

RULES FOR RESOLUTION OF FEE DISPUTES BY THE ALABAMA STATE BAR

(Note: These rules were revised by Board of Bar Commissioners on July 12, 2006 to give the Fee Dispute Resolution Committee jurisdiction to mediate or arbitrate disputes between two or more lawyers concerning the entitlement to portions of fees earned from joint services).

PREAMBLE

The purpose of this program is to provide a simple and convenient non-judicial mechanism for the resolution of disputes between lawyers and clients over fees, and for the resolution of fee disputes between two or more lawyers concerning the entitlement to portions of fees earned from joint services. Participation in the program is completely voluntary. Unless both parties agree by written consent to mediation and/or arbitration by the Committee, the Committee has no grounds or jurisdiction to involve itself with the dispute. Also, before the Committee can assume jurisdiction to mediate or arbitrate a fee dispute, the petitioning party must provide evidence he or she has made a good faith effort to resolve the dispute.

This program is not designed to resolve disputes between lawyers in connection with the withdrawal of a lawyer from a partnership or other business entity or from the separation or termination of a partnership or other business entity.

Disputing parties who consent to use the program will first attempt to achieve a jointly agreed upon resolution through non-binding mediation. If the parties are unable to reach an agreement through mediation, binding arbitration may be requested by either side. Regardless of whether it is a lawyer or a client who takes the initiative of filing a request for arbitration of the dispute, the petitioner must agree to be bound by the results of the arbitration. This is intended to discourage the filing of petitions which are frivolous or which seek to invoke the process simply to obtain an "advisory opinion." If the respondent also agrees to be bound, the resulting arbitration award will be enforceable under the general arbitration laws of the State of Alabama.

COMMITTEE ON RESOLUTION OF FEE DISPUTES

Rule 101. Committee

The program will be administered by the Alabama State Bar Committee on Fee Dispute Resolution ("Committee").

Rule 102. Membership

The Committee shall consist of a minimum of twelve (12) members and not more than thirty-six (36) members to be appointed by the President of the Alabama State Bar. Members

of the Committee should be selected to provide representation from a broad spectrum of the Bar from the standpoint of firm organization, geography, and types of practice. Committee members must be experienced in the practice of law, and no member should have practiced law for less than five (5) years. Committee members should be trained in mediation and/or arbitration. The members shall serve three-year terms. Initially, one-third of the members of the Committee shall be appointed for a period of one year, one-third for a period of two years, and one-third for a period of three years. As each member's term of office on the Committee expires, his successor shall be appointed for a period of three years.

The term of any member which expires while a mediation or arbitration is pending before him/her or before a panel of which he/she is a member shall be extended until such mediation or arbitration is concluded, but such extension shall not interfere with the President's power to appoint a successor to the Committee.

Rule 103. Executive Board

The President of the Alabama State Bar shall appoint a Chairman who together with five members of the Committee shall constitute the Executive Board of the Committee. The Executive Board shall be charged with the responsibility of overseeing the work of the Committee, reviewing recommendations for dismissal of petitions developing forms to implement the procedure prescribed herein and may formulate rules of procedure not inconsistent with these rules. The Executive Board shall periodically review the recommendations for dismissal of petitions.

Rule 104. Jurisdiction

The Committee shall have jurisdiction over any disagreement between lawyers and clients over fees and expenses, or between two or more lawyers over fees and expenses not otherwise precluded by limitations set forth in Rule 104 and 105. The fees in question, whether paid or unpaid, must be charged for legal services rendered by (a) lawyer(s) who is (are) or who was (were) at the time of the rendition of the service admitted to practice law in the State of Alabama. The services or charges in question must have been performed either in the State of Alabama or from an office located in the State of Alabama. At the time the legal services in question were performed there must exist or have existed an express or implied contract establishing an attorney-client relationship, or an express or implied lawyer to lawyer fee agreement regarding legal services. Disputes over which, in the first instance, a court has jurisdiction to fix the fee by statute or other law, or which involve services which may constitute a violation of the Rules of Professional Conduct (unless Committee jurisdiction is authorized by the General Counsel of the Alabama State Bar or by the appropriate bar committee or organization by which the violation was determined), or disputes in which the full amount of all terms have already been fixed or approved by order of a court, are

specifically excluded from the Committee's jurisdiction. In the sole discretion of the Committee, a relative or other person paying the legal fees of the client may request mediation or arbitration of disputes over those fees provided both the client and the payor join as co-petitioners or co-respondents and both agree to be bound by the results of the mediation or the arbitration. An attorney-client or lawyer to lawyer fee dispute must not be the subject of litigation in a court of record at the time the petition for mediation or arbitration is filed. In the case of arbitration, such petition must be filed with the Committee by the lawyer or the client no more than two (2) years following the date on which the controversy arose. If this date is disputed, it shall be determined in the same manner as the commencement of a cause of action on the underlying contract.

Rule 105. Processing Petitions

Requests for Committee consideration of fee disputes ("the Petition ") shall be submitted in writing on forms approved by the Committee and addressed to:

**The Alabama State Bar
Committee on Fee Dispute Resolution
415 Dexter Avenue
Montgomery, Alabama 36104**

or mailed to:

**The Alabama State Bar
Committee on Fee Dispute Resolution
P. O. Box 671
Montgomery, Alabama 36101-0671**

A fee dispute may be referred to the Committee by the Alabama State Bar Center for Professional Responsibility, the Disciplinary Commission of the Alabama State Bar, local bar association grievance committees, or any attorney or client. Any fee dispute submitted to the Committee, other than from the Alabama State Bar Center for Professional Responsibility or the Disciplinary Commission of the Alabama State Bar, shall first be sent to the General Counsel of the Alabama State Bar for review of potential violations of the Alabama Rules of Professional Conduct. If the General Counsel determines that petition is appropriate for referral to the Committee, it shall be processed pursuant to these Rules.

The request shall state with clarity and brevity the facts with respect to the fee dispute, the particulars of the petitioner's position, including relevant dates, the identities of both the client and the lawyer, or the two or more lawyers in dispute over fees and their addresses a list of names and addresses of those persons who may be directly affected by the outcome, and a statement that the petitioner has made a good faith effort to resolve the dispute and the details of that effort.

Upon receipt at the State Bar, a number shall be assigned to the written petition and the petition shall be immediately acknowledged in writing and then forwarded to the Chairman of the Committee, who will then assign it to a member of the Committee. The Chairman shall then write a letter of explanation to the client and attorney, or to the lawyers involved if the dispute is between lawyers, attaching a copy of the petition for the attorney, and a copy of these rules to each. At the beginning of each term, the Chairman of the Committee shall establish a list of members of the Committee in each area of the state to whom petitions are to be forwarded in alphabetical rotation. All petitions received shall be sent directly to the assigned member next in rotation. The Committee member assigned to the case will also forward to the attorney and the client the necessary forms for execution by each party to consent to mediation and/or arbitration.

Upon receipt of the petition and the executed consent forms, the assigned member shall promptly review the petition and, if necessary, obtain additional information from the petitioner to satisfy himself/herself that he/she has all relevant facts in his possession.

Upon the completion of any preliminary investigation he/she deems appropriate, the assigned member shall determine whether, in his judgment, a legitimate petition has been stated. If the assigned member determines that a petition should be dismissed without further action, because there appears to be no just jurisdictional grounds for the petition or dispute, he/she shall prepare a brief written report setting forth the facts and his/her recommendation for submission to the next meeting of the Executive Board of the Committee. If the Executive Board concurs in the assigned member's recommendation, the matter shall be closed and the petitioner so advised. If the Executive Board disapproves the assigned member's recommendation, the matter shall be reassigned to a new assigned member for further proceedings.

Rule 106. Mediation

Mediation by the Committee simply means that a member of the Committee shall attempt to achieve a jointly agreed resolution of the dispute between the parties. If mediation is unsuccessful, the parties will remain in the same position as they were prior to filing the Petition. Mediation cannot result in a resolution not agreed to by all parties.

Mediation shall take place in the following order. If, upon receipt of the consent forms, and following his/her preliminary investigation, the assigned member concludes that the Committee has jurisdiction, he/she shall notify the parties. Unless the parties agree otherwise, the mediation shall be conducted in accordance with the Alabama Civil Court Mediation Rules, by the assigned member, as mediator, who is a member of the Alabama State Bar Fee Dispute Resolution Committee. Within thirty (30) days thereafter, both parties and their respective attorneys, if any, shall meet with the mediator for one mediation session, it being agreed that

each party representative attending such mediation session shall be a Senior Party Representative with authority to settle the dispute. If the dispute cannot be settled at such mediation session or at any mutually agreed continuation thereof, either party may give the other and the mediator written notice declaring the mediation process at an end. All conferences and discussions which occur in connection with mediation conducted pursuant to this process shall be deemed settlement discussions, and nothing said or disclosed, nor any document produced, which is not otherwise independently discoverable, shall be offered or received as evidence or used for impeachment or for any other purpose at any current or future arbitration or litigation.

If mediation is unsuccessful, the assigned member shall ask the parties to consider binding arbitration, which consideration shall be followed by express written consent to be obtained from both parties by the assigned member or the Chairman of the Committee. If such consent is obtained, the assigned member or the Chairman of the Committee shall notify the parties that the dispute shall be determined by arbitration in accordance with the procedures set out in Section 6-6-1 et seq., Code of Alabama 1975. The arbitrator or arbitrators so selected shall not be the same person who served as mediator.

In the event the dispute fails to proceed to binding arbitration because of a refusal by the attorney or client to consent to binding arbitration, the assigned member shall not assist either party in finding legal representation, and shall not serve as an expert or other witness in any subsequent litigation which the parties may institute to resolve the dispute.

Rule 107. Arbitration

Upon receipt of the consent of the parties to binding arbitration, the matter shall be assigned to a hearing before one member of the Committee, if the amount in controversy is less than \$5,000.00. If the amount in controversy is \$5,000.00 or more, *and either party shall so request*, the hearing panel shall be composed of three members of the Committee. In either event, the arbitrator(s) are to be selected by the Chairman, who shall likewise designate the Chairman of the panel.

It shall be the obligation of any member so designated to serve as arbitrator to disclose to the Chairman of the Committee any reasons why he/she cannot ethically or conscientiously serve. In the event that a member so designated to serve declines or is unable to serve, the Chairman shall select another eligible Committee member. In designating panel members, the Chairman shall strive to rotate selection of panel members in an equitable manner.

If at the time set for a hearing before a three member panel, all three members are not present, the Chairman of the panel, or in the event of his unavailability, the Chairman of the Committee, in his sole discretion, shall decide either to postpone the hearing, or with the consent of the parties, to proceed with the hearing with one member of the panel as the sole arbitrator, in which case the Chairman shall also designate the member of the panel who will

hear the case as sole arbitrator. In no event will a hearing be conducted by or proceed with two arbitrators.

If any member of a three member panel dies or becomes unable to continue to act while the matter is pending and before an award has been made, the proceedings to that point shall be declared null and void and the matter assigned to a new panel for rehearing unless the parties, with the consent of the panel chairman, or in the event of his unavailability, the Chairman of the Committee, consent to proceed with the hearing with one of the remaining members of the panel as the sole arbitrator.

If all the parties to a controversy so agree, they may waive oral hearings and may submit their contentions in writing, together with exhibits, to the arbitrator or arbitrators so assigned, who may then determine the controversy on the basis of such documents. However, the arbitrators may require oral testimony.

The member(s) of the Committee selected as arbitrator(s) of any dispute shall be vested with all the powers, and shall assume all the duties granted and imposed upon neutral arbitrators by the Code of Alabama 1975, Section 6-6-1 et seq., not in conflict with these rules.

The single arbitrator or panel assigned shall hold a hearing within forty-two (42) days after the receipt of the assignment, and shall render an award within fourteen (14) days after the close of the hearing. When a panel is used, the award of the panel shall be made by a majority of the panel.

The chairman of the panel or the single arbitrator assigned, as the case may be, shall fix a time and place for the hearing and shall cause written notice thereof to be served personally or by registered or certified mail on the parties to the arbitration and on the other members of the panel no less than fourteen (14) days before the hearing. A complete written statement of facts as contended by each party shall be filed with the arbitrator(s) at least seven (7) days prior to the scheduled hearing.

The term "party" as used in these rules to refer to a party in an arbitration shall include all parties who have executed a consent to binding arbitration. A person who has failed to consent to binding arbitration shall not be deemed a party, shall not be entitled to notice of the hearing and shall not be eligible to participate in the hearing.

The parties to the arbitration are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing. Any party to an arbitration has the right to be represented at the hearing or at any stage of the arbitration proceeding.

All parties shall have an absolute right to attend all hearings. The exclusion of other persons or witnesses waiting to be heard shall rest in the discretion of the arbitrators. There

shall be no ex parte communication between the parties and the arbitrator(s).

Adjourned dates for the continuation of any hearings which cannot be completed on the first day shall be fixed for such times and places as the arbitrators may select with due regard to the circumstances of all the parties and the desirability of a speedy determination. Upon request of a party to the arbitration for good cause, or upon its own determination, the panel may postpone the hearing from time to time.

The sole arbitrator or chairman of the panel shall preside at the hearing. He/She shall rule on the admission and exclusion of evidence and on questions of procedure, and shall exercise all powers relating to the conduct of the hearing. In making an investigation or inquiry or conducting a hearing, the arbitrator(s) shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by these rules and Code of Alabama 1975, Section 6-6-1, et seq., but may make such investigation or inquiry or conduct such hearing in such manner as best to ascertain the rights of the parties.

The arbitrator(s) may request opening statements and may prescribe the order of proof. The normal order of proceedings shall be the same as in a trial with the petitioner first presenting his or her claim. In any event, all parties shall be afforded full and equal opportunity for the presentation of any material evidence or relevant proofs. The standard of proof to be used by the arbitrator(s) in determining issues shall be by a preponderance of the evidence.

On request by any party to the arbitration or by arbitrator(s), the testimony of witnesses shall be given under oath. Where so requested, the sole arbitrator or chairman of the panel shall administer oaths to witnesses testifying at the hearing.

If either party to an arbitration who has been duly notified fails to appear at the hearing, the arbitrator(s) may hear and determine the controversy upon the evidence produced, notwithstanding such failure to appear, and enter a binding award.

Before closing the hearing, the sole arbitrator or chairman of the panel shall specifically inquire of all parties whether they have further evidence to submit in any form. If the answer is negative, the hearing shall be declared closed and a notation to that effect made by the arbitrators as well as the date for submission of memoranda or briefs if requested by the arbitrators.

At the discretion of the arbitrator(s), the hearing may be reopened by the arbitrator(s) on their own motion or on application of a party at any time before the award is signed and filed.

In the event of the death or incompetency of a party to the arbitration proceeding prior to the close of the hearing, the proceeding shall be abated without prejudice to either party to

proceed in a court of proper jurisdiction to seek such relief as may be warranted. In the event of death or incompetency of a party after the close of the hearing but prior to a decision, the decision rendered shall be binding upon the heirs, administrators or executors or other personal representatives of the deceased and on the estate or upon the guardian or other personal representative of the incompetent.

Rule 108. The Award

The decision of the arbitrator(s) shall be expressed in a written award signed by the arbitrator or, in the event of a panel, by all of them. When a panel is used, if there is a dissent, it shall be signed separately, but the award shall be binding if signed by the majority of the arbitrators. Unless the submission or contract provides otherwise, the arbitrator(s) may grant any remedy or relief they deem proper, including a direction for specific performance. However, no arbitrator shall have authority to enter an award contrary to the terms of a valid written contract between the parties, except on the grounds of fraud, mistake, other grounds permitting the reformation of contracts under the laws of this state, or as being contrary to applicable law. An award may also be entered on consent of all parties. Once the award is signed and filed, the hearing may not be reopened except upon consent of all parties.

An original and four (4) copies of the award shall be signed by the arbitrator(s) or by members of the panel concurring therein. The sole arbitrator or the chairman of the panel shall forward said award, together with the entire file, to the Chairman of the Committee, who shall thereupon for and on behalf of the arbitrator(s), serve a signed copy of the award on each party to the arbitration, personally or by registered or certified mail. A copy of the award shall be filed with the Alabama State Bar.

If the parties settle their dispute during the course of the arbitration proceeding, the arbitrators, upon the written consent of all parties, may set forth the terms of the settlement in an written award.

The award need not be in any particular form, but should succinctly set forth the remedy determined to be appropriate by the arbitrator(s), consistent with the issues presented. In preparation of the award, the arbitrator(s) should take care not to divulge any matters or communications between attorney and client which remain confidential or privileged. The arbitrator(s) may include in the award a direction for the payment of expenses related to the proceedings but not for fees to the arbitrator(s) or counsel.

Rule 109. Enforcement of the Award in Attorney-Client Fee Disputes

The arbitration shall be governed by the substantive laws of the State of Alabama without regard to conflicts of law rules and by the arbitration law of the Federal Arbitration

Act (Title 9, United States Code), and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The award of the arbitrator(s) is final and binding upon the parties and may be enforced as provided by the general arbitration laws of the state of Alabama.

If the award shall determine that the participating attorney or attorneys who consented to binding arbitration are not entitled to any portion of the disputed fee, service of a copy of such award on said attorney or attorneys shall: (a) terminate all claim and interest of the participating attorney or attorneys against the participating client or clients in respect to the subject matter of the arbitration; (b) terminate all right of such attorney or attorneys to retain possession of any documents, records, or other properties of such client or clients pertaining to the subject matter of the arbitration then held under claim of attorney's lien or for other reasons; (c) terminate all right of such attorney or attorneys to oppose the substitution of one or more other attorneys designated by such client or clients in any pending litigation pertaining to the subject matter of the arbitration.

If the award shall be in favor of any attorney or attorneys who submitted their consent to binding arbitration, it shall fix the amount to which he/she or they are found to be entitled; Payment of that amount or amounts shall: (a) constitute a complete satisfaction of all claims and interest of the participating attorney or attorneys against the participating client or client in respect to the subject matter of the arbitration; (b) terminate all right of such attorney or attorneys to retain possession of any documents, records, or other properties of such client, or clients pertaining to the subject matter of the arbitration then held under claim of attorney's lien or for other reasons; (c) terminate all right of such attorney or attorneys to oppose the substitution of one or more other attorneys designated by such client or clients in place of the participating attorney or attorneys in any pending litigation pertaining to the subject matter of the arbitration.

If the award shall be in favor of the participating client and shall determine that the client is entitled to the refund of all or a part of monies previously paid, it shall fix the amount to which the client or clients is found to be entitled. Payment of that amount or amounts shall constitute a complete satisfaction of all claims and interest of the participating client against the participating attorney in respect to the subject matter of the arbitration.

Rule 110 Enforcement of the Award in Fee Disputes Between Lawyers

The arbitration shall be governed by the substantive laws of the State of Alabama without regard to conflicts of law rules and by the arbitration law of the Federal Arbitration Act (Title 9, United States Code), and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The award of the arbitrator(s) is final and binding upon the parties and may be enforced as provided by the general arbitration laws of the state of Alabama.

If the award shall determine that the lawyer or lawyers petitioning for part or all of the fees, and who consented to binding arbitration is (are) not entitled to any portion of the disputed fee, service of a copy of the award on the lawyer(s) shall: (a) terminate all claim and interest of the lawyer(s) against the other lawyer(s) in respect to the subject matter of the arbitration; (b) terminate all rights of the lawyer(s) to retain possession of any documents, records, or other properties of the other lawyer(s) pertaining to the subject matter of the arbitration.

If the award shall be in favor of the lawyer(s) petitioning for part or all of the fees, and who consented to binding arbitration, it shall fix the amount to which the lawyer(s) are found to be entitled. Payment of that amount shall: (a) constitute complete satisfaction of all claims with respect to the subject matter of the arbitration; (b) terminate the rights of the other lawyer(s) to retain possession of any documents, records, or other properties of the other lawyer(s) pertaining to the subject matter of the arbitration.

Rule 111. Confidentiality

With the exception of the award itself, all records, documents, files, proceedings, and hearings pertaining to arbitration and mediation of any fee dispute under these rules shall not be opened to the public or any person not involved in the dispute without a written consent of both parties to the arbitration or mediation. However, the Committee may reveal confidential information in those circumstances in which the Office of General Counsel of the Alabama State Bar is authorized to do so by Rule 30 of the *Rules of Disciplinary Procedure*.

