

BIRMINGHAM BAR ASSOCIATION

Fee Arbitration Committee

POLICIES & PROCEDURES

The Fee Arbitration Committee [“Committee”] shall be comprised of current, dues paying members of the Birmingham Bar Association [“Association”] who are in good standing with the Association and the Alabama State Bar. The primary function of the Committee shall be to hear and consider disputes between attorneys and/or between attorneys and their clients [collectively, “Parties”] regarding the reasonableness of the fees charged or claimed by the attorney [“Disputes”], and to render a fair judgment in the most cost effective and expeditious manner possible.

The Committee shall conduct its work in accordance with these Policies and Procedures, as may from time to time be amended [“Policies”]. In fulfilling its function, the Committee shall consider and determine (i) whether a fee agreement exists in which the attorney agreed to perform certain legal services for the client in exchange for certain agreed consideration, (ii) whether the attorney performed the services, and (iii) whether the fee charged for the services performed is consistent with the fee agreement or is fair and proper under all the circumstances, *without rigid adherence* to accepted or established factors regarding a reasonable fee. The Committee is not and shall not be used as a forum to critique or second-guess attorney strategy or decisions or to consider collateral matters, *unless* they are deemed relevant *and* reasonably necessary, in the sole discretion of the Panel Chair [See Section 6], to a fair resolution of the Dispute.

1. JURISDICTION.

The Committee shall only consider Disputes referred by the Association pursuant to these Policies. As a general rule, these Disputes must have a sufficient nexus with Jefferson County, Alabama, and must have arisen between attorneys or between clients and their attorney(s) in matters pending or occurring in the Birmingham or Bessemer Divisions of the District Court or the Circuit Court of Jefferson County, Alabama, or in the Southern Division of the United States District Court for the Northern District of Alabama (*i.e.*, Blount, Jefferson and Shelby). The Association shall not refer any Dispute to the Committee unless all the following conditions precedent have been met: (i) At least one of the Parties to the Dispute has signed and filed a suitable written complaint form; (ii) All Parties have completed all applicable forms which from time to time may be approved by the Committee; (iii) All Parties have signed and filed a written consent to arbitration and an acknowledgment of the receipt and review of these Policies; and (iv) The attorney’s Association dues are current.

The Committee reserves the right to refer all matters not directly bearing on the merits of the Dispute to the Alabama State Bar or appropriate decision-making body. Specifically, the Committee shall not consider matters relating to alleged violations of the rules of professional conduct or the rules of disciplinary procedure. The Parties shall be so advised and offered contact information for the Alabama State Bar as soon as practicable after the initial complaint form has been filed. The Association also reserves the right, in its sole discretion, to *decline* to refer disputes to the Committee relating to any of the following:

- a. Matters in which a court, appellate court or federal or state administrative agency has mandatory or discretionary power to fix fees, *except* upon receipt by the Association of a formal, written request of the court or agency;
- b. Undecided matters pending in a court, an appellate court or federal or state administrative agency, *except*:

- (1) Upon receipt by the Association of a formal, written request of the court or agency; or
- (2) Unless all Parties to the pending matter (i) agree in writing to seek and obtain an order of the court or agency suspending the matter pending the Committee's consideration of the dispute, to fully comply with these Policies, and to file any resulting arbitration award in the court or agency as a final judgment in the pending matter, and (ii) submit their written consent hereto to the Association, along with a copy of the applicable order of the court or agency;
 - c. Matters involving an actual amount in controversy of less than \$1,000.00, including fees, costs and expenses;
 - d. Matters involving a pending or threatened Alabama State Bar grievance against the attorney, except for matters referred to the Committee by the Alabama State Bar;
 - e. Matters involving a pending or threatened malpractice claim or lawsuit against the attorney;
 - f. Matters involving pending or threatened litigation or arbitration to which the client and the attorney are named parties;
 - g. Matters involving pending or threatened criminal proceedings arising from the attorney's conduct;
 - h. Matters having an insufficient nexus to Jefferson County, Alabama;
 - i. Matters initiated by a Dispute Form [See Section 4] received by the Association more than two (2) years after the attorney-client relationship has been terminated or more than two (2) years after the final billing has been received by the client, whichever is later; or
 - j. Any other matter that, in the sole discretion of the Association, is deemed insufficient or inappropriate for the exercise of jurisdiction.

After a Dispute has been referred to the Committee by the Association, the Committee (including any panel of the Committee, subject to consultation with the Chair or the Co-Chair of the Committee) reserves the right to suspend or terminate jurisdiction over the Dispute for any of the reasons set forth in subparts (a) through (j) above.

2. COMMITTEE CHAIR AND CO-CHAIR.

The Chair and Co-Chair of the Committee ["Chair" and "Co-Chair," respectively], both as duly appointed by the President of the Association, shall serve concurrent terms of two (2) years each. After the expiration of the 2 year terms, the initial Co-Chair shall succeed the initial Chair and thereafter serve a 2 year term. A new Co-Chair shall then be appointed to serve a concurrent 2 year term. Unexpected vacancies may be filled in a manner determined by the Association.

3. COMMITTEE COMPOSITION AND SELECTION.

The Committee shall consist of no more than twenty (20) members. *Prior to* the assignment of attorneys to the Committee by the Association's incoming President, the Chair shall (i) jointly confer with the incoming President and a representative of the Executive Committee, (ii) review the Committee Preference Forms submitted by the Associations's members [*which shall have been revised to request each attorney's three*

primary areas of practice], and (iii) select no more than twenty attorneys for Committee membership, giving due consideration to their practice areas, among other established or relevant factors.

4. INITIATING A FEE DISPUTE.

A fee dispute form [“Dispute Form”] is posted on the Association’s website at www.birminghambar.org. It may be used by either the client or the attorney to initiate a Dispute.

The Party initiating the Dispute shall (i) mail or hand deliver the original signed and dated Dispute Form to the Birmingham Bar Association, Attn: Mr. Bo Landrum, Executive Director, 2021 Second Avenue, North, Birmingham, Alabama 35203, and, on the same date, (ii) mail or hand deliver a legible copy of the Dispute Form – and, if the filing Party is an attorney, a copy of these Policies – to the opposing Party at said Party’s last known address.

Within twenty-one (21) days from the date the Dispute Form is mailed or delivered by hand to the opposing Party, the opposing Party shall mail or hand deliver a signed and dated Response to the initiating Party and the Association that fairly addresses the facts, matters and issues contained in the Dispute Form.

As a condition precedent to referring a Dispute to the Committee, the Parties, upon the request of the Executive Director, shall acknowledge in writing that they are voluntarily submitting the Dispute to the Committee for a final and binding decision by a Panel of the Committee, and that none of the rulings or decisions of the Association, the Executive Director, the Chair, the Co-Chair or the Panel Chair made in connection with the Dispute, are subject to any reconsideration, re-hearing or appeal of any kind at any time to any other person, organization or court.

5. RECONCILIATION.

Prior to the formal submission of a Dispute to a Panel of the Committee, the Committee, in its sole discretion, may encourage the Parties to discuss the Dispute and seek an amicable resolution of their differences. During the pendency of a Dispute, including during the hearing of a Dispute by a Panel of the Committee, the Panel Chair, in its sole discretion, may suspend the proceedings to give the Parties a specified period of time to resolve their differences, subject to a resumption of the proceedings if a resolution is not timely achieved.

6. PANEL SELECTION AND COMPOSITION.

Alternative Methods of Panel Selection. The Chair and Co-Chair shall have discretion to use either of the following methods to select panels to consider Disputes:

a. Establish three distinct panels derived from the twenty Committee members as soon as practicable in each new calendar year; or

b. Select panel members on a case-by-case basis as Disputes are submitted to the Committee.

Number of Panel Members; Practice Areas. Regardless of the method used, *at least one* attorney on each Panel shall have expertise or substantial experience in the practice area from which the Dispute arises. Each Panel shall consist of no less than three (3) members and no more than five (5) members, including the Chair or Co-Chair. Since attorneys will often have legitimate emergencies arise after committing to serve on a Panel, it is recommended that the Chair consider designating one or two alternates who would be prepared to attend a hearing on short notice if needed to achieve the desired five member panel. If three Panel members are not able to attend a scheduled hearing, then the hearing shall be continued.

Conflicts of Interest. Upon selection for a Panel, each Panel Member shall immediately (i) self-identify potential business or personal conflicts involving either Party and disclose them to the Chair and (ii) request that his/her firm conduct a confidential, electronically-generated conflicts check to confirm that none of the other attorneys in the firm have represented, or been adverse to, either Party in connection with a legal matter. The results of the conflicts check shall be reported promptly to the Chair so that final Panel membership may be determined without unnecessary delay. If, in the sole discretion of the Chair, any Panel Member has a conflict of interest or the appearance of a conflict of interest, then the Panel Member shall not serve.

Notification to Parties. When the members of the Panel, including any alternates, have been selected, the Chair shall promptly transmit the Complaint and Answer to each Panel Member at the email address maintained by the Association. The Executive Director shall promptly notify the Parties by U. S. Mail that a Panel has been selected, but shall not disclose the identity of any Panel Member.

Panel Chair. The Chair or Co-Chair, or, in the sole discretion of the Chair, another Panel Member, shall be the Panel Chair.

7. PRELIMINARY SUBMISSIONS.

Initial Submissions.

By no later than thirty (30) days from the date the Parties have been notified that a Panel has been selected, each Party shall file with the Executive Director of the Association, in the manner directed, copies of the following, where applicable:

- a. Any signed or unsigned contract, agreement or engagement letter, including any amendments or revisions thereto, purporting to contain the terms of representation, including the fees to be charged and the costs and expenses to be incurred;
- b. Any invoices, statements, letters, or other documents and records, purporting to itemize or describe any of the services rendered and costs/expenses incurred by the attorney during the course of representation;
- c. Any canceled checks or other documents evidencing payment(s) made to the attorney; and
- d. Any emails and letters sent to or received by the Parties relating to the Dispute, including efforts made by the Parties to resolve the Dispute.

Upon receipt of the Parties' Initial Submissions, the Executive Director shall send them to the Chair, who shall review them and send them to the Panel Chair. The Panel Chair, after review, shall promptly send the Initial Submission of each Party to the opposing Party.

Subsequent Submissions and Communications.

Prior to the hearing, the Parties may be directed, in the sole discretion of the Panel Chair, to submit additional documents and records if deemed necessary or beneficial. This decision, including the time within which the documents and records must be provided and the page limitations, if any, shall be made by the Panel Chair on a case-by-case basis.

The Parties' Subsequent Submissions *and* Pre-Hearing Submissions [See Section 8] shall, whenever possible, be made in electronic or digital formats and transmitted via email to the Panel Chair. Notwithstanding

the foregoing, the Panel Chair reserves the right to direct that subsequent submissions and pre-hearing submissions be made by other means or in other formats.

Upon receipt of the Parties' Subsequent Submissions, the Panel Chair shall (i) review them, (ii) send them – preferably via email – to the opposing Party, (iii) send them under separate cover to the Panel Members, and, as deemed necessary, (iv) request clarification or supplementation from the submitting Party by a date certain.

After a Dispute has been assigned to a Panel, there should not be any further direct Party-to-Party communication or exchange of documents or information, via email or otherwise, without the prior knowledge and agreement of the Panel Chair.

Subject to the discretion of the Panel Chair for good cause shown, a Party may, through its conduct or the conduct of its counsel, waive the right to submit further documents and information, particularly in cases of unreasonable delay, inexcusable neglect, material non-compliance with these Policies, or consistent lack of timely cooperation by that Party or its counsel.

8. HEARING.

Hearing Date, Scheduling and Notice.

The Panel Chair shall preside at the hearing. To the extent reasonably practicable, a final hearing for every Dispute shall be set on a date no later than one hundred twenty (120) days from the date the Dispute Form is received by the Association.

The Executive Director and Panel Chair shall jointly select at least two alternate dates on which three or more of the Panel Members, including any alternates, are available for the hearing. Thereafter, the Executive Director shall notify the Parties of the alternate dates and request a response regarding the Parties' availability. Once a hearing date and time have been set, the Executive Director shall notify the Parties in writing. The hearing date shall not be changed except for good cause shown, in the sole discretion of the Panel Chair.

If either or both of the Parties fail, in the sole discretion of the Panel Chair, to reasonably cooperate in scheduling the hearing, then the scheduling process shall be terminated and the Association's file relating to the Dispute shall be administratively closed, subject to re-opening in the sole discretion of the Panel Chair. The Executive Director is authorized to promptly notify the Parties of the administrative closure via U. S. Mail.

Pre-Hearing Submissions.

Each Party shall submit the following to the Panel Chair at least ten (10) days prior to the hearing:

- a. A one page summary of their position;
- b. A witness list consisting of the name, address and telephone number of each likely witness; and
- c. The sworn and duly notarized affidavit of any witness who will be, or is expected to be, unable to attend the hearing.

Upon receipt of the Pre-Hearing Submissions, the Panel Chair shall (i) review them, (ii) send them – preferably via email – to the opposing Party, (iii) send them under separate cover to the Panel Members, and, as deemed necessary, (iv) request clarification or supplementation from the submitting Party by a date certain.

Applicable Rules.

The hearing shall be conducted in accordance with the general principles of the Alabama Rules of Civil Procedure and the Alabama Rules of Evidence [“Rules”], provided, however, that the Rules shall be liberally construed to facilitate a fair and complete presentation of the Parties’ respective positions to the Panel.

Limitation on Number of Additional Pages Per Party.

The submission of new documents and records by the Parties at the hearing shall be limited to no more than thirty five (35) pages per Party, subject to being increased in the sole discretion of the Panel Chair.

Hearing Procedure; Examination of Parties and Witnesses.

a. The Panel Chair shall convene the hearing with a general greeting and introduction, briefly describe the hearing procedure and a request that each Panel Member state their name and, where applicable, their law firm’s name. The Panel Chair shall then request oral confirmation from the Parties that the Panel is acceptable.

b. Thereafter, the Panel Chair shall administer the oath to the Parties and any witness who is expected to testify. Each Party and witness shall swear or affirm that their testimony will be true and correct.

c. Thereafter, the client shall make a brief opening statement that summarizes the client’s position and explains the specific relief or result sought by the client, including the dollar amount of fees and expenses, if any, (i) to which the attorney is entitled or (ii) for which the client is seeking reimbursement or adjustment from the attorney.

d. Thereafter, the attorney shall make a brief opening statement that summarizes the attorney’s position and explains the specific relief or result sought by the attorney, including the dollar amount of fees and expenses, if any, to which the attorney is entitled to receive from the client.

e. The client may then testify in detail and present relevant evidence regarding the client’s position, and may call any duly sworn witness to present relevant evidence. At the conclusion of the client’s presentation, the Panel Chair reserves the right to permit Panel Members to examine the client and any witnesses, or to defer examination until after the attorney’s presentation or the client’s rebuttal thereof, if any.

f. Thereafter, the attorney may testify in detail and present relevant evidence regarding the attorney’s position, and may call any duly sworn witness to present relevant evidence. At the conclusion of the attorney’s presentation, the client shall be permitted to rebut the attorney’s presentation.

g. Subject to the Panel Chair’s direction and limitation, the Panel Members may freely and fully examine the Parties and any witnesses to the extent they deem necessary.

h. A Party may not cross-examine the opposing Party or any of the opposing Party’s witnesses, but the Panel Chair reserves the right, in its sole discretion, to permit the Parties to suggest questions or lines of inquiry to be pursued by the Panel.

i. The Panel Chair, in its sole discretion, reserves the right to prohibit the admissibility of irrelevant, immaterial or redundant testimony or documents from either Party at any time.

j. Any Party is permitted, at their own expense, to obtain a court reporter to record and transcribe the hearing, subject to the requirement that a copy of the transcript be provided immediately, without charge, to the opposing Party *and* the Panel Chair. Otherwise, recording the hearing is expressly prohibited.

k. Hearings may be suspended and/or adjourned in the sole discretion of the Panel Chair.

Sanctions; Failure to Appear.

The Panel Chair, in its sole discretion, shall be permitted to impose sanctions, including, but not limited to, default and dismissal, for failure of a Party or its counsel (i) to appear at the hearing, (ii) to comply with any material provisions of these Policies, or (iii) to reasonably prosecute or defend. If a Party, including the primary counsel for a Party, if any, fails to appear at a scheduled hearing after timely receipt of notice of the hearing, then, as a condition precedent to rescheduling the hearing, the Party or its counsel shall be required to submit a written explanation of the failure to appear to the Panel Chair, after which a decision shall be made as to whether to reschedule the hearing or take other appropriate action.

Representation by Counsel.

Each Party shall have the right to be represented by counsel, including at the hearing, but counsel shall be limited to making an opening statement and closing argument, and under no circumstances shall be permitted to examine or cross-examine any Party or witness. Any such counsel's fees and expenses shall *not* be recoverable as part of any relief awarded by the Panel.

Notwithstanding the foregoing, and in addition to opening and closing, the Panel Chair, in its sole discretion, reserves the right to allow constructive participation by counsel for any Party and retains the authority to sanction conduct of counsel that is deemed inappropriate, disruptive or in violation of these Policies, including, but not limited to, an adjournment of the hearing or other appropriate action.

Waiver of Hearing by Consent. The Parties may jointly consent in writing to the waiver of a hearing, in which event the Panel Members shall assemble at a convenient date and time to confer and consider the submissions of the Parties and to render a judgment.

9. PANEL JUDGMENT; ENFORCEMENT; NO APPEAL.

Majority Vote; Final, Binding and Non-Appealable.

The judgment of the Panel shall be based on a simple majority vote. A Panel judgment made substantially in compliance with these Policies is conclusive between the Parties and their privies as to the Dispute submitted and cannot be inquired into or impeached for want of form or for irregularity if the Panel determines the Dispute submitted. The Panel's judgment regarding a Dispute is final, binding and non-appealable.

Panel Authority; Scope of Relief.

After the Panel decides the Dispute, it shall then have authority to award the following relief in favor of the prevailing Party, said relief also being subject to a simple majority vote of the Panel:

a. A monetary award directing one Party to pay the other Party a specified amount of money by a date certain;

- b. Equitable relief in lieu of or in addition to a monetary award where deemed appropriate by the Panel, including performance by a date certain;
- c. If necessary to implement the Panel's decision, an order directing a non-party in possession of contested funds to pay a specified amount of money to the prevailing Party by a date certain;
- d. An order terminating any claimed attorney's lien and directing the attorney to return any and all original documents, records, or other property of the client relating to the Dispute by a date certain; and
- e. Any further or different relief or remedy to which the Panel believes the prevailing Party is entitled or that the Panel deems necessary and appropriate.

After the prevailing Party and relief have been determined, the Panel Chair, in its sole discretion, shall direct the preparation of (i) a judgment form that simply identifies the prevailing Party and the relief awarded, *or* (ii) a specially prepared written decision containing a supporting rationale [each hereinafter referred to as an "Award"]. If the Panel majority chooses the latter, then the Panel Chair shall direct a Panel Member to prepare a draft of the decision as soon as practicable, but in no event later than fourteen (14) days from the date of the Panel's vote.

Upon receipt, the Panel Chair shall review the Award, revise it to the extent deemed necessary, and send it to the Panel Members for review and comment. Upon approval by the Panel majority, the Award shall be signed by the Panel Chair and, to the extent practicable, shall be sent to the Parties by the Panel Chair no later than twenty-one (21) days from the date of the Panel's vote.

Enforcement of the Award.

The Parties' written consent to binding arbitration of their Dispute under these Policies constitutes a binding agreement under the laws of the State of Alabama, and a Panel Award has the force and effect of a judgment, upon which execution may issue. If the non-prevailing Party fails to strictly comply with the Award in the time and manner specified therein, and the prevailing Party seeks and obtains judicial enforcement of the Award in a court of competent jurisdiction, then the prevailing Party shall be entitled to recover from the non-prevailing Party reasonable attorney's fees, costs and expenses incurred in connection with the enforcement action.

10. CONFIDENTIALITY.

The proceedings relating to the Dispute, in its entirety, including the identities of the Parties, and any and all applicable forms, written and electronic communications, documents, evidence, testimony, submissions, Panel Member notes, deliberations, and the Award, shall be confidential and shall not be disclosed by the Association, the Committee or any Panel Members to any person, entity or organization except as provided in these Policies or as otherwise required by applicable law or court order.

11. IMMUNITY OF ASSOCIATION, COMMITTEE AND PANEL MEMBERS.

The Association's representatives, and the Chair, Co-Chair, and each member of the Panel or Committee who participates in any hearing or decision-making process relating to any Dispute under these Policies, shall be immune from civil liability to the same extent as a judge of a court in this state acting in a judicial role. Immunity afforded by this section supplements any other applicable statutory or common law immunity even if the Chair, Co-Chair, or any Panel Member failed to comply with Section 6 of these Policies.

12. LIBERAL CONSTRUCTION; FORMS AND AMENDMENTS.

These Policies shall be liberally construed to promote their underlying purpose. To the extent necessary to implement the Policies and fulfill their objectives, the Association may from time to time develop and revise forms, adopt different procedures, or amend provisions of the Policies in a manner designed to facilitate the dispute resolution process. At the discretion of the Executive Director, the Association may post the current version of the Policies, including any applicable forms, on the public side of the Association's website or use other means and media to inform the public about the Policies.

13. ADOPTION AND EFFECTIVE DATE.

The Executive Committee of the Association has formally adopted these Policies, effective January 1, 2014, the Effective Date, and the Policies shall apply to all Disputes initiated on or after January 1, 2014.

APPROVED and ADOPTED this the __ day of October, 2013.

BIRMINGHAM BAR ASSOCIATION

By: _____
Its: _____