

**RULES FOR ARBITRATION BY THE FEE ARBITRATION COMMITTEE
OF THE BALTIMORE COUNTY BAR ASSOCIATION**
(Effective 9/11/07)

1. Applicable Rules of Arbitration

The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by the Fee Arbitration Committee of the Baltimore County Bar Association (hereinafter the "Committee"). If a party establishes that an adverse material inconsistency exists between the arbitration agreement and these rules, the arbitrator shall apply these rules. Both parties must agree in writing to permit the Committee to arbitrate any dispute.

If a party seeks judicial intervention with respect to a pending arbitration, the Committee will suspend its administration of the pending arbitration pending the outcome of the court case.

2. Subject Matter

The only matters subject to arbitration by the Committee are disputes concerning attorneys' fees. The Committee will arbitrate disputes between attorneys if the dispute involves the division of a fee paid or payable by a client on a matter in which both attorneys participated. In such instances, the total amount of the fee must be agreed upon by the attorneys before the Committee will consider the matter.

Any dispute concerning whether a particular issue is subject to arbitration because it either is or is not an attorneys' fee dispute covered by these rules shall be decided in the first instance by the arbitrator, and not by a court. Unless a challenge is made to the validity of a contract's fee arbitration clause itself, a claim that a contract containing a fee arbitration clause is otherwise void for illegality shall be decided in the first instance by the arbitrator, and not by a court.

3. Committee as Administrator of the Arbitration

When parties agree to arbitrate under these rules, or when they provide for arbitration by the Committee and an arbitration is initiated under these rules, they thereby authorize the Committee to administer the arbitration. The authority and duties of the Committee in these rules may be carried out through its Chairperson or through such of the Committee's representatives as its Chairperson may direct.

4. Initiation of Arbitration

Arbitration shall be initiated in the following manner.

- a. The parties may submit a joint request for arbitration.
- b. In the absence of a joint request for arbitration:

- (i) The initiating party or parties (hereinafter “Claimant[s]”) shall:
 - (1) File a written notice (hereinafter “Demand”) of its/their intention to arbitrate with the Chairperson, Fee Arbitration Committee, Baltimore County Bar Association, Courthouse, 401 Bosley Avenue, Towson, Maryland 21204. The filing shall be made in duplicate, and each copy shall include the applicable arbitration agreement. The Demand shall set forth the names, addresses, and telephone numbers of the parties; a brief statement of the nature of the dispute; the amount in controversy, if any; the remedy sought; and requested hearing location.
 - (2) Simultaneously mail a copy of the Demand to the other party or parties (hereinafter “Respondent[s]”).
 - (3) Include with its Demand the applicable filing fee of \$25.00.
 - (4) Provide the Committee with a Checklist for Conflicts, which need not be provided to the other side.
- (ii) The Respondent[s] if they so desire shall file an Answer with the Committee within 30 days after the date of receipt of the Demand. The Answer if any shall provide the Respondent’s or Respondents’ brief response to the claim and the issues presented. The Respondent[s] shall make its filing in duplicate with the Committee, and simultaneously shall mail a copy of the Answer to the Claimant.
- (iii) The Respondent[s]:
 - (1) May file a counterclaim with the Committee within 10 days after receipt of the Demand. The filing shall be made in duplicate. The counterclaim shall set forth the nature of the claim, the amount in controversy, if any, and the remedy sought.
 - (2) Simultaneously shall mail a copy of any counterclaim to the Claimant.
 - (3) Shall provide the Committee with a Checklist for Conflicts within 30 days of receipt of the Demand. The Checklist for Conflicts need not be provided to the other side.
- (iv) The Claimant[s] may file an Answer to the counterclaim with the Committee within 15 days after receipt of it. The Answer shall provide Claimant’s brief response to the counterclaim and the issues presented. The Claimant shall make its filing in duplicate with the Committee, and simultaneously shall mail a copy of the Answer to the Respondent[s].

- c. The form of any filing in these rules shall not be subject to technical pleading requirements.

5. Changes of Claim

Before the appointment of the arbitrator, if either party desires to offer a new or different claim or counterclaim, such party must do so in writing by filing a written statement with the Committee and simultaneously mailing a copy to the other party or parties, who shall have 10 days from the date of such mailing within which to file an answer with the Committee. After the appointment of the arbitrator, a party may offer a new or different claim or counterclaim only at the discretion of the arbitrator.

6. Communication with the Committee and Arbitrator

Unless these rules provide otherwise, once the arbitrator or panel is appointed, all communications from and to the parties, including the filing of all documents, shall be through the arbitrator or chair of the arbitration panel. Each party shall copy, by the same method, all other parties on all communications to either the arbitrator or chair of the arbitration panel.

7. Exchange of Information

The arbitrator may direct the production of the client file and client billing records, and any other documents necessary for a full and fair arbitration. The arbitrator may also direct the parties to identify any witnesses to be called, and to produce any exhibits to be used. The arbitrator shall have the authority to set a schedule for and resolve any disputes concerning the exchange of information. Consistent with the expedited nature of arbitration, there shall be no formal discovery.

8. Arbitration Management Conference

As soon as possible after the appointment of the arbitrator, the arbitrator is encouraged to conduct an arbitration management conference with the parties and/or their counsel, in person or by telephone, to explore and resolve matters that will expedite the arbitration proceedings. The specific matters to be addressed include:

- (i) the issues to be arbitrated;
- (ii) the date, time, place and estimated duration of the hearing;
- (iii) the parameters regarding the exchange of documents, hearing exhibits, witness lists and other information, both between the parties themselves and between the parties and the arbitrator;

- (iv) the law, standards, rules of evidence and burdens of proof that are to apply to the proceeding;
- (v) the names of witnesses (including expert witnesses) and the scope of witness testimony;
- (vi) the need for a stenographic record;
- (vii) the form of the award; and
- (viii) any other issues relating to the subject or conduct of the arbitration.

The arbitrator shall issue oral or written orders reflecting his or her decisions on the above matters, and may conduct additional conferences when the need arises.

9. Location of the Arbitration Hearing

The parties may designate the location of the arbitration hearing by mutual agreement. In the absence of such agreement, any party may request a specific hearing location by notifying the arbitrator in writing and simultaneously submitting a copy of the request to the other party or parties. If a timely objection is filed with the arbitrator, the arbitrator shall have the power to determine the location, and his or her decision as to location shall be final and binding.

10. Date and Time of Hearing; Notice to the Parties

The arbitrator shall have the authority to set the date and time of the hearing in consultation with the parties. Promptly upon the designation of a time and place for the hearing, the arbitrator shall so notify the parties in writing.

11. Qualifications to Serve as Arbitrator; Rights of Parties to Disqualify Arbitrator

- (a) Qualifications
 - (i) Arbitrators serving under these rules shall be members of the Bar of the Maryland Court of Appeals.
 - (ii) Arbitrators serving under these rules shall have no personal or financial interest in the results of the proceedings in which they are appointed, and shall have no relation to the underlying dispute or to the parties or their counsel, that may create an appearance of bias.
 - (iii) The roster of available arbitrators will be established on a voluntary basis from among the members of the Committee.

(b) **Standards of Disclosure by Arbitrator**

Prior to accepting appointment, a prospective arbitrator shall disclose all information that might be relevant to the arbitrator's neutrality, including but not limited to the presence of any of the factors listed in Rule 11(a)(ii), and/or service as a neutral or as counsel in any past or pending matter involving any of the parties and/or their counsel.

12. Number and Appointment of Arbitrators

- (a) If the amount of the fee in dispute is less than \$10,000.00, the arbitration shall be conducted by one arbitrator. If the amount of the fee in dispute is \$10,000.00 or more, the arbitration shall be conducted by a panel of three arbitrators. If the parties cannot agree upon the number of arbitrators, the Committee shall have the authority to determine the number of arbitrators. In these rules, wherever appropriate, the term "the arbitrator" may be used from time to time to signify the entire panel in three arbitrator panel cases.
- (b) The Committee shall have the power to select an arbitrator from among the members of the roster of the Committee without consultation with the parties, provided that such arbitrator meets the qualifications in these rules. In three arbitrator panel cases, the Committee shall designate a panel chairperson from among the three arbitrators.

13. Vacancies

If for any reason an arbitrator is unable to perform the duties of the office, the Committee may fill the vacancy with another member of the Committee, providing that such arbitrator meets the qualifications in these rules.

In the event of a vacancy in a panel of arbitrators after the hearing has commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.

14. Representation; Unrepresented Parties

Any party may be represented by an attorney. A waiver of the right to be represented by an attorney prior to the arbitration hearing is ineffective if the party desires an attorney at the hearing.

An unrepresented party must be aware that any lawyer serving as an arbitrator or mediator in the case cannot represent the unrepresented party, and cannot give legal advice about the case. By agreeing to arbitration and/or mediation under these rules, unrepresented parties agree that any lawyer serving as an arbitrator or mediator is a third-party neutral, whose role is to assist two or

more persons who are not clients of that lawyer to reach a resolution of a dispute that has arisen between them.

15. Stenographic Record

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least three days in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties, or determined by the arbitrator to be the official record of the proceeding, it must be provided to the arbitrator and made available to the other parties for inspection, at a date, time, and place determined by the arbitrator.

16. Interpreters

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

17. Sequestration of Witnesses

The arbitrator shall have the authority to exclude witnesses, other than a party, from the hearing during the testimony of any other witness. The arbitrator also shall have the authority to decide whether any person who is not a witness may attend the hearing.

18. Confidentiality

The arbitrator shall maintain the confidentiality of the arbitration and shall have the authority to make appropriate rulings to safeguard that confidentiality, unless the parties agree otherwise or the law provides to the contrary.

19. Postponements; Adjournment

The arbitrator: (1) may postpone any hearing upon the request of a party for good cause shown; (2) must postpone any hearing upon the mutual agreement of the parties; (3) may postpone any hearing on his or her own initiative; and (4) may adjourn any hearing from time to time as necessary.

20. **Oaths**

At the arbitration hearing a witness shall be sworn at the request of a party or at the request of a majority of arbitrators.

21. **Majority Decision**

All decisions and awards of the arbitrators in three arbitrator panel cases must be by a majority, unless the unanimous decision of all arbitrators is expressly required by the arbitration agreement or by law.

22. **Order of Proceedings**

The parties shall bear the same burdens of proof and burdens of producing evidence as would apply if their claims and counterclaims had been brought in court.

Witnesses for each party shall submit to direct and cross examination as approved by the arbitrator.

With the exception of the rules regarding the allocation of the burdens of proof and going forward with the evidence, the arbitrator has the authority to set the rules for the conduct of the proceedings and shall exercise that authority to afford a full and equal opportunity to all parties to present any evidence that the arbitrator deems material and relevant to the resolution of the dispute.

Documentary and other forms of physical evidence, when offered by either party, may be received in evidence by the arbitrator.

The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.

23. **Arbitration in the Absence of a Party or Counsel for a Party**

The arbitration may proceed in the absence of any party or its counsel who, after due notice, fails to be present or fails to obtain a postponement. One party may not unilaterally withdraw from the arbitration, once properly initiated, without the consent of the other party or parties. An award shall not be based solely on the default of a party. The arbitrator shall require the party who is in attendance to present such evidence as the arbitrator may require for the making of the award.

24. Evidence; Subpoenas

The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator deems necessary to an understanding and determination of the dispute.

An arbitrator may issue a subpoena for witnesses or to appear at the arbitration hearing or for documents to be produced at the arbitration hearing upon the request of any party or independently. An arbitrator may not compel a person who is not a party to the arbitration to produce discovery in advance of the arbitration. A single arbitrator may sign a subpoena on behalf of the entire panel.

The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to formal rules of evidence shall not be necessary. The arbitrator may in his or her discretion direct the order of proof, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence, and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any party is absent, in default, or has waived the right to be present. In the discretion of the arbitrator, testimony may be given live, via telephone, by video-conference, or by deposition.

25. Evidence by Affidavit or Declaration and Post-Hearing Filing of Documents or Other Evidence

The arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

If the parties agree or the arbitrator directs, briefs, documents or other evidence may be submitted to the arbitrator after the hearing. All parties shall be afforded an opportunity to examine such documents or other evidence and to lodge appropriate objections, if any.

26. Private Communications with the Arbitrator

There shall be no private communications between one party and the arbitrator outside of the presence of the other side, unless the parties and the arbitrator agree to the contrary in advance of the communication. The parties should therefore expect that, in the absence of a prior agreement, all correspondence and other communications that each party has with the arbitrator will be shared with the other side.

27. Interim Measures

At the request of any party, the arbitrator may take whatever interim measures he or she deems necessary with respect to the dispute. Such interim measures may be taken in the form of an interim award or interim order.

28. Closing of Hearing

The hearing shall be closed when the arbitrator is satisfied that the parties have no further proofs to offer or witnesses to be heard.

If briefs are to be filed, the hearing shall be closed as of the final date set by the arbitrator for the receipt of briefs. If documents and/or other evidence are to be filed after the hearing, and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit, if any, within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon closing of the hearing.

29. Reopening of Hearing

The hearing may be reopened by the arbitrator upon the arbitrator's initiative, or upon application of a party for cause shown, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed on by the parties in the arbitration contract, the matter may not be reopened unless the parties agree on an extension of time. When no specific date is fixed in the contract, the arbitrator may reopen the hearing and shall have a reasonable time from the closing of the reopened hearing within which to make an award.

30. Waiver of Oral Hearing

The parties may provide, by written agreement, for the waiver of oral hearings in any case. If the parties are unable to agree as to the procedure, the Committee or the arbitrator shall specify a fair and equitable procedure.

31. Waiver of Objection/Lack of Compliance with These Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with, and who fails to state objections thereto in writing, shall be deemed to have waived the right to object.

32. Extensions of Time

The parties may modify any period of time by mutual agreement. The Committee or the arbitrator may for good cause extend any period of time established by these rules, except any time specified in the arbitration contract for making the award.

33. Serving of Notice

Each party shall be deemed to have consented that any papers, notices, or process necessary for the initiation of an arbitration under these rules; for noticing any action taken under these rules; for any court actions in connection therewith; or for the entry of judgment on an award made under these procedures may be served on a party by first class mail addressed to the party or its counsel at the last known address or by personal service, in or outside the state where the arbitration is to be held.

The Committee, the arbitrator and the parties may also use the mail, facsimile transmission, email, or overnight courier to give any notices required by these rules.

34. The Award

- (a) Unless the parties' contract for arbitration provides for a different time, the award shall be made promptly by the arbitrator, and shall be reviewed by the Committee Chairperson prior to transmission to the parties.
- (b) The award shall be in writing, shall be signed by a majority of the arbitrators and shall provide the written reasons for the award, unless the parties agree otherwise.
- (c) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable, including any remedy or relief that would have been available to the parties had the matter been heard in court. The arbitrator may in the award assess the arbitration fee in favor of any party.
- (d) The arbitrator shall have the authority to provide for the reimbursement of the attorneys' fees and costs of the fee arbitration, in whole or in part, as part of the remedy, but only in accordance with applicable law.
- (e) If the parties settle their dispute during the course of the arbitration, the arbitrator may set forth the terms of the settlement in a consent award.
- (f) The parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail, addressed to the parties or their respective attorneys, at the last known address.

- (g) The arbitrator's award shall be final and binding unless the parties have agreed to non-binding arbitration. In the case of binding arbitration, judicial review shall be limited, as provided by law. Non-binding arbitration is not permitted in any case where the amount of the fee in dispute exceeds \$2,500.00.

35. Modification of Award

Within 20 days after the transmittal of an award, any party, upon notice to the other parties, may request the arbitrator to correct any clerical, typographical, technical or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided.

The other parties shall be given 10 days to respond to the request. The arbitrator shall dispose of the request within a reasonable time after transmittal by the Committee to the arbitrator of the request and any response thereto.

36. Release of Documents for Judicial Proceedings

The Committee shall, upon the written request of a party, furnish to the party, at that party's expense, certified copies of any papers in the Committee's case file that may be required in judicial proceedings relating to the arbitration.

37. Judicial Proceedings and Exclusion of Liability

- (a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.
- (b) Neither the Committee nor any arbitrator in a proceeding under these rules is or shall be considered a necessary or proper party in judicial proceedings relating to the arbitration.
- (c) Parties to these procedures shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction.
- (d) Neither the Committee nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these procedures.

38. **Mediation**

- (a) If the parties so agree, the Committee may submit a dispute within its jurisdiction to mediation. The Committee shall have the power to select a mediator from among the members of the roster of the Committee without consultation with the parties, provided that such mediator meets the qualifications for serving as an arbitrator in these rules. The mediator shall not serve as an arbitrator in the same fee dispute. Prior to accepting appointment, a prospective mediator shall disclose all information that might be relevant to his or her neutrality, including but not limited to the presence of any of the factors listed in Rule 11(a)(ii), and/or service as a neutral or as counsel in any past or pending matter involving any of the parties and/or their counsel.
- (b) The mediator shall fix the date, time and manner of each mediation session. No stenographic record shall be taken. Either party may terminate mediation at any time.
- (c) The parties shall maintain the confidentiality of the mediation, and shall not rely on, or introduce as evidence in any proceeding, any admissions, proposals, or views expressed by another party or by the mediator in the course of mediation.
- (d) The mediator shall not divulge any confidential information disclosed by the parties in the course of mediation. All documents received by the mediator shall be confidential. The mediator shall not be compelled to divulge such documents or information, or to testify regarding the mediation, in any proceeding or judicial forum.
- (e) Neither the Committee nor any mediator is or shall be considered a necessary or proper party in judicial proceedings relating to the matter which is the subject of mediation. Neither the Committee nor the mediator shall be liable to any party for any act or omission in connection with mediation conducted under these procedures.