

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

### *Appointment of Committee Members*

1. The Committee on Resolution of Fee Disputes shall consist of at least thirty members, not less than five from each Appellate Circuit, approximately one-third of whom shall be appointed annually by the President to serve for a term of three years or until their successors are appointed. The term of any member which expires while an arbitration is pending before him or before a panel of which he is a member shall be extended until such arbitration is concluded, but such extension shall not interfere with the President's power to appoint a successor to the Committee.
2. In making appointments to the Committee, the President should select only experienced attorneys who have practice for not less than five years and who are, at the time of their appointment, actively engaged in the practice of law. Members should be selected to provide representation from a broad spectrum of the Bar from the standpoint of both firm organization (i.e., large firms, small firms and sole practitioners) and types of practice (i.e., general practice, litigation practice, criminal practice, domestic practice, real estate practice, etc.). The President shall endeavor to insure that each county is represented on the Committee, in reasonable proportion to its lawyer population.

### *Committee Organization*

3. The President shall appoint from the members of the Committee a Committee Chair and also one Vice-Chair from each of the six Appellate Judicial Circuits. The President may appoint any additional Assistant Vice-Chairs as necessary. The Chair and the six Vice-Chairs, and any additional 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 by procedures not inconsistent with the Bylaws of the Association or these regulations. The Executive Council shall review recommendations for dismissal of complaints and may do so in panels of three designated by the Chairman for that purpose.
5. Each Vice-Chairman shall assign the members within his Appellate Judicial Circuit to perform duties as client representatives and arbitrators, and shall assure that such duties are performed in conformity with these regulations. A member may serve simultaneously in both capacities, but not in relation to the same complaint. When serving as a client representative or arbitrator, a member shall perform the duties prescribed by these regulations. A Vice-Chairman may establish a roster of client representatives to whom complaints are to be forwarded in rotation and may establish one or more arbitration panels each consisting of three arbitrators.

6. The Executive Director of this Association 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.

### *Jurisdiction*

7. The Committee may, in its discretion, decline or defer the exercise of its jurisdiction for good cause. Disputes which may be declined by the Committee for good cause include, but are not limited to, disputes [concerning any fee dispute] which [is] are pending in a court or which involve[s] conduct that may constitute a violation of the Code of Professional Responsibility. Whenever it becomes apparent to a member that the Committee should decline or defer jurisdiction, he/she shall so advise his/her Vice Chair who may defer further action on the dispute pending communication with competent judicial authority, Bar Counsel of the attorney Grievance Commission, or the Clients' Security Trust Fund of the Maryland Bar, as may be appropriate.
8. The Committee shall decline to exercise jurisdiction of any fee dispute which is within the jurisdiction of any local bar association (as defined in Maryland Rule BVI.B) that annually files with the Executive Director a certification that it has established a procedure for the arbitration of fee disputes involving attorneys who practice within its jurisdictional boundaries pursuant to written rules that (a) provide that in the event an attorney fails or refuses to consent to binding arbitration, the arbitration panel to which the matter is assigned will proceed to conduct an ex parte hearing and, if it finds the complainant's allegations are justified, will direct an assigned member to represent the complainant either to institute suit for the refund of any portion of the fee paid and determined to be excessive or to resist any suit by the attorney seeking to collect any portion of the fee not yet paid and determined to be excessive, (b) defines the scope of its jurisdiction, and (c) identifies the name and address of the representative to whom complaints are to be forwarded; provided, however that conformity to part (a) above shall not be required for the plans of the Baltimore City, Baltimore County, Montgomery County and Prince George's County Bar Associations. Prior to its acceptance as a basis for declining jurisdiction, said certification shall be approved by the Executive Council after an appropriate investigation to determine compliance with the above criteria. Any dispute regarding compliance with the above criteria established herein shall be decided by the Board of Governors of the Maryland State Bar Association.
9. A written request for Committee consideration of a fee dispute with an attorney shall be deemed a complaint. The request 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.

### *Processing Complaints*

10. A complaint submitted by the Committee shall be addressed to the Executive Director of this Association. Upon receipt, a complaint shall be immediately acknowledged and then forwarded to the Vice-Chairman of any Appellate Judicial Circuit in which the attorney maintains an office for the practice of law. The Vice-Chairman shall assign the complainant to a client representative within the Appellate Judicial Circuit. If The Vice-Chairman has established a roster of client representatives to whom complaints are to be forwarded in rotation, the Executive Director may send the complaint directly to the client representative next in rotation, and shall advise the Vice-Chairman. The three member panel of the Committee of which the client representative is a member shall be disqualified from participating in any manner in proceedings involving the request assigned to its client representative.
11. Upon receipt, the client representative shall promptly review the complaint and, if necessary, obtain additional information from the complainant; and if appropriate the attorney involved, to satisfy himself that he has all of the relevant facts.
12. Upon the completion of any preliminary investigation he deems appropriate and assuming the truth of the complainant's representations, the client representative shall determine whether, in his judgement, there is probable cause to believe a legitimate fee dispute exists. If the client representative determines that a complaint should be dismissed without further action, either because there appears to be no just ground for the complaint or dispute, or the matter is moot, or if for some reason deemed adequate jurisdiction is, or becomes unwarranted, he shall prepare a written report setting forth the facts and his recommendation for submission to the next meeting of the Executive Council of the Committee. If the Council concurs in the client representative's recommendation, the matter shall be closed and the complainant so advised. If the Council disapproved the client representative's recommendation, it may request further investigation or designate another client representative to proceed in accordance with these regulations.
13. If, following his preliminary investigation, the client representative concludes that a legitimate complaint has been stated, he shall notify the complainant and the attorney involved and shall forward to the attorney involved a copy of the complainant's allegations. The parties shall be advised that the Committee has assumed jurisdiction but will delay any further steps until the expiration of a thirty day period during which the parties are urged to exert their best effort to reach an amicable resolution of their dispute. The client representative shall, during this period, attempt informally to amicably resolve the fee dispute by consulting with both the complainant and the attorney.

14. If the parties do not themselves settle the dispute within the thirty day period, the client representative shall request the complainant to execute a consent to binding arbitration. If the complainant fails or refuses to execute such consent, the matter shall be closed.
15. Upon receipt of the complainant's consent to binding arbitration, the assigned member shall request the attorney to execute a consent to binding arbitration and, in the event that the attorney so consents, he shall be requested to submit a formal answer to the allegations for submission to the arbitration panel in order that it be advised of the issues between the parties. At the time this request is submitted to the attorney, the client representative shall advise him that, in the event the attorney fails or refuses to consent to binding arbitration, the arbitration panel to which the matter is assigned will proceed to an ex parte hearing and, if it finds that the client's allegations are justified, will direct the client representative to represent the complainant to either institute suit for the refund of any portion of the fee paid and determined to be excessive or to resist any suit by the attorney seeking to collect any portion of the fee not yet paid and determined to be excessive.

### *Arbitration*

16. Upon receipt of the attorney's consent to binding arbitration, or his refusal or the expiration of the time fixed for the attorney's submission of his consent to binding arbitration, whichever the case may be, the client representative shall notify the Vice-Chairman. If the amount in dispute exceeds \$10,000, the Vice-Chairman shall assign the matter to an arbitration panel composed of three arbitrators practicing within the attorney's appellate circuit and shall designate one of the arbitrators as the panel chairman. If the amount in dispute is \$10,000 or less, the Vice-Chairman shall designate a sole arbitrator practicing within the attorney's Appellate Circuit to conduct all arbitration proceedings.
17. It shall be the obligation of any member so designated to serve as arbitrator to disclose to the Vice-Chairman any reasons why he 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 and with due regard to the criteria set forth in paragraph 2 of these regulations.
18. If at any time set for the hearing before a three member panel, any panel member is not present, the Chairman of the panel, or in the event of his unavailability, the Circuit Vice-Chairman, 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 he 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.

19. 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 with one of the remaining members of the panel as the sole arbitrator.
20. 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 or arbitrators assigned, who may then determine the controversy on the basis of such documents. However, the arbitrators may nevertheless, if they deem it desirable, require oral testimony of any party or witness, after due notice to all parties.
21. 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.
22. When a complainant and attorney have both executed written consents to binding arbitration of their fee dispute, such consents 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.
23. The term “party” or “parties” as used in these regulations shall refer to those who have executed a consent to binding arbitration. Any attorney 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.
24. The single arbitrator or panel assigned shall endeavor to hold a hearing no later than thirty 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, or by one member of the panel who was designated as sole arbitrator, as provided herein.
25. The panel chairman, or the single arbitrator, assigned, as the case may be, shall fix a time and place for the hearing and 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 not less than ten days before the hearing. A party’s appearance at a scheduled hearing shall constitute a waiver on his part of any deficiency in respect to the giving of notice of the hearing.
26. 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. The complainant shall be presented by the client representative unless he exercises his right to retain counsel of his own choice. Any party may also have a hearing before a panel reported by a Certified Shorthand Reporter at his expense by written request presented to the panel chairman of single arbitrator at least three days prior to the date of the hearing. In the event of such request, any other party to the arbitration shall be entitled to acquire at his own expense a copy of the reporter's transcript of the testimony by arrangements made directly with the reporter. When no party to the arbitration requests that the hearing be reported, and the panel or sole arbitrator deems it necessary to have a hearing reported, the panel or sole arbitrator may employ a Certified Shorthand Reporter for such purpose if authorized to do so by the Committee Chairman. The written notice of the hearing sent to the parties shall advise them of these rights.

27. 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 arbitrators.
28. 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.
29. 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.
30. The arbitrators 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.
31. The testimony of parties and witnesses shall be given under oath. The chairman of the panel shall administer such oaths.
32. If either party to an arbitration, who has been duly notified, fails to appear at the hearing, the panel may hear and determine the controversy upon the evidence produced, notwithstanding such failure to appear, and enter a binding award.
33. Before closing the hearing, the arbitrators 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 arbitrators as well as the date for submission of memoranda or briefs, if requested by the arbitrators.
34. The hearing may be reopened by the arbitrators 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.

35. 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*

36. The decision of the arbitrators 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. Unless the submission or contract provides otherwise, the arbitrators may grant any remedy or relief they feel proper, including a direction for specific performance. An award may be entered on consent of all the parties. Once the award is signed and filed, the hearing may not be reopened except upon consent of all parties.
37. 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. It shall include a determination of all the questions submitted to the arbitrators, the decision of which is necessary in order to determine the controversy.
38. The arbitrators may include in the award a direction for payment of expenses related to the proceedings other than fees to arbitrators, client representatives, or counsel.
39. The original and four copies of the award shall be signed by the members of the panel concurring therein. The panel chairman or sole arbitrator shall forward said award, together with the entire file, to the Executive Director, who shall thereupon, for and on behalf of said panel, 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.
40. In any case in which both the complainant and the attorney signed a consent to binding arbitration, any award rendered may be enforced by any court of competent jurisdiction.
41. In the event of an award to the complainant in a matter in which the attorney has not executed a consent to binding arbitration, involving a fee which has already been paid, the client representative shall, if the complainant consents, institute suit on behalf of the complainant against the attorney for the refund of any portion of the fee found to be excessive.
42. In the event of an award to the complainant in a matter in which the attorney has not executed a consent to binding arbitration, involving any portion of a fee claimed but not paid, the client representative shall, if the complainant consents, represent the

complainant in defense of any suit by the attorney seeking to collect any portion determined to be excessive. In the event of such award, the client representative shall also institute suit to vacate any lien asserted by the attorney on the basis of any such fee charged determined to be excessive upon any property of the complainant. The client representative shall, immediately following the entry of an award in such circumstances and with the consent of the complainant, notify the attorney of the award and of his appearance as counsel for the complainant.

43. In any lawsuit by or against the complainant in which he is represented by the client representative, no fee shall be charged for the assigned member's services but costs advanced by the Association shall be reimbursed to the Association from any recovery.
44. If the award shall determine that the participating attorney or attorneys who consented to binding arbitration are entitled to no 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.
45. If the award shall be in favor of an attorney or attorneys who submitted their consent to binding arbitration, it shall fix the amount to which he 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 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 the 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 attorney's 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.



### *Confidentiality*

46. 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.