



## DAYTON BAR ASSOCIATION RULES AND REGULATIONS FOR BINDING ARBITRATION OF CLIENT- ATTORNEY FEE DISPUTES

- 1. Committee.** The Fee Arbitration Committee (the “Committee”) of the Dayton Bar Association (“DBA”) is chaired by the Dayton Bar Associations Bar Counsel, as determined and appointed by the President of the DBA, and volunteer members of the DBA appointed by the President in consultation with the Chair.
- 2. Filing and Notice.** Upon notice from the Grievance Committee, the Grievance Screening Committee, Bar Counsel, or other appropriate source that a dispute regarding legal fees exists, a letter of notification will be sent to the parties that such a complaint has been filed. The client will be requested to sign a “Consent and Agreement” form agreeing to binding arbitration, with no right of appeal. No obligation exists on the client to consent. Fee arbitration is mandatory for an attorney whose client consents. Failure of an attorney to cooperate in a fee arbitration processing may be considered a violation of Gov. Bar R. V(9)(G).
- 3. Pending or Prior Litigation.** DBA fee arbitration will not be mandatory if litigation or an ethics complaint/grievance (including a grievance filed with the DBA, another bar association or the Ohio Supreme Court Office of Disciplinary Counsel) between the parties is pending before the fee dispute first comes to the attention of the DBA, or if fee arbitration is required by another forum, e.g. Workers Compensation. A lawyer may not file a suit after receiving notice of a referral for fee arbitration. Litigation started after a fee dispute has been presented to the DBA may be stayed pending arbitration. A grievance complaint initiated after a fee dispute has been presented to the DBA will result in a stay of the fee dispute until the resolution of the grievance.
- 4. Hearing Scheduling.** When a signed Consent and Agreement form is received from the client, Counsel for the DBA will mail a copy of the arbitration form to the attorney. From the date of delivery, the attorney will have 21 days to review the material and consent to the arbitration. The attorney may also provide additional material to the committee prior to the matter being set for arbitration. After the 21-day period, Counsel for the DBA will cause the matter to be set for arbitration before a single arbitrator or a three-person panel of arbitrators (collectively, the “arbitrator”) as provided in these Rules. Thereafter, the arbitrator has thirty (30) days in which to contact parties so a hearing date can be set. The hearing date shall be set within 60 days of assignment to the arbitrator. Continuances may be granted for cause.
- 5. Rules for Conduct of the Hearing.** Each party and witness to the arbitration hearing shall testify under oath or affirmation to tell the truth. No record of the testimony and the evidence shall be made at the hearing unless requested by either party. In the event of a request for a record by either party, the same shall be kept by mechanical means, although neither the arbitrator nor the DBA shall be held responsible for the quality of the mechanical recording. Any cost to transcribe the recording shall be borne by the party requesting the transcript. A party may, but shall not be required, to retain a stenographer.

Other than to affect an appeal pursuant to Chapter 2711 of the Ohio Revised Code, all proceedings shall be confidential unless all parties to the arbitration agree to waive the restriction of confidentiality. In the event that the matter in controversy generates substantive and procedural issues which do not appear to be directly governed by these Rules, the Lawyers/Client Dispute Resolution Rules or LCDR rules and any rules from time to time adopted by the Committee and/or the DBA shall apply.

**6. Powers of the Arbitrators.** The arbitrator shall have sole discretion to determine the order of presentation of evidence, the type of evidence that the arbitrator will consider (for instance, the opportunity to cross-examine witnesses), and the time in which the parties may have to present their evidence. The arbitrator shall have the power to determine the admissibility of evidence, to permit testimony to be offered by deposition, to decide the law and facts, and to maintain order and direct the order of the presentation of evidence and/or witnesses. The arbitrator shall not be bound by the usual common law or statutory rules of evidence. The arbitrator will follow the factors set forth the Rule 1.5 of the Ohio Rules of Professional Conduct, as amended, and all other standards adopted by the Ohio Supreme Court applicable to fee disputes.

Pursuant to the provisions of Chapter 2711 of the Ohio Revised Code, and Montgomery County Common Pleas Court Local Rule 2.35, the arbitrator shall administer oaths or affirmations, fix the time and place of hearings, or adjourn hearings from day to day or for a longer time and also from place to place, and may subpoena any persons to attend as a witness and, in a proper case, compel the witness to produce any document or object which is deemed material as evidence in the case.

The fees levied for attendance by any witness subpoenaed by the panel shall be the same as fees for witnesses in the Montgomery County Court of Common Pleas. Any such subpoena shall issue in the name of an arbitrator, and shall be signed by the arbitrator and, the arbitrator may choose means appropriate to obtain service thereof.

Any arbitrator(s) may petition the Court of Common Pleas in the county in which the attendance of a witness is being compelled to punish any person failing to appear for contempt in the same manner provided for securing the attendance of witnesses or their punishment for neglect or refusal to attend in that court.

The parties may take depositions to be used as evidence in the same manner and for the same reasons as provided by law for the taking of depositions in suits or proceedings in the Montgomery County Common Pleas Court.

**7. Settlements.** Negotiated settlements and compromises are encouraged, and the parties may agree to settle their dispute at any time prior to the conclusion of the hearing.

**8. Hearings.** At the hearing, the parties may introduce any testimony, including witnesses, documents, or other evidence supporting their positions. The arbitrator may ask questions to gain a full and complete understanding of the nature and extent of the dispute.

**9. Counsel.** Although not required, parties may have their own attorneys present at the hearing to assist them in presenting their positions. **10. Evidence.** There are no formal rules of evidence. The arbitrator may consider any information the arbitrator deems relevant to obtain a complete understanding of the nature of the dispute as it relates to fees charged.

**11. Decision.** Following the hearing, the arbitrator shall prepare a written decision that shall be signed by the arbitrator and distributed to the parties, with a copy to Bar Counsel of the DBA and the Chairperson of the Committee, within 10 days. In the event the arbitrator is a panel, then the written decision shall be prepared by the Chair of the panel, signed by at least two members of the panel, and distributed as set forth in this paragraph. Decisions by a panel of arbitrators shall be approved by a simple majority of the panel. The decision of the arbitrator shall be final without any right of appeal.

**12. Small Disputes.** If Bar Counsel for the DBA determines that the amount of a fee dispute is less than Three Thousand Dollars (\$3,000.00), the matter will be assigned, heard and determined by a single arbitrator, who shall be a member of the Committee. If the amount of the dispute is over Three Thousand Dollars (\$3,000), the Chair will order a panel of

three (3) Committee members to hear the case. The Committee will not generally hear disputes under Two Hundred Fifty Dollars (\$250.00).

**13. Effect.** The arbitrator's decision, once issued, has the legal effect of an account stated. This means that the decision can be admitted in a court of law as a final determination by binding arbitration as to the amount owned by one party to the other. Thereafter, a court normally would make no further inquiry into the background of the dispute. By signing the consent and agreement form, the client is consenting to such a result.

**14. Collection.** The DBA, the Committee and the arbitrator shall not be responsible to monitor nor control when or how the fee or refund is to be collected by the party to whom it is owed.

**15. Authority.** Fee Arbitration is part of an Alternative Dispute Resolution program adopted by the DBA under Gov. Bar Rule V (5)(G) and regulations thereunder. The authority of the Committee is limited to determining the amount of a reasonable fee or appropriate refund. An arbitrator may consider the quality of the services rendered and anything else that impacts the issue of a reasonable fee or appropriate refund. The decision of the arbitrator concerning a fee or refund is not nor should it be interpreted as a decision regarding possible malpractice or the basis for an ethics grievance. If, during a hearing, there is evidence of unethical behavior by the attorney, the fee arbitration will immediately conclude, and the fee arbitration will be held in abeyance until the ethics matter is referred to the Certified Grievance Committee of the DBA or, if necessary, the Ohio Supreme Court Office of Disciplinary Counsel, for a determination of the merits of the ethics matter. In the event the ethics matter is dismissed without further prosecution, then the fee arbitration shall resume at the earliest available date thereafter. In the event the ethics matter results in further prosecution, then the fee arbitration shall be stayed until the final resolution of such prosecution.