

**BIRMINGHAM BAR ASSOCIATION  
FEE DISPUTE ARBITRATION PROCESS  
February 21, 2020**

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 this Process, as may from time to time be amended [“Process”]. 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 to a fair resolution of the Dispute.

1. COMMITTEE JURISDICTION

The Committee will review Disputes that meet all of the following criteria: (i) at least one of the Parties to the Dispute has signed a suitable written complaint form and submitted it to the Executive Director of the Association; (ii) all Parties have completed all applicable forms which from time to time may be approved by the Committee; (iii) all Parties have signed a written consent to arbitration and returned it to the Executive Director of the Association; and (iv) the Dispute has a sufficient nexus with Jefferson County, Alabama, and arose between attorneys or between clients and their attorneys.

The Committee will not consider matters relating to alleged violations of the rules of professional conduct or the rules of disciplinary procedure, which are within the purview of the Alabama State Bar. 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 this Process, 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 malpractice claim or lawsuit against the attorney;
  - e. Matters involving pending litigation or arbitration to which the client and the attorney are named parties;
  - f. Matters involving pending criminal proceedings arising from the attorney's conduct;
  - g. Matters initiated by a Dispute 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
  - h. 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 reserves the right to suspend or terminate jurisdiction over the Dispute for any of the reasons set forth in subparts (a) through (h) 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, will serve concurrent terms of two (2) years each. After the expiration of the 2-year terms, the initial Co-Chair will 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 Executive Director of the Association.

## 3. INITIATING A FEE DISPUTE

A fee dispute form ["Dispute Form"] is posted on the Association's website at [www.birminghambar.org](http://www.birminghambar.org). It may be used by either the client or the attorney to initiate a Dispute.

The Party initiating the Dispute will

- mail or hand deliver the original signed and dated Dispute Form to the Birmingham Bar Association, Attn: Jennifer Buettner Executive Director, 2021 Second Avenue North, Birmingham, Alabama 35203
- **or** email the signed and dated Dispute Form to the Executive Director of the Association at [jbuettner@birminghambar.org](mailto:jbuettner@birminghambar.org) **and** receive confirmation of receipt of such email;
- **and on the same date** mail or hand deliver a legible copy of the signed and dated Dispute Form to the opposing Party at his/her last known address – **and, if the filing Party is an attorney, a copy of this Process,**
- **or** email the signed and dated Dispute Form to the opposing Party **and** receive proof of receipt of such email.

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

Before the Executive Director will refer a Dispute to the Committee, the Parties must 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 the rulings or decisions of the Committee, the Panel, the Association, the Executive Director, the Chair, the Co-Chair or the Panel Chair made in connection with the Dispute, are not subject to any reconsideration, re-hearing or appeal of any kind at any time to any other person, organization or court in any forum whatsoever.

At any time during the pendency of a Dispute, the Committee, in its sole discretion, may encourage the Parties to discuss the Dispute and seek an amicable resolution of their differences.

#### 4. PANEL SELECTION

The Chair and Co-Chair will have discretion to select the Panel in the manner that they deem appropriate. At least one attorney on each Panel should, if possible, have expertise or substantial experience in the practice area from which the Dispute arises. Each Panel will consist of no less than three (3) members and no more than five (5) members, including the Chair or Co-Chair. The Chair may also designate one or two alternate Panel members who would be prepared to attend a hearing on short notice if needed. If fewer than three (3) Panel members are able to attend a scheduled hearing, then the hearing will be continued.

Conflicts of Interest. Upon selection of a Panel, each Panel Member will immediately (i) self-identify potential business or personal conflicts involving either Party and disclose them to the Chair and Executive Director and (ii) request that his/her firm also conduct a similar conflict check. The results of the conflicts check will be reported to and the Chair and the Executive Director so that final Panel membership may be determined without unnecessary delay. If any Panel Member has a conflict of interest or the appearance of a conflict of interest – as determined by the Chair and the Executive Director – then the Panel Member will not serve.

Notification to Parties. When the members of the Panel, including any alternates, have been selected, the Complaint and Answer will be submitted to each Panel Member. The Executive Director will notify the Parties that a Panel has been selected.

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

## 5. DOCUMENTARY 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 submit to 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 and the Panel Chair. The Chair, the Panel Chair or the Executive Director will send the Initial Submission of each Party to the opposing Party and, separately, to the Panel Members.

### Subsequent Submissions and Communications

Upon direction of the Chair or Panel Chair, the Executive Director may direct either or both Parties to submit (in the manner directed) additional documents and records deemed necessary or beneficial. Any such Subsequent Submissions will be submitted by the Executive Director to the opposing Party and, separately, to the Panel Members. The Panel Chair may, at his/her discretion and for good cause shown, determine that a Party has, through its conduct or the conduct of its counsel, waived its right to submit further documents and information, particularly in cases of unreasonable delay, inexcusable neglect, material non-compliance with this Process, or consistent lack of timely cooperation by that Party or its counsel.

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.

### Pre-Hearing Submissions

Each Party will submit (in the manner directed) the following documents to the Executive Director at least ten (10) days prior to the hearing:

- a. A one-page summary of that Party's 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 Executive Director will, upon direction from the Chair or Panel Chair, send the Pre-Hearing Submissions to the opposing Party and, separately, to the Panel Members.

## 6. 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 completed Dispute Form and all materials submitted by the parties are received by the Association.

The Executive Director and Panel Chair shall jointly select at least two (2) alternate dates on which 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.

### 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

Neither Party should wait until the hearing to submit new documentation. However, at the discretion of the Panel Chair, the submission of new documents and records at the hearing may be granted and such new documents and records should be limited to no more than ten (10) pages per Party. Absent express authorization by the Panel Chair or Co-Chair, no submissions by either party to the Dispute shall be made to the Panel after five (5) days prior to the scheduled hearing date.

#### 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 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 opposing Party.

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 Panel Chair reserves the right to permit Panel Members to examine the attorney and any witnesses, or to defer examination until after the client's rebuttal thereof, if any.

g. At the conclusion of the attorney's presentation, the client shall be permitted to rebut the attorney's presentation.

h. 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.

i. 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.

j. 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.

k. Any Party is permitted, at its 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 Executive Director, who will share it with the Panel Members. Otherwise, recording the hearing is expressly prohibited.

l. 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 this Process, 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 this Process, including, but not limited to, an adjournment of the hearing or other appropriate action.

#### Waiver of Hearing by Consent

If both Parties consent in writing to the waiver of a hearing, the Panel Members will assemble at a convenient date and time to confer and consider the submissions of the Parties and to render a judgment.

### 7. PANEL JUDGMENT; ENFORCEMENT; NO APPEAL

#### Majority Vote; Final, Binding and Non-Appealable

The judgment of the Panel will be based on a simple majority vote. A Panel judgment made substantially in compliance with this Process 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 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 draft Award, revise it to the extent deemed necessary, and send the draft Award to the Panel Members for review and comment. Upon approval by the Panel majority, the final Award shall be signed by the Panel Chair and, to the extent practicable, shall be sent to the Parties by the Panel Chair (or the Executive Director if requested by the Panel Chair) within twenty-one (21) days after the date of the Panel's vote.

Enforcement of the Award.

The Parties' written consent to binding arbitration of their Dispute under this Process 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.

8. 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 this Process or as otherwise required by applicable law or court order.

9. IMMUNITY OF ASSOCIATION, COMMITTEE AND PANEL MEMBERS

The Association, its employees and representatives, the Chair, the Co-Chair, the Panel Members and every Committee member associated with any Dispute, hearing or decision-making process will 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 there was any failure to comply with this Process.

10. LIBERAL CONSTRUCTION; FORMS AND AMENDMENTS

This Process shall be liberally construed to promote its underlying purpose. To the extent necessary to implement the Process and fulfill its objectives, the Association may from time to time develop and revise forms, adopt different procedures, or amend provisions of the Process 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 Process, 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 Process.

11. ADOPTION AND EFFECTIVE DATE

The Executive Committee of the Association has formally adopted this Process, effective February 21, 2020 the Effective Date, and the Process shall apply to all Disputes initiated on or after **February 21, 2020**.

APPROVED and ADOPTED this the 21 day of February 2020.

**BIRMINGHAM BAR ASSOCIATION**

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By: Andrew S. Nix  
Its: President