

HENNEPIN COUNTY BAR ASSOCIATION LEGAL FEE ARBITRATION RULES AND PROCEDURES

DEFINITIONS

1. The following definitions shall apply to this document as well as all arbitrations falling under the jurisdiction of the Hennepin County Legal Fee Arbitration Committee:
 - a) “Association” means Hennepin County Bar Association.
 - b) “Committee” means all members of the Legal Fee Arbitration Committee.
 - c) “Committee Chair(s)” means the member(s) of the Legal Fee Arbitration Committee appointed by the HCBA as chair(s) of the Committee.
 - d) “Administrator” means an employee of the HCBA that is in charge of assisting with processing all cases and generally assisting the Fee Arbitration Committee as proscribed in these rules and procedures.
 - e) “Panel” means three members of the Committee assigned to serve as arbitrators in a fee dispute.
 - f) “Chairperson” means an attorney-arbitrator appointed by the Committee’s Administrator to serve on the panel as Panel Chairperson.
 - g) “Lay Member” means any person that is not an “Attorney” as defined in this document.
 - h) “Attorney” and “Lawyer” mean any person admitted to practice of law in Minnesota.
 - i) “Party” means the client or lawyer as petitioner or respondent.
 - j) “Petition” and “Response” mean the Hennepin County Legal Fee Arbitration Program Petition/Response form.
 - k) “Petitioner” means the party requesting arbitration.
 - l) “Respondent” means the party with whom the Petitioner has a fee dispute.

PURPOSE

2. The Hennepin County Bar Association created this legal fee arbitration system to provide lawyers and clients with an out-of-court method for resolving fee disputes that is professional, expeditious, confidential, inexpensive, and impartial.

COMPOSITION OF COMMITTEE AND PANELS

3. The Legal Fee Arbitration Committee shall consist of an appropriate number of members to be determined by the President of the Association and appointed annually. Committee members shall be appointed by the President and shall include two or more lay members, one or more attorney member(s), and one Committee Administrator. The members of the Committee shall be appointed for a period of 1 year and shall reflect the different segments of the legal profession as well as the need to provide for gender, racial and additional forms of diversity. The term of any member which may expire while an arbitration is pending before him or her, or before a panel of which he or she is a member, shall be extended until such arbitration is concluded, but such extension shall not interfere with the power to appoint a successor to the Committee. The Committee Chairperson is appointed by the President of the HCBA for a one year term that may be renewed at the discretion of subsequent HCBA Presidents.

4. Each Arbitration panel will consist of three arbitrators from the Committee, two of whom shall be lay members and one of whom shall be an attorney member. The Committee's Administrator will randomly select the three panel members for each arbitration and designate the attorney member as panel chairperson.

BOARD ADMINISTRATOR AND CHAIRPERSON FUNCTIONS

5. The Committee Chairperson(s) and Administrator designated by the Hennepin County Bar Association shall be charged with the responsibility of overseeing the work of the Committee, including reviewing complaints and developing forms to implement the procedures prescribed herein, and may propose to the Committee new or modified rules or procedures.
6. The Committee Chairperson(s) and Administrator shall annually formulate plans and a budget for making lawyers and clients aware of the fee arbitration process and shall encourage its use. In particular, the Committee shall encourage lawyers to include arbitration provisions in fee agreements. Each year the Chairperson(s) and Administrator shall organize a training seminar for all members of the Committee to cover these procedures and develop a uniform approach to arbitrations conducted under the Committee's jurisdiction.

JURISDICTION OF COMMITTEE

7. The Committee shall have jurisdiction over any disagreement concerning fees for legal services rendered by an attorney in Hennepin County or by an attorney practicing in Hennepin County who, with their former or current client, agree in writing to submit their dispute to the Committee for binding arbitration. The Committee shall also accept for arbitration any matter referred to it by a judicial officer. The Committee may, in its discretion, accept other matters for arbitration where both parties agree to the submission of such matter.
8. The Committee shall have jurisdiction regardless of whether a fee complaint also contains a complaint of an ethical violation. A panel member serving as a neutral in any case shall maintain the confidentiality of all information acquired in the course of serving in that role, unless the panel member is required or permitted by law or agreement of all the parties to disclose or use any otherwise confidential information.
9. The degree of professional care and skill that is reasonable under the circumstances may be considered in issuing a decision, but the panel shall have no jurisdiction to determine claims seeking affirmative relief for legal malpractice.
10. The panel shall not hear or rule on any matter that is presently being litigated in court unless the fee dispute can be severed from the rest of the proceedings.

PROCESSING ARBITRATION PETITIONS

11. An arbitration is commenced by filing a petition for arbitration of a fee dispute with the Committee addressed to the Committee at the Hennepin County Bar Association office, along with a filing fee as follows: for disputes of \$7,500.00 or less, the sum of \$100.00; for disputes of more than \$7,500.00, the sum of \$200.00. The Committee will provide a

form on which petitions shall be filed. Either party may commence such proceeding. The parties are encouraged to undertake direct negotiation or mediation in advance of filing an arbitration demand through this program, or at any time thereafter.

12. Upon receipt, a petition shall be immediately acknowledged and promptly reviewed by the Administrator. The matter shall be referred for hearing unless the Administrator determines, and the Committee Chairperson concurs that the matter is not subject to arbitration.
13. If it is determined that the matter is not properly subject to arbitration, the matter shall be dismissed. The reasons for dismissal may include lack of jurisdiction, failure to state a claim, failure to pay the required filing fee, no written fee arbitration agreement by the parties to be bound by an arbitration award, the dispute is moot, or the Committee can provide no relief.
14. After the determination that there is a legitimate petition, the Administrator shall forward the petition to the other party with a request for a response. A response shall be filed by the responding attorney or party within 20 days of receipt of the petition, along with a filing fee as follows: for disputes of \$7,500.00 or less the sum of \$100.00; for disputes of more than \$7,500.00 the sum of \$200.00. The panel for good cause shown may extend the response time by not more than 20 days. No response shall be accepted unless accompanied by the required filing fee. If a responding party fails to respond or pay the required filing fee, the filing party may pay such fee. The parties shall then be informed that the arbitration will proceed even if no response was made.

DISCLOSURES AND CHALLENGES

15. Any Committee member who accepts a request to serve as an arbitrator on a panel shall make a reasonable inquiry and then disclose to all parties to the agreement any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceedings, including:
 - a) financial or personal interest in the outcome of the arbitration proceeding;
 - b) an existing or past relationship with any of the parties to the agreement or arbitration, their counsel, witnesses, or other Committee members serving as arbitrators on the same case.
16. All Committee members who are serving on a panel have a continuing obligation to disclose the information described in paragraph 15 throughout the arbitration proceeding.
17. A party may challenge any Committee member/arbitrator for cause. A challenge for cause naming the arbitrator and the reason for the challenge shall be filed with the Administrator within ten (10) calendar days after service of the notice of appointment, or within two (2) business days of a Rule 16 disclosure. An arbitrator shall accede to a reasonable challenge and the Administrator shall appoint a replacement. If an arbitrator does not voluntarily accede, the Administrator shall decide whether to appoint a replacement. The decision of the Administrator on challenges shall be final. In the event that a panel member declines or is unable to serve, the Administrator shall appoint another Committee member to serve. The Administrator shall strive to rotate selection of Committee members based on 1)

availability and 2) whether the Committee member has been selected yet during the term, with preference given to Committee members who have not yet been selected.

IMMUNITY

18. A Committee member who has been selected to participate on a panel as an arbitrator is immune from civil liability to the same extent as a judge of a court in this state acting in a judiciary role. Immunity afforded by this section supplements any other immunity even if the Committee member failed to make full disclosure as required by paragraphs 15 or 16 herein.

ARBITRATION PROCEDURE

19. Upon completion of the administrative process, the matter shall be assigned to a panel of three Committee members, consisting of one attorney and two lay members.
20. All members of the Hennepin County Bar Association's Fee Arbitration Committee shall comply with Minnesota arbitration laws, as applicable, the Federal Arbitration Act, as applicable, the parties' arbitration agreement, and the American Bar Association's current Code(s) of Ethics for Arbitrators.
21. If, at the time set for a hearing, fewer than three (3) panel members are in attendance, the attending member(s) of the panel, in their sole discretion, shall decide either to postpone the hearing, or, with the consent of the parties, to proceed with the hearing with one (1) or two (2) member(s) as arbitrator(s).
22. The panel chair may grant one request for a continuance from each party for exigent reasons, such as serious illness, injury or death of a party or immediate family member. If a party who has consented to binding arbitration fails to participate further, the panel shall proceed to a determination. If a request for continuance is granted after the date on which submissions to the panel are due, the time period for making such submissions shall not be extended.
23. If all parties to a controversy so agree, they may waive oral hearings and may submit their contentions in writing, together with exhibits, to the panel, which may then determine the controversy on the basis of such documents. In their sole discretion the panel may require oral testimony of a party after due notice. The panel has the discretion to allow telephonic or other electronic means of presenting evidence or sworn testimony.
24. The panel shall hold a hearing within sixty (60) calendar days after the receipt of the petition and shall render their award within fifteen (15) calendar days after the close of the hearing. The award of the panel shall be made by a majority of the panel.
25. The Administrator shall fix a time and place for the hearing and shall cause written notice thereof to be served (by hand delivery, email, mail, or certified mail) on the parties to the arbitration not less than fourteen (14) calendar days prior to the hearing date. The parties shall attempt to agree to a date on which the hearing will be held. In the event the parties are unable to agree to a date, the Administrator has the sole authority and discretion to schedule the hearing. A party's appearance at a scheduled hearing shall constitute a waiver of any deficiency challenge with respect to the giving of notice of the hearing. In the event a party to the arbitration is incarcerated, the arbitration may be heard at the

place of incarceration or take place by telephonic conference, at the discretion of the panel chair.

26. The parties to the arbitration are entitled to be heard, present evidence, see all evidence presented, and to cross-examine witnesses appearing at the hearing. Any party to the arbitration has the right to be represented by an attorney at the hearing or at any stage of the arbitration proceeding. Any party has the right to subpoena witnesses or documents. Any party may also request to have a hearing before a panel reported by a Certified Shorthand Reporter at his or her expense if a written request is presented to the Administrator at least three (3) business days prior to the date of the hearing. The party requesting the court reporter is solely responsible for obtaining the reporter's services. In the event of such a request, any other party to the arbitration shall be entitled to acquire at his or her own expense a copy of the reporter's transcript of the testimony by making arrangements directly with the reporter. The panel has the discretion to allow or deny such a request. Any transcript will not constitute an "official record" of the hearing unless so designated by the panel.
27. All parties shall have an absolute right to attend all hearings. Other persons or witnesses may be sequestered in the discretion of the arbitrators.
28. The Chair of the panel shall preside at the hearing. The panel chair shall rule on the admission and exclusion of evidence and on questions of procedure, with the advice of the other members of the panel.
29. At the commencement of the hearing the panel chair shall make a statement designed to emphasize the informality of the proceedings, put all participants at ease, and insure that they are familiar with the procedure.
30. On the request of any party to the arbitration or any member of the panel, the testimony of witnesses shall be given under oath. When so requested, the Chairperson of the panel shall administer a non-sectarian oath to witnesses testifying at the hearing. (E.g.: "Do you swear or affirm that your testimony in this hearing will be the truth?")
31. If either party to the arbitration who has been duly notified fails to appear at the hearing, the panel may hear and determine the controversy upon the evidence produced and may enter a binding award.
32. The majority decision of the arbitrators shall be expressed in a written award signed by all of them. The arbitrators may grant any remedy or relief they deem proper including a direction for specific performance. Once the award is signed and filed, the hearing may not be re-opened except upon consent of all parties.
33. The panel shall render a simple award. The panel may, in its discretion, include additional information as to the reasons for the award. The panel may, in its discretion, utilize award forms provided by the Administrator.
34. The panel may include an award for attorneys fees incurred in collecting unpaid fees only if a written agreement provides for the recovery of such fees. Otherwise, no attorneys fees with respect to the arbitration process shall be awarded to either party. The panel may also include in its award an award of arbitration filing fees.
35. If a party fails to pay the filing fee or file a response in a timely manner, the panel of arbitrators shall have the discretion to exclude any evidence or testimony offered by that party.

36. The Chairperson of the panel shall forward the award, together with the entire file, to the Administrator who shall serve a copy of the award on each party to the arbitration, personally, or by registered or certified mail.

ENFORCEMENT OF AWARD

37. Any award rendered may be enforced by any court of competent jurisdiction.

CONFIDENTIALITY

38. The Hennepin County Bar Association does not release names of parties, awards, transcripts, or any other part of the proceedings or files therein to any outside agency or for public record unless required to do so by law or court order.
39. This rule shall not be construed to deny access to relevant information by professional discipline agencies or other law enforcement authorities as the Board shall authorize, however, absent a court order, such release of information shall be limited to the release of statistical or general information that does not disclose the identity of a lawyer or any party, or any specific information about a particular case or proceeding.

Rules originally adopted in the spring of 1984 and effective October 1, 1984.
Last amended and adopted in the Spring of 2011 and effective July 1, 2011.