

AUSTIN BAR ASSOCIATION
FEE DISPUTE RESOLUTION BY-LAWS

1. **MEDIATION AND ARBITRATION OF FEE DISPUTES**

1.01 **Purpose**. Clients of attorneys subject to these Rules and the public in general have a right to be charged fairly and reasonably fees for legal services actually rendered. Conversely, attorneys are entitled to their just compensation for work performed. Therefore, the Fee Dispute Resolution Committee (hereinafter referred to as Committee), created by these Rules, shall have as its purpose the prompt and equitable disposition of fee disputes between attorneys subject to these Rules and their clients. To that end, the Committee shall offer mediation and arbitration services to attorneys and their clients having a dispute over a legal fee.

If either party requests mediation as the Committee's initial action, mediation services will be offered to the disputants. If mediation is not requested, or if mediation does not result in an agreement, the disputants may request arbitration.

1.02 **Attorneys and Non-Resident Attorneys** Attorneys and non-resident attorneys who practice before the Courts of Travis, Bastrop, Blanco, Burnet, Hays and Williamson County or who render legal services to residents of Travis, Bastrop, Blanco, Burnet, Hays and Williamson County shall be subject to these Rules and the requirements thereof.

1.03 **Failure to Participate** In the event an attorney subject to these Rules who, following notice, fails or refuses to mediate and/or arbitrate a fee dispute when requested to do so by the Chairperson of the Committee, the Chairperson of the Committee may notify the President of the Association and promptly refer the matter to the Office of the General Counsel of the State Bar of Texas. .

1.04 **Fee Dispute Resolution Guidelines** Panel members may rely generally on Disciplinary Rule 1.04 of the Texas Disciplinary Rule of Professional Conduct in the arbitration of fee disputes under these Rules.

1.05 **Pending Litigation** A fee dispute resolution request may be filed upon agreement of both parties and accepted by the Committee Chairperson notwithstanding the existence of a pending lawsuit to collect the fee filed by the attorney involved in the fee dispute; provided, however, the request for services from the Committee must be filed with the Committee prior to the occurrence of substantial proceedings in the pending fee litigation.

The written rendition of agreement as a result of mediation or final award after arbitration by the Fee Dispute Resolution Panel shall be submitted to the Court in which the fee litigation is pending for entry in final disposition of the lawsuit and all other costs.

1.06 **Minimum Jurisdiction** The Chairperson of the Committee shall have the discretion to decline jurisdiction on disputes involving attorney's fees when the amount in controversy is \$100.00 or less. The Chairperson may elect to act as sole arbitrator in the processing and hearing of disputes involving amounts of less than \$100.00, and following the hearing pursuant to Section 3 of these Rules, the written award of the Committee Chairperson shall be binding and final pursuant to Section 4 hereof.

2. **FEE DISPUTE RESOLUTION COMMITTEE**

2.01 **Creation of Committee** In order to facilitate dealings between the members of this Association and their clients, there is hereby created a Fee Dispute Resolution Committee.

2.02 **Fee Dispute Resolution Committee Members** The Committee shall consist of a Chairperson and members appointed by the President. Each mediation panel shall consist of one attorney and one community representative and each arbitration panel shall consist of 2 attorneys and 2 community representatives.

2.03 **Acceptance of Appointment** Upon appointment to the Committee, a committee member agrees to mediate those cases assigned to them for mediation and to judge disputes assigned to them for arbitration fairly and in accordance with the by-laws of the Austin Bar Association Fee Dispute Resolution Committee. A committee member agrees not to serve in any mediation or arbitration in which they have a financial interest or in which they are prejudiced for or against either party.

2.04 **Duties of the Committee** It shall be the duty of the Committee to hear and facilitate agreements or make awards in all disputes between attorneys and clients regarding any attorney's fee which are submitted to it in accordance with these Rules. **NO MEMBER OF THE COMMITTEE OR THE AUSTIN BAR ASSOCIATION SHALL EVER BE LIABLE TO ANY PARTY IN A MEDIATION OR ARBITRATION PROCEEDING FOR ERRORS OF JUDGMENT OR FOR ANY DAMAGE OR LOSS SUFFERED BY REASON OF ANY ACTS TAKEN IN CONNECTION WITH THE COMMITTEE.**

2.05 **Duties of the Chairperson** The chairperson of the committee shall designate a chairperson of each panel. The Chairperson of the Committee shall be responsible for assigning disputes to the panels, for obtaining consents

of the parties to mediate or arbitrate and for the general administrative affairs of the Committee. The Chairperson may designate an individual to handle administrative duties.

2.06 **Interpretation and Application of Rules** The Committee and the panels shall interpret and apply these Rules insofar as they relate to their powers and duties. Such interpretation shall be by majority vote.

2.07 **Disqualification of Member** A member of the Committee shall be disqualified to serve in any mediation or arbitration proceedings:

- A. If he or a member of his law firm or business is a party to the proceeding or has a financial interest in the outcome of the proceeding; or
- B. If he states that he is prejudiced in the proceedings; or
- C. If he is related by blood or marriage to a party; or
- D. If either party to the arbitration proceeding requests that he be disqualified for cause. The panel Chairperson shall be the sole and exclusive judge of the sufficiency of such cause.

3. **PROCEDURE**

3.01 **Initiation of a Proceeding** A mediation or arbitration proceeding may be initiated by filing a written request for services with the Chairperson of the Committee. Such written request shall describe the dispute, and set out the names and addresses of the parties involved. A written request for services may be filed with the Chairperson of the Committee by any of the following:

- A. A client who has a fee dispute with a member of the Association or with a member of the State Bar of Texas who is not a member of the Association but who is a resident of or regularly practices in Travis County, Texas;
- B. By a member of the Association;
- C. By a member of the State Bar of Texas who is not a member of the Association but who resides or regularly practices in Travis County, Texas;
- D. By the Chairperson or the Secretary of any District Grievance Committee of the State Bar of Texas or the Office of General Counsel.
- E. Any Judge of a Court located in Travis County.

3.02 **Preliminary Examination by the Chairperson** Upon receipt of a written request for services, the Committee Chairperson shall make a preliminary determination whether the matter is appropriate for consideration by the Committee. The Chairperson shall have the discretion to decline jurisdiction on disputes involving

attorney's fees when the controversy has existed an inordinate amount of time. The Chairperson shall have exclusive discretion to accept or reject any disputes on behalf of the Committee. In the event that the matter is determined to be one which should be declined, the Chair shall advise the party who filed the written request for services that the Committee elects not to provide mediation or arbitration services. In the event the Chair determines the matter should be reviewed by the State Bar Grievance Committee or the Office of the General Counsel, the matter may be referred to that body.

3.03 **Agreement to Mediate or Arbitrate** If the Chairperson of the Committee determines that the dispute should be accepted by the committee, the Chair or a designee shall immediately mail to each party of the dispute, by Certified Mail, notice of such acceptance. Enclosed in such notice shall be an agreement to mediate, in cases in which mediation has been requested. In cases in which mediation has not been requested by either party, an agreement to arbitrate in a form prescribed by the Board of Directors of the Association, shall be enclosed with such notice. The agreements to mediate or arbitrate shall be executed by each party to the dispute and shall be returned to the Austin Bar Association within fifteen (15) calendar days from the date of its transmittal to the parties. In the event the agreements have not been received by the Austin Bar Association within fifteen (15) days, the Committee may dismiss the proceeding.

3.04 **Notification of Filing of Agreements to Mediate or Arbitrate; Assignment to a Panel** Upon receipt of executed agreements to mediate or arbitrate, the Chairperson or a designee shall notify each party by Certified Mail that the agreements have been received and that the dispute has been assigned to a panel of the Committee. The notice shall also contain the names of the panel members to which the dispute has been assigned and shall name a date and place for the mediation or arbitration to occur.

3.05 **Mediation Sessions** Each party shall have the right to appear at a scheduled mediation in person and by counsel. No testimony or witnesses other than the disputants shall be heard, absent special request by the mediators.

3.06 **Arbitration Hearing** Each party shall have the right to appear in person and by counsel at an arbitration hearing. The parties shall be entitled to be heard, present evidence and witnesses material to the controversy, and to examine and cross-examine witnesses appearing at the hearing. The chair of the panel shall preside, but all members of the panel shall be entitled to participate in the hearing. The panel may administer oaths, issue subpoenas and authorize depositions pursuant to the Texas General Arbitration Act, Art. 224, et seq., Texas

Annotated Civil Statutes. The panel may adjourn the hearing from time to time as necessary and on request of a party and for good cause, or upon their own motion postpone the hearing. The panel may hear and determine the dispute upon the evidence and witnesses produced notwithstanding the failure of a party duly notified to appear. The panel shall have exclusive control of the procedure in any proceeding before it. Upon agreement of the parties, the controversy may be submitted to the panel on the relevant documents only, and without the need for an appearance at the hearing by either party. The panel Chair may communicate with either party to ask clarifying questions about the dispute and report any information obtained to the panel.

4. **AGREEMENTS AND AWARDS**

4.01 **Agreements Resulting from Mediation** Agreements reached by the disputants during a mediation shall be put into writing by the mediators and signed by the parties.

4.02 **Rendition of Award in Arbitrations** The panel shall make an award as soon as possible after the hearing. All awards shall be in writing and shall set out the award. The panel shall not award additional attorneys' fees for either disputant as a result of the arbitration hearing. The disputants shall be informed that the panel will not award such fees prior to the commencement of the hearing.

The award shall be signed by the members of the panel who join it. A simple majority of the arbitration panel is required to enter an award. The panel shall deliver a copy to each party personally or by Certified Mail. A copy of the executed award shall be filed among the permanent records of the Fee Dispute Resolution Committee.

4.03 **Modification of Arbitration Award** Upon written application filed with the Panel Chairperson and Committee Chairperson, and provided to the opposing party, within twenty (20) days from the date of the delivery of the award, the panel may modify, correct, or vacate the award for good cause shown. If a disputant makes such application, the other disputant may serve objections to such application within ten (10) days of receiving the application from the opposing disputant. If the panel does not act within forty (40) days of the date of the original award, the award shall be deemed final and shall be binding upon the parties.

4.04 **Failure to Pay Award; Enforcement** If the participants reach an agreement in a mediation it is a binding contract between the disputants and is enforceable as a contract.

In the event the party against whom an arbitration award is rendered fails to pay the award, the party in whose favor the award was rendered shall have the right to enforce the award in a court of competent jurisdiction. In the event an attorney subject to these rules fails to pay an award after it has become final, the Panel Chairperson shall

immediately report such failure to the committee Chair. The committee Chair shall immediately report such failure to the President of the Association, inform the client it may sue upon the award, and may refer the matter to the Office of the General Counsel of the State Bar of Texas or the appropriate Grievance Committee.

5. **AMENDMENT**

5.01 **Amendment Process** These Fee Dispute Resolution By-Laws may be amended from time to time upon a two-thirds vote of the total number of Austin Bar Association Officers and Directors.

6. **ADOPTION**

6.01 These By-Laws were adopted by a two-thirds vote of the total number of the Travis County Bar Association Officers and Directors on the 11th day of December 1991.

6.02 These By-laws were amended by more than two-thirds of the total number of Travis County Bar Association Officers and Directors on the 27th day of August, 2003.