



## **REGULATIONS GOVERNING THE RESOLUTION OF FEE DISPUTES**

### **Appointment of Committee Members**

1. The Committee on Resolution of Fee Disputes (hereinafter the “Committee”) shall consist of one (1) Chair and six (6) Vice-Chairs who shall be appointed by the MSBA President in accordance with Paragraph V.C. of the Maryland State Bar Association (“MSBA”) Policy Manual. The MSBA President, in consultation with the Chair and Vice-Chairs, shall also appoint at least 30 at-large members of the committee, keeping in mind the diversity statement outlined in Paragraph V.A. of the MSBA Policy Manual.
2. The President may, in consultation with the Chair and Vice-Chairs, appoint Assistant Vice-Chairs as necessary.

### **Committee Organization**

3. The Chair and the six Vice-Chairs, and any appointed Assistant Vice-Chairs, shall constitute the Executive Council of the Committee.
4. It shall be the duty of the Executive Council to oversee the work of the Committee, review recommendations for dismissal of complaints, develop forms to implement the procedures prescribed herein, and assure the faithful execution of these regulations. The Executive Council may submit amendments to these regulations for adoption by the Board of Governors and may formulate rules and procedures not inconsistent with the Bylaws of the Association or these regulations.

### **Complaint Submission**

5. The Committee shall make available by the MSBA website or other electronic means, a form through which, either a client or MSBA attorney member, may submit a written fee dispute for the Committee’s consideration (hereinafter “Complaint”). When a Complaint is filed against an attorney working in a firm, the firm shall be deemed a party to the Complaint.
6. The Complaint need not follow any specific form but should state with clarity and brevity the facts with respect to the fee dispute, the names and addresses of the parties to the dispute and those persons who may be directly affected by the outcome.

## **Jurisdiction**

7. In order for the Committee to exercise jurisdiction over the Complaint, it must meet the following conditions:

- a. the amount in dispute must be equal to or greater than \$500,
- b. involve an attorney that was admitted to practice in Maryland both at the time the fee agreement was entered and when the legal work giving rise to the fee dispute occurred,
- c. is not within the jurisdiction of a local bar association, as outlined in Paragraph 9, and
- d. in instances where the Complaint was submitted by an attorney, said attorney is an MSBA Member in good standing.

8. The Committee may, at any time, in its discretion, decline, discontinue or defer the exercise of its jurisdiction for good cause. Complaints which may be declined by the Committee for good cause include, but are not limited to, fee disputes which are pending in a court or which are also the subject of a complaint filed with the Attorney Grievance Commission, fee disputes involving the parties as to which the Attorney Grievance Committee has become involved, fee disputes filed untimely with the Committee, or involving attorneys no longer admitted to practice in Maryland.

9. The Committee shall decline to exercise jurisdiction of any Complaint which is within the jurisdiction of any local bar association (as defined in Maryland Rule BVI.B) that has established a procedure for the resolution of fee disputes involving attorneys who practice within its jurisdictional boundaries and has accepted jurisdiction over the fee dispute.

10. The Committee shall decline to exercise jurisdiction of any Complaint arising between two or more attorneys, including, but not limited to, Complaints arising from fee sharing agreements.

## **Procedures Upon Receipt of Complaint**

11. Upon receipt of a Complaint, the Executive Council or its designee shall conduct an initial review of the Complaint to determine whether it is appropriate for the Committee to exercise jurisdiction. The review shall determine whether the conditions outlined in Paragraph 7 are met. If all conditions are met, the Committee may assume jurisdiction of the Complaint.

12. Upon assuming jurisdiction, the Executive Council or its designee shall appoint a member of the Committee to act as a Settlement Facilitator. The Executive Council shall make reasonable efforts to assign a member of the committee within the Appellate Judicial Circuit to perform duties as Settlement Facilitators, and shall assure that such duties are

performed in conformity with these regulations. If, after reasonable efforts, a member within the Appellate Judicial Circuit cannot be assigned, another member of the committee shall be assigned regardless of their location.

13. Upon receipt, the Settlement Facilitator shall promptly review the Complaint and, if necessary, obtain additional information from the parties involved, in order to ensure they have all the relevant facts related to the fee dispute.

14. Upon the completion of any preliminary investigation the Settlement Facilitator deems appropriate, the Settlement Facilitator shall determine whether, in their judgement, a legitimate fee dispute exists.

15. If the Settlement Facilitator determines that a Complaint should be dismissed without further action, because the Settlement Facilitator determines that 1) a legitimate fee dispute does not exist, 2) the matter is moot, or 3) adequate jurisdiction is, or becomes unwarranted, they shall prepare a written report setting forth the facts and their recommendation for submission to the next meeting of the Executive Council of the Committee. If the Council concurs in the Settlement Facilitator's recommendation, the matter shall be closed and the Complainant so advised. If the Council disapproved the Settlement Facilitator's recommendation, it may request further investigation or designate another Settlement Facilitator to proceed in accordance with these regulations.

16. If, following their preliminary investigation, the Settlement Facilitator concludes that a legitimate fee dispute has been stated, they shall notify the parties involved. Within thirty days of this notification, the Settlement Facilitator shall provide informal assistance to the parties in an attempt to reach an amicable resolution of their dispute.

17. If the parties do not themselves settle the dispute within the thirty day-period, the Settlement Facilitator shall request that the parties consent to participate in a two-hour settlement conference either virtually or in-person, with the Settlement Facilitator acting as a neutral. The Settlement Facilitator shall be responsible for determining the appropriate parties to the dispute and obtain the consents from the appropriate individuals or entities. If one of the parties fails to consent to the settlement conference, the matter shall be closed, each party so notified, and then free to pursue whatever claims they deem meritorious.

18. If both parties consent to the settlement conference, the parties shall participate in a two hour settlement conference either virtually or in-person, with the Settlement Facilitator acting as a neutral. If a resolution is reached as a result of the settlement conference, the Settlement Facilitator shall draft a term sheet or brief agreement outlining the resolution to be signed by all parties to the settlement conference.

19. If, after the settlement conference, the parties do not reach an amicable resolution of the Complaint, then:

a. If the amount in dispute is below the District Court of Maryland's threshold for a small claims action, as defined in section 4-405 of the Maryland Courts & Judicial Proceedings Article, as may be amended from time to time, then the Settlement Facilitator will provide the parties a closing letter, stating:

- i. the factual basis of the fee dispute,
- ii. that the Committee accepted jurisdiction, and attempted to assist in the amicable resolution of the fee dispute between the parties,
- iii. that despite these efforts, amicable resolution efforts have failed,
- iv. that the Committee is terminating jurisdiction, and closing the Complaint, and
- v. that the parties may seek advice of counsel on how to proceed with resolving the dispute.

b. If the amount in dispute exceeds the District Court of Maryland's threshold for a small claims action, as defined in section 4-405 of the Maryland Courts & Judicial Proceedings Article, as may be amended from time to time, then the Settlement Facilitator shall ask the parties to provide written consent to binding arbitration. The Settlement Facilitator shall be responsible for determining the appropriate parties to the dispute and obtain the consents from the appropriate individuals or entities.

- i. If one of the parties fails to consent to binding arbitration, the matter shall be closed, and the Settlement Facilitator shall issue the closing letter outlined in section 17.a.
- ii. If all parties consent to arbitration, the Settlement Facilitator shall advise all parties that the Committee shall appoint an arbitrator or arbitration panel in accordance with these regulations, and that the parties are entitled to retain an attorney to represent them prior to, during, and following the arbitration.
- iii. Following a referral to arbitration, the Settlement Facilitator's role in the matter is concluded and the Settlement Facilitator may not serve as an arbitrator in the same matter.

### **Arbitration**

20. If the amount in dispute exceeds the maximum jurisdictional amount of the District Court of Maryland, as then defined in section 4-405 of the Maryland Courts & Judicial Proceedings Article, as may be amended from time to time, the Vice-Chairman shall assign the matter to an arbitration panel composed of three arbitrators. If the amount in dispute is less than the maximum jurisdictional amount of the District Court of Maryland's threshold, as defined in section 4-405 of the Maryland Courts & Judicial Proceedings Article, the

Vice-Chairman shall designate a sole arbitrator. The Vice-Chairman shall make reasonable efforts to assign members of the committee within the Appellate Judicial Circuit to act as Arbitrators, and shall

assure that such duties are performed in conformity with these regulations. If, after reasonable efforts, sufficient members within the Appellate Judicial Circuit cannot be assigned, other members of the committee shall be assigned regardless of their location.

21. It shall be the obligation of any member so designated to serve as arbitrator to disclose to the Vice-Chairman any reasons why they cannot serve objectively, ethically and conscientiously. In the event that a member so designated to serve declines or is unable to serve, the Vice Chairman shall designate another arbitrator who may be eligible. In designating arbitrators, the Vice-Chairman shall endeavor to rotate selection in an equitable manner.

22. If at any time set before the hearing before a three-member panel, any panel member is not present or available, the Chairman of the panel, or in the event of his unavailability, the Circuit Vice-Chairman, in their sole discretion, shall decide either to postpone the hearing, substitute the panel member, or, with the consent of the parties, to proceed with the hearing.

23. 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 Circuit Vice-Chairman of the Committee, consent to proceed with the hearing.

24. If all the parties to a controversy agree, they may waive oral hearings and may submit their contentions in writing, together with any exhibits, to the arbitrator(s) assigned, who may then determine the controversy on the basis of such documents. However, the arbitrator(s) may nevertheless, if they deem it desirable, require oral testimony of any party or witness, after due notice to all parties.

25. The members of the Committee selected as arbitrators of any dispute shall be vested with all the powers, and shall assume all the duties granted and imposed upon neutral arbitrators by the provisions of the Maryland Uniform Arbitration Act as codified in the annotated Code of Maryland, Courts and Judicial Proceedings, Title 3, Subtitle 2 (Arbitration and Award, Section 3-201, et seq.), as may be amended from time to time, which are not in conflict with these regulations.

26. The parties' written consents to binding arbitration of their fee dispute shall together constitute their agreement (a) to provide for arbitration under the laws of Maryland, within the meaning of the Maryland Uniform Arbitration Act, (b) to authorize the appointment of arbitrators and the conduct of arbitration proceedings in the manner prescribed by these regulations, and (c) to be bound by the award.

27. The single arbitrator or panel assigned shall endeavor to hold a hearing no later than ninety days after the receipt of the assignment. The award of the panel shall be made by a majority of the panel where heard by three members.

28. The panel chairman, or the single arbitrator, assigned, as the case may be, shall fix a time and place, either virtually or in-person, for the hearing and cause written notice thereof to be served on the parties to the arbitration and on the other members of the panel not less than ten days before the hearing. A party's appearance at a scheduled hearing shall constitute a waiver on their part of any deficiency in respect to the giving of notice of the hearing.

29. 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 by an attorney at the hearing or at any stage of the arbitration proceeding. Any party may also have a hearing recorded at their expense by written request presented to the panel chair or single arbitrator at least ten days prior to the date of the hearing, said party is responsible for making appropriate arrangements. When no party to the arbitration requests that the hearing be recorded, and the panel or sole arbitrator deems it necessary to have a hearing recorded, the panel or sole arbitrator may employ a reporter for such purpose if authorized to do so by the Committee Chair.

30. All parties shall have an absolute right to attend all hearings. The exclusion of other parties or witnesses waiting to be heard shall rest in the discretion of the arbitrator(s).

31. 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 arbitrator(s) 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 arbitrator(s) may postpone the hearing from time to time.

32. If more than one arbitrator, the chairman of the panel shall preside at the hearing. The panel 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.

33. The arbitrator(s) may request opening statements and may prescribe the order of proof. In any event, all parties shall be afforded full and equal opportunity for the presentation of any material evidence.

34. The testimony of parties and witnesses shall be given under oath. If more than one arbitrator, the chairman of the panel shall administer such oaths.

35. 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.

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

37. The hearing may be reopened by the arbitrator(s) on their own motion or upon application and a showing of good cause by a party at any time before the award is signed and filed.

38. 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 personal representatives of the deceased and on the estate of guardian of the incompetent.

### **The Award**

39. The decision of the arbitrator(s) shall be expressed in a written award signed by all of those who concur. If there is a dissent, the award shall be binding as determined by the majority of the arbitrators. The arbitrator(s) may grant any remedy or relief they feel proper, including a direction for specific performance. Once the award is signed and filed, the hearing may not be reopened except upon consent of all parties, or upon compelling circumstances.

40. While it is not required that the award be in any particular form, it should, in general, consist of a preliminary statement reciting the jurisdictional facts (i.e., that the hearing was held upon notice pursuant to a written agreement to arbitrate, that the parties were given an opportunity to testify and to cross-examine, etc.), a brief statement of the dispute, the factual findings, and the award. In the alternative, an award may be entered on consent of all the parties.

41. The arbitrator(s) may include in the award a direction for payment of expenses related to the proceedings.

42. The award shall be signed by the sole arbitrator or members of the panel concurring therein. The panel chairman or sole arbitrator shall forward said award to the Committee Chair, who shall thereupon, for and on behalf of the Committee, serve a signed copy of the award on each party to the arbitration, personally or by registered or certified mail, and notify the Vice Chairman that the matter has been concluded.

43. Following the conclusion of the Arbitration, the arbitrator(s) shall retain the entire file related to the arbitration for a period of not less than 180-days from the date the award was issued pending any post award actions under the Maryland Uniform Arbitration Act.

44. Following the issuance of a signed award as outlined above, the role of the arbitrator(s) and the MSBA Resolution of Fee Disputes committee shall end. The Executive Council may issue a closing letter to all parties stating the same.

### **Confidentiality**

45. Except as otherwise provided herein, all records, documents, files, proceedings and hearings, including the award itself, pertaining to the arbitration of any fee dispute under these rules in which both the complainant and the attorney have consented to be bound by the result, shall not be opened or revealed to the public or to any person not involved in the dispute, except as otherwise provided by law. In the event suit is instituted, the award may be introduced into evidence.

### **Notice of Regulations**

46. The Executive Director of the MSBA shall receive and transmit requests for consideration of fee disputes, disseminate information to the public concerning the committee's regulations and procedures and the availability of its services, maintain records, make reports, and perform other duties requested by the Executive Council and authorized by the Board of Governors.

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