

**KENTUCKY BAR ASSOCIATION
RULES OF THE SUPREME COURT OF KENTUCKY**

PRACTICE OF LAW

SCR 3.800 Legal negligence arbitration

(1) Purpose.

The purpose of this Rule 3.800 is to establish a procedure whereby claims of legal negligence in the amount of fifty thousand dollars (\$50,000.00) or less between attorney and client may be resolved by submission to binding arbitration.

(2) Definitions.

(A) "Attorney" means an attorney-at-law who is a member in good standing of the Association, or an attorney admitted to practice pursuant to SCR 3.030 when the dispute arises from that representation.

(B) "Association" means the Kentucky Bar Association.

(C) "Director" means the Director of the Kentucky Bar Association.

(D) "Dispute" shall mean any claim of legal negligence in the amount of fifty thousand dollars (\$50,000.00) or less. This includes a matter that is the subject of a diversion pursuant to SCR 3.160(3), or a matter referred for negligence arbitration by the Court.

(E) "Amount of Controversy" means the amount of direct loss claimed as a result of the claimed negligence of an attorney.

(F) "Panel" means the arbitrator or arbitrators appointed to arbitrate claim of legal negligence.

(3) Scope of Authority.

(A) The Rules and Procedures herein shall be available to resolve any dispute as herein defined only when the amount in controversy exceeds the jurisdictional maximum specified in KRS 24A.230 and all parties to the dispute agree in writing to submit the claim of negligence to the arbitration procedures herein and further, agree in writing that they shall be fully bound by the decision and award of the Panel.

(B) These Rules shall not be used unless the parties to the dispute certify in writing that a good faith effort has been made by them to resolve the dispute.

(C) These Rules shall not be used if the dispute is the subject matter of a pending lawsuit, unless the parties follow the procedures of KRS 417.060(4).

(D) Except as otherwise provided herein, the substantive law of the Commonwealth of Kentucky will apply to any dispute arbitrated under this plan.

(4) Institution of Proceedings.

(A) Proceedings hereunder shall be begun by the filing of a petition with the Association. The signed petition shall state the origin and details of the dispute, the acts or omissions deemed to be negligent, and the amount claimed due as a result of the negligence alleged. The petitioner shall also sign an arbitration agreement. The petition and arbitration agreement shall be on forms

provided by the Association.

(B) Upon the filing of the petition, the Director shall determine whether it presents a dispute under these Rules. The decision of the Director on that matter shall be final. The Director shall have full power to require additional information from the petitioner as is deemed necessary.

(C) If the Director determines that the Association shall not accept jurisdiction, the petition shall be returned to the petitioner indicating why the Association has not accepted jurisdiction and will not arbitrate the matter.

(D) If the Director determines that the Association shall accept jurisdiction, a copy of the petition and the arbitration agreement signed by the petitioner shall be forwarded to the other party to the dispute to sign and return to the Director with the answer to the petition. Twenty (20) days shall be allowed in which to answer unless additional time is requested. Upon receipt of the answer, the Director shall forward to the petitioner a signed copy of the arbitration agreement and the answer submitted by the other party to the dispute.

(E) If the other party to the dispute refuses to submit to arbitration, or fails to sign and return the arbitration agreement and answer within the time allowed, the Director shall so notify the petitioner, and the file of the Association shall be closed.

(F) If the dispute is referred to arbitration as referenced in 2(D) above, then sections 4(B) and (C) of this rule are not applicable. The attorney involved in the dispute shall be deemed the petitioner and shall file a petition with the Director.

(G) Upon the filing of a petition with the Association, any applicable statute of limitations is tolled until dismissal or final award is entered.

(5) Arbitration Panel.

(A) Composition.

(i) Where the amount in controversy is ten thousand dollars (\$10,000.00) or less, the Panel shall consist of one (1) practicing attorney.

(ii) Where the amount in controversy exceeds ten thousand dollars (\$10,000.00), but is not in excess of fifty thousand dollars (\$50,000.00), the Panel shall consist of three (3) practicing attorneys.

(iii) The practicing attorneys referred to in paragraph (5)(A)(i) and (5)(A)(ii) above shall each:

(a) be a member in good standing of the Association;

(b) be appointed for a particular dispute by the Director;

(c) if engaged in the private practice of law, maintain an office and carry on such practice within a reasonable proximity to the county in which the petitioner resides.

(iv) Any attorney appointed by the Director may refuse to serve. Such refusal shall be by written notice to the Director within ten (10) days of the appointment.

(v) The Director, in cases of a three-member Panel, shall designate one member of the Panel as Chair of the Panel.

(B) Objections.

Either party to the dispute may object for cause to any of the Panel members. Such objection shall be in writing and shall be made within twenty (20) days of written notification of the composition of the Panel. Failure to object within twenty (20) days shall constitute a waiver of any objection to the composition of the Panel.

Objections to Panel members shall be made to the Director and shall be determined in accordance with KRS 26A.015 et seq. The decision of the Director shall be final.

(C) Compensation.

The Panel shall not be compensated for its services. Reasonable transportation costs may be reimbursed.

(D) Vacancies.

If any arbitrator should be unable to act, the Director shall declare the office vacant and, if the matter has already been heard by the Panel, it shall not be reheard if the remaining members concur in the Award. If the sole member of the Panel is unable to act or the remaining members of the Panel do not concur in the Award, a new member shall be selected and the matter will be reheard. If the Panel has not yet heard the matter a new arbitration Panel member shall be selected in accordance with these Rules.

(E) Communication Between the Parties and Panel Members.

There shall be no ex parte communication between the parties and the Panel upon the subject matter of the arbitration other than at arbitration proceedings, or in documents filed with the Association as part of the proceedings. This limitation does not apply to administrative communications between the Panel and the parties regarding the scheduling of the hearing.

(6) Hearings.

(A) Location.

Hearings shall be held in a county that reasonably limits the travel required by the parties to attend the hearing.

(B) Notice.

The Chair of the Panel shall fix the time and cause written notice of time and place to be served upon all parties to the dispute by Certified Mail not fewer than ten (10) days prior to the time set for the hearing. Such notice of hearing shall also inform the parties of their right to be represented by an attorney and their right to present evidence in support of their respective positions.

(C) Stenographic Record.

(i) Any party may have a hearing before a Panel reported by a Certified Shorthand Reporter at the expense of the requesting party by written notice presented to the Panel Chair at least seven (7) days prior to the date of the hearing. Any other party to the arbitration shall be entitled to acquire, at their own expense, a copy of the reporter's transcript of the testimony by arrangements made directly with the reporter.

(ii) In the event the Panel determines it appropriate or necessary to record the hearing, it may be recorded by digital or video means with costs being assessed as the Panel deems just. A party to the dispute, at its own expense, may request a copy of the record so recorded.

(D) Production of Records and Subpoenas.

(i) The parties to a dispute have the obligation to provide all documents needed for the Panel to resolve the questions presented for resolution. The discovery provisions of the Kentucky Rules of Civil Procedure are not strictly applicable. When a party fails to provide documents determined necessary by the Panel, the Panel may accept the negative factual inferences created by the failure to provide the requested documents.

(ii) When the Panel determines the provisions of KRS 417.110 should be utilized, it may request permission in writing from the Director for the authority to issue a subpoena for the documents specified in its request.

(E) Oath of Panel Members.

The Panel shall take a written oath to be filed with the Director to decide the dispute submitted to them according to the law and evidence and the equity of the case to the best of their judgment without favor, affection or prejudice.

(F) Conduct of Hearings.

(i) The testimony of all witnesses shall be given under oath. The Panel Chair shall administer oaths to witnesses.

(ii) The Panel Chair shall preside at the hearing and shall be the judge of the relevancy and materiality of the evidence offered, shall rule on questions of procedure, and shall exercise all powers relating to the conduct of the hearing. Strict compliance with the rules of evidence shall not be required.

(iii) In cases involving a three (3) member Panel, if at the time set for any hearing all three members of the Panel are not available to participate, the hearing shall be postponed, or, with consent of the parties shall proceed with the hearing with one (1) member of the Panel chosen by the parties as the sole arbitrator.

(iv) If any party to an arbitration who has been duly notified fails to appear at a scheduled hearing, the Panel may proceed with the hearing and determine the dispute upon the evidence produced.

(v) The Panel Chair may adjourn the hearing from time to time as necessary. Upon request of a party to the arbitration for good cause, the Panel Chair may postpone the hearing from time to time.

(vi) No briefs or legal memorandum shall be submitted by the parties unless specifically requested by the Panel or a majority thereof.

(7) The Award.

(A) Rendition and Form.

(i) The Panel shall render its award within thirty (30) days after the close of the hearing. The Award shall be made by a majority of the Panel.

(ii) The original Award shall be in writing and shall be signed by the member(s) of the Panel concurring therein. The Award shall include a determination of all questions submitted to the Panel, the decision of which shall be necessary to resolve the dispute. Copies of the Award shall have the same legal force and effect as the original.

(iii) 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 a hearing was held upon notice pursuant to a written agreement to arbitrate, the parties were given an opportunity to testify and cross-examine, etc., a brief statement of the dispute, findings, conclusions, and the amount, if any, to be paid or reimbursed. The Panel shall avoid reciting information in the text of the Award that is privileged unless the parties specifically waive any privilege.

(iv) An Award may also be entered by consent of all parties to the dispute.

(v) The Award signed by the member(s) of the Panel shall be provided to the Director, who shall cause it to be mailed to the parties by Certified Mail.

(B) Correction of Errors.

If, upon receiving the Award, a party determines it contains significant factual or accounting errors or omissions, the party may bring this information to the attention of the Director within fifteen (15) days from the receipt of the Award. The Director will present the information to the other party and to the Panel for consideration along with the comments from the other party to the dispute. If the Panel determines that modification of the Award is appropriate, the Panel will issue a modified Award reflecting any changes made and will provide the modified Award to the Director for service on the parties as indicated above. This procedure is not intended to provide a party the opportunity to submit new evidence or to reargue the merits of the dispute.

(C) Effect and Enforcement.

The provisions of KRS 417.180 and of the arbitration agreement of the parties shall govern and determine the effect and enforcement of the Award. The law of the Commonwealth of Kentucky will govern the award of interest of any judgment.

(8) Records.

With the exception of the Award itself all records, documents, files, proceedings and hearings pertaining to arbitration of any dispute under these Rules shall not be open to the public or to any person not involved in the dispute with the exception of disputes referred to arbitration as stated in section 2(D) above. In that circumstance, a copy of the Award may be provided to the referring activity or agency.

(9) Death or Incompetence of a Party.

In the event of the death or incompetence of a party to the arbitration proceedings before the hearing has been concluded, the proceedings shall be abated without prejudice to either party to seek such relief as may be proper. In the event of death or incompetence of a party after the close of the hearing, but prior to issuance of the Award, the decision rendered shall be binding upon the heirs, administrators, or executors of the deceased and on the estate or guardian of the incompetent.

(10) No Charge for Arbitration Services.

No charge or fee shall be required of any party requesting or making use of the arbitration services provided by these Rules.

(11) Indemnity Provision.

By agreeing to the procedures authorized herein, the parties further agree to indemnify and hold harmless the Association, its employees and the Panel concerning any action arising out of the

procedures set forth by this rule and for any and all conduct of the Panel in the exercise of the procedures herein.

HISTORY: Amended by Amended by Order 2007-007, eff. 2-1-08; prior amendments eff. 1-1-06 (Order 2005-10): 1-1-97 (Order 96-1), 1-1-89, 1-1-86; adopted eff. 7-1-84