

INDIANA STATE BAR ASSOCIATION ATTORNEY FEE DISPUTE RESOLUTION PROGRAM POLICIES

Section 1. Purpose

- 1.1** The purpose of these rules is to provide a structure for the arbitration of fee disputes between members of the Indiana State Bar maintaining offices in Indiana and their clients; between attorneys who are members of the Indiana State Bar who have agreed to share fees in proportion to the amount of work they have performed on a case; between attorneys practicing in the State of Indiana and attorneys practicing in another state who have agreed to share fees in proportion to the amount of work they have performed on a case; and between active members of a state bar other than Indiana and their clients who are either a resident of the State of Indiana or who have a principal place of business in the State of Indiana.

Section 2. Organization & Administration

- 2.1** Indiana State Bar Association (“ISBA”) shall serve as the clearing house for filing and administering fee disputes between an attorney and client, other than those fee disputes filed with the county Fee Dispute Resolution Programs (“FDRP”) set out in ¶8, below.
- 2.2** The ISBA FDRP shall consist of panels of arbitrators, each comprised of three (3) attorneys selected by the members of the ISBA Fee Dispute Resolution Committee from six (6) regions located throughout the State of Indiana. Each region is labeled one (1) through six (6) and includes the counties delineated by the map attached hereto as Attachment A.
- 2.3** Attorneys selected to serve on the respective panels shall practice in the same region where the attorney involved in the fee dispute holds his or her primary office, and arbitration shall take place in the county where the attorney maintains a primary office, or in a county agreed upon by the Petitioner, Respondent, and Arbitrator.
- 2.4** ISBA shall provide all needed administrative and record-keeping assistance for each of the ISBA regional FDRP Committees.
- 2.5** The ISBA regional FDRP Committee shall not replace fee dispute programs run by local bar associations so long as the local bar associations offer resolution by way of formal mediation or voluntary binding arbitration. To the extent it is practical, the ISBA FDRP committees shall endeavor to work in conjunction with those programs.
- 2.6** These rules shall apply to fee disputes received by the ISBA after June 1, 2016.

Section 3. Initiation of Proceedings

- 3.1** An arbitration proceeding shall be initiated by filing a written request for fee dispute resolution with the ISBA. The form may be filed electronically by emailing a copy to mzoeller@inbar.org or by mailing the form to the Indiana State Bar Association, c/o Attorney Fee Dispute Resolution Committee, One Indiana Square, Suite 530, Indianapolis, IN 46204. The request for fee dispute resolution may be filed by a consumer of legal services or by the attorney providing legal services. The request for fee dispute resolution form is attached as Attachment B. The form shall also be available on the ISBA website, www.inbar.org.
- 3.2** Upon receipt of the signed, eligible written request for fee dispute by the ISBA, the ISBA Attorney Fee Dispute Resolution Program Committee Chairperson shall forward a copy of the petition and an agreement to binding arbitration via regular first class mail, email, facsimile, or any other method as may provide notice of the grievance to the respondent within fifteen (15) business days. The respondent must then notify the ISBA Attorney Fee Dispute Resolution Committee Chair within seven (7) business days whether the respondent agrees to participate in the arbitration by returning a copy of the petition for fee dispute bearing the respondent's signature and a signed copy of the agreement to binding arbitration. A failure to sign and return the requisite materials shall be deemed a rejection of arbitration.
- 3.3** All requests for a fee dispute resolution filed with the ISBA must be brought no later than two years after the date the last legal services were rendered.
- 3.4** Should the fee dispute be the subject of litigation, the ISBA FDRP shall have no jurisdiction to consider the dispute. The ISBA FDRP may assume jurisdiction of the matter in pending litigation if both parties agree in writing to dismiss and/or stay the pending litigation and submit the dispute to the ISBA FDRP.
- 3.5** No charge by the panel shall be imposed or collected from the client or attorney for filing or handling the fee dispute.
- 3.6** In the event a fee dispute is filed involving an attorney who is a member of the ISBA attorney fee dispute resolution committee, that attorney shall be prohibited from participating in any discussion, meeting, or arbitration panel related to the fee dispute filed by or against the attorney.

Section 4. Amount in Dispute

- 4.1** The ISBA Attorney Fee Dispute Resolution Committee shall retain the discretion to decline to refer to arbitration fee dispute requests where the amount in dispute is less than seven hundred and fifty dollars (\$750.00).

- 4.2 The issue to be determined in arbitration proceedings commenced upon the filing of a fee dispute petition shall be whether the fees or costs charged for services rendered by the attorney were reasonable. An attorney shall not be awarded more than the amount for fees and costs billed but unpaid. A client shall not be awarded more than the amount already paid; however, the client may be relieved from liability for payment on services billed but remaining unpaid.
- 4.3 Matters regarding a fee award which have already been ordered or approved by a court or which is the subject of, or in any way connected with, a disciplinary proceeding (pending at the time the fee dispute complaint was filed) against the attorney involved in the dispute shall not be referred to arbitration. In the event a disciplinary proceeding commences subsequent to a fee dispute complaint is filed, the ISBA Attorney Fee Dispute Resolution Committee shall stay the proceedings until such time as the Indiana Supreme Court Disciplinary Commission renders a decision.

Section 5. Selection of Arbitrators

- 5.1 Once a matter has been determined to be subject to arbitration, the Chair of the ISBA Attorney Fee Dispute Resolution Committee shall submit to the Petitioner and the Respondent a panel of arbitrators selected to arbitrate the fee dispute. The panel of arbitrators shall be appointed within thirty (30) business days after receipt of the parties' fully executed agreement to arbitrate.
- 5.2 The Chair of the ISBA Attorney Fee Dispute Resolution Committee shall appoint a lead arbitrator from the panel. The lead arbitrator's responsibility shall be to coordinate with the petitioner, respondent, and co-arbitrators a date, time and location for the arbitration to take place. The lead arbitrator shall also be responsible for ensuring those involved in the arbitration adhere to the rules of arbitration set forth in Section 6, and for tendering the arbitrator's written decision to the ISBA Attorney Fee Dispute Resolution Committee Chair within ten (10) days of the completion of the decision.
- 5.3 In the event a presiding judge is involved in a fee dispute request, and the parties agree to binding arbitration, the arbitration panel shall be comprised of attorneys whose primary practice is located outside of the county where the judge presides
- 5.4 In the event the parties have an objection to the panel of appointed arbitrators, either party may file a written objection within seven (7) business days of receipt of the same. Failure to file a written objection constitutes a waiver of any objection and indicates consent to the panel of arbitrators appointed. Written objections may be filed by way of email sent to mzoeller@inbar.org or by certified U.S. Mail to the ISBA offices.
- 5.5 Should any of the appointed arbitrators be unable to serve, the arbitrator who is unable to serve must notify the ISBA Attorney Fee Dispute Resolution Committee Chair

immediately. The ISBA Attorney Fee Dispute Resolution Committee Chair shall be responsible for appointing a replacement to the panel. The ISBA Attorney Fee Dispute Resolution Committee Chair shall notify the parties of the substitute appointment within seventy-two (72) hours of the appointment being made. The Petitioner and Respondent reserve the right to levy an objection to the new appointment but must do so within the time frame set forth in Section 5.3.

- 5.6** During the course of the arbitration proceedings, if an arbitrator becomes aware of a possible violation of the rules of professional conduct that directly relates to the proceeding, the lead arbitrator shall recess the proceedings in order to determine whether an ethical violation has taken place. In the event the arbitrator(s) reasonably believe a violation of the Rules of Professional Conduct has occurred, the arbitrator(s) must report the violation to the Indiana Disciplinary Commission. The fee dispute arbitration shall immediately be stayed until the Indiana Disciplinary Commission has rendered a decision.

Section 6. Arbitration

- 6.1** Once a panel has been appointed, the lead arbitrator shall fix a hearing date to occur within thirty (30) days following appointment of the panel. The panel shall endeavor to complete the hearing in a timely fashion not to exceed one half day.
- 6.2** Either Petitioner and Respondent may be represented by counsel during the arbitration proceedings.
- 6.3** Participation at the hearing by the client and /or attorney may be in person, by telephone, or by way of other electronic medium, including Skype or similar program.
- 6.4** The lead arbitrator shall preside over the hearing, although panel members shall be free to ask questions during the course of the hearing. The hearing shall be informal in nature and shall be so designed and conducted as to encourage the Petitioner and Respondent to be comfortable with the proceeding. The hearing may be recessed and reconvened as necessary to find and receive additional evidence, provided that the hearing shall be terminated and concluded not later than thirty (30) days after its commencement, and further provided that any such recess and reconvening is at the discretion of the lead arbitrator. The Petitioner and Respondent shall electronically submit documentation relevant to the arbitration proceedings five (5) days prior to the initiation of the proceedings. Such documentation shall be emailed to mzoeller@inbar.org. The Petitioner and Respondent are expected to bring a hard copy of all documents and information to the hearing which may be relevant to the proceedings, anticipating that the matter will be resolved at the hearing and that any continuance of the proceeding will rarely be granted.

- 6.5** Witnesses to be called by either Petitioner or Respondent may be present at all times during the hearing except that the lead arbitrator may in his/her discretion grant the request of either client or attorney for a separation of witnesses, in which event all or some of the witnesses may be excluded from the hearing at specified times, or at all times when not actually testifying. No person other than the panel, Petitioner, Respondent, and representatives of the Petitioner and Respondent, and witnesses may be present during the hearing except upon the unanimous consent of the client, attorney and lead arbitrator.
- 6.6** At the conclusion of the hearing, the panel shall recess and consider the matter. The panel shall issue its written decision and signed by all panel members not later than five (5) days after final receipt of evidence on the matter. The decision may concisely state the rationale/reason upon which the decision was based.
- 6.7** The decision rendered by the panel shall be binding on the Petitioner and Respondent.
- 6.8** The decision of the panel shall be reduced to writing with the original and three (3) copies being originally signed by all panel members present at the hearing. Agreement of a majority of the panel members shall determine the decision. One (1) copy of the decision shall be given to the Petitioner, one (1) copy of the decision shall be given to the Respondent and one (1) copy of the decision shall be forwarded to the ISBA Attorney Fee Dispute Resolution Committee Chair. The original copy of the arbitrator's decision shall be retained under seal at the office for the Indiana State Bar Association.
- 6.9** If either the Petitioner or Respondent, fails to appear and do not contact the lead arbitrator at least twenty-four (24) hours prior to the scheduled hearing, summary dismissal of the complaint may be issued, but not entered until fifteen (15) days subsequent to the scheduled hearing. Alternatively, a default judgment may be entered based upon a summary of the evidence presented by the party who does appear. If the Petitioner or Respondent contacts the lead arbitrator within fifteen (15) days subsequent to the scheduled hearing and shows good cause why the Petitioner or Respondent did not attend the scheduled hearing, the matter may, at the discretion of the panel, be rescheduled for hearing.

The arbitrators possess the authority to impose sanctions and penalties within their discretion upon the parties for any non-compliance with the rules set forth herein. Additionally, the arbitrators may impose sanctions or penalties within their discretion for actions deemed inappropriate and not covered by these rules.

- 6.10** No panel member shall disclose evidence, pleadings or decisions (or the content of the same) except as provided by law or ordered by any court. After the decision has been made and signed by the panel and distributed as provided herein, the entire file shall be sealed by the ISBA in an envelope marked only with the caption of the matter and the date on which the decision was made. The ISBA shall maintain the file for not less than six (6) years, after which the file may be destroyed. The file shall be unsealed and disclosed only as provided by law or as ordered by any court.

