

**BY-LAWS FOR THE FEE DISPUTE ARBITRATION COMMITTEE  
STATE BAR OF NEVADA**

**Amended: August 22, 2012**

**I. DEFINITIONS:**

As used in these By-Laws, unless the context requires otherwise:

- A. "Arbitration" means the resolution of a fee dispute outside the courts where the parties agree to be bound by the decision of an arbitrator or arbitration panel.
- B. "Decision" means the determination made by a single arbitrator or arbitration panel.
- C. "Mediation" means a process by which the petitioner and respondent work with a mediator and use consensus and agreement to resolve the fee dispute.
- D. "Participation" means that the attorney respondent must provide a written narrative and supporting documentation regarding the fees in dispute. Upon request from the fee dispute arbitrator or chair of an arbitration panel, the attorney respondent must also be present for the arbitration to respond to any questions posed by the arbitrator or arbitration panel.
- E. "Party" means an attorney or client who has executed consent to binding arbitration. An attorney or client who has failed to consent to binding arbitration shall not be deemed a party, shall not be entitled to notice of the hearing and shall not be entitled to participate in the hearing. However, the arbitrator(s), at his or her discretion, may allow such participation to facilitate resolution of the dispute.
- F. "Petitioner" means the party requesting fee arbitration.
- G. "Respondent" means the party with whom the petitioner has a fee dispute.

**II. COMMITTEE COMPOSITION:**

- A. The Board of Governors of the State Bar of Nevada ("the Board") established a Fee Dispute Arbitration Committee ("Committee") pursuant to Supreme Court Rule 85 and 86.
- B. The Committee consists of a State Chair and six (6) Regional Panel Chairs: three (3) in Las Vegas, one (1) in Reno, one (1) in Carson City and (1) Rural Panel Chair. The State Chair, with the consent of the Board, may create additional Regional Panel Chairs. The size and makeup of each regional panel shall be determined by the Board so that an adequate number of attorney and lay members ("Members" or "arbitrator(s)") shall comprise each regional panel. The Board may enlarge or reduce the size of regional panels as the need appears. Each Member shall be appointed by the Board for a three (3) year term. Regional Panel members shall be appointed the Board annually, as shall the State Chair. Members' terms shall be staggered so that approximately one-third (1/3) of the terms shall expire each year. If a Member's term expires while arbitration is pending before that Member, the term shall be extended to allow completion of those proceedings.

- C. The State Chair and the Regional Panel Chair for each of the regional panels, or any substitute for said Regional Panel Chairs as the State Chair might designate, shall constitute the Executive Council of the Committee. The Executive Council shall be charged with the responsibilities of overseeing the work of the Committee and the regional panels and developing forms to implement the arbitration/mediation process.

### **III. JURISDICTION:**

- A. The Committee has jurisdiction over any disagreement between a client and an attorney concerning the fee and/or costs ("fee") paid, charged or claimed for legal services rendered by an attorney subject to discipline in this state, or practicing in this state pursuant to Supreme Court Rule 42.
- B. A claim must be filed within six years after the attorney/client relationship has ended or otherwise limited under N.R.S. §11.190. This time limitation may be waived with the consent of the Respondent.
- C. The Committee does not have jurisdiction over the following matters:
  - 1. Disputes over which, in the first instance, a Court has jurisdiction to determine the fee and has chosen to exercise its jurisdiction by means of Complaint and/or motion;
  - 2. Claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct;
  - 3. Any claim for less than Two Hundred Fifty Dollars (\$250.00).
- D. The arbitration of any fee dispute shall in no way preclude a Disciplinary Board from investigating the conduct of the attorney involved for potential violation of the Code of Professional Responsibility, or from conducting any hearing or hearings in connection with any alleged violation of the Code of Professional Responsibility.

### **IV. FILING AND RESPONDING TO A FEE DISPUTE:**

- A. Petitioners requesting arbitration must complete the Petitioner's Agreement for Arbitration of Fee Dispute ("Petition") and submit a copy to the State Bar of Nevada's Las Vegas office. The Petition must be signed and shall include copies of any supporting documentation upon the filing of the Petition. Failure to sign the Petition or provide supporting documentation may result in denial of the request for arbitration.
- B. The Petition and supporting documentation shall be provided to the Respondent within a reasonable period of time, in addition to a copy of these By-Laws. The Respondent will be provided twenty-five (25) days to respond in writing with any supporting documentation. The Respondent will also be asked to sign a binding arbitration agreement. The response and binding arbitration agreement shall be delivered to the State Bar of Nevada's Las Vegas Office. The Respondent may request an additional twenty-four (24) day extension to file a response, for a total of forty-nine (49) days.
  - 1. If the Respondent is an attorney and fails or refuses to sign the binding arbitration agreement, the arbitration will proceed ex parte. In this instance, any Respondent attorney participation during the fee dispute process is at the discretion of the arbitrator.
  - 2. If the Respondent is an attorney and if during two (2) years prior to the filing of the Petition by the Petitioner, the Respondent attorney has been the subject of three (3) or more fee

disputes within the jurisdiction of the Committee, then participation in the fee dispute arbitration proceeding shall become mandatory, and failure to participate may result in referral to the Office of Bar Counsel for investigation into ethical violations.

- C. Upon expiration of the response period, or upon receipt of the response, the State Bar shall provide the Petitioner with copies of the Respondent's binding arbitration agreement and response, if any. If no binding arbitration agreement is received, the State Bar shall offer the Petitioner the opportunity to withdraw the fee dispute or proceed ex parte. The State Bar shall inform the Petitioner that no collections assistance will be available in the event the Petitioner proceeds ex parte and the Decision is in the Petitioner's favor.

#### **V. MANDATORY MEDIATION:**

- A. All disputes for \$5,000 or less are subject to mandatory mediation before a mediator selected by the State Bar and/or Regional Chair.
- B. With good cause, parties to the fee dispute may petition the Regional Chair, by filing a request with the State Bar's Las Vegas Office, to resolve the matter directly to arbitration. The Respondent attorney must sign a binding arbitration agreement prior to making this request.

#### **VI. MEDIATION PROCESS:**

- A. All parties have the right to request mediation as a primary means of fee dispute resolution with the option of arbitration if mediation is unsuccessful.
- B. Upon receipt of the response, the State Bar shall convey the complete fee dispute file to a mediator.
- C. The mediator shall, within fourteen (14) days, provide notice of the mediation. The date and location of the mediation is at the discretion of the mediator. The mediation shall be conducted within thirty (30) days; however, the mediator may grant a continuance for good cause. Non-compliance with this timeframe shall not be construed to be cause to invalidate the mediation.
- D. The mediator shall notify the State Bar the outcome of the mediation.
  - 1. If the mediation is successful, the State Bar will inform the parties that the matter is closed. The State Bar will also provide the Petitioner the opportunity to re-open the fee dispute in the event the Respondent does not comply with the mediation agreement.
  - 2. If the mediation is unsuccessful, the Petitioner may request the fee dispute be resolved through arbitration.

#### **VII. ARBITRATION:**

- A. The Regional Chair will forward fee disputes in excess of \$5,000 in which mediation was not selected as an option, or those fee disputes in which mediation was unsuccessful, for arbitration within 14 days of receipt.
- B. Fee disputes of Ten Thousand Dollars (\$10,000) or less will be assigned to a single member of the Fee Dispute Committee. Fee disputes in excess of Ten Thousand Dollars (\$10,000) will be assigned to a three (3)-member arbitration panel.

1. Arbitrators shall be selected on a rotational basis.
  2. An arbitration panel may consist of up to two (2) Lay Members and a Lay Member may serve as an arbitration panel chair.
  3. Lay Members may not serve as sole arbitrators.
- C. No arbitration hearing panel hearing shall be conducted by or proceed with two (2) arbitrators without written consent of all parties.
- D. Once an arbitrator has been assigned, a party who submits additional or supporting documents to the arbitrator(s) shall serve a copy upon the other party, by mail or personal delivery, and shall so advise the arbitrator(s) and the State Bar's Las Vegas office.
- E. The burden of proof shall be on the attorney to prove the reasonableness of the fee by a preponderance of the evidence utilizing the standard set forth in Nevada Rules of Professional Conduct 1.5.
- F. The parties to arbitration are entitled to attend all hearings, to be heard, to present evidence and to cross-examine witnesses appearing at the hearing. Parties to the arbitration may also:
1. Be represented by an attorney at the hearing or at any stage of the arbitration proceedings.
  2. Have the hearing reported by a certified court reporter at such party's expense by written request presented to the arbitrator(s) at least three (3) days prior to the date of hearing. The party retaining the reporter shall provide one copy of the transcript to the arbitrator. Any other party, at his or her own expense, may obtain a copy of the transcript by making arrangements directly with the reporter.
  3. Waive oral hearings and may submit their contentions in writing, together with exhibits, for consideration of the controversy on the basis of such documents. The arbitrator(s) may nevertheless require oral testimony of any party or witness, after due notice to all parties. Otherwise, when oral hearing has been waived by the parties, section VIII shall not apply.
- G. In the event that an arbitrator cannot ethically or conscientiously serve, or declines or is unable to serve, the Regional Panel Chair, or if unavailable the State Chair, shall select another Committee Member. The Regional Panel Chair may appoint a new three (3)-Member arbitration panel ("arbitration panel"), if in the Regional Chair's opinion such appointment is necessary to complete the arbitration in a fair and expeditious manner.
- H. The Members of the Committee selected as arbitrator(s) of any dispute shall be vested with all the powers and shall assume all the duties granted and imposed upon neutral arbitrators by Chapter 38 of the Nevada Revised Statutes.

#### **VIII. ARBITRATION PROCESS:**

- A. The single arbitrator or chair of the arbitration panel shall provide notice to the parties, other arbitrators and any counsel appearing, for an arbitration hearing (if possible) not less than twenty (20) days and no more than ninety (90) days in the future. The arbitrator or arbitration panel chair may grant a continuance for good cause.
- B. The single arbitrator or chair of the arbitration panel shall preside at the hearing; shall rule on the admission and exclusion of evidence and on questions of procedure; and shall exercise all powers relating to the conduct of the hearing.



1. The single arbitrator or chair of the arbitration panel may, at his or her discretion:
  - a. Request opening statements and may prescribe the order of proof. In any event, all parties shall be afforded full and equal opportunity for the presentation of any material evidence.
  - b. Exclude persons or witnesses, other than the parties to the controversy, waiting to be heard.
  - c. When necessary for the convenience of the parties, hold the hearing by telephonic conference in which the parties are able to hear each other, the arbiters and the witnesses.
  - d. Employ a certified court reporter, with the permission of the Regional Chair.
  - e. Issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence in accordance with NRS 38.233.
  - f. Determine the controversy upon the evidence produced and enter an award, or dismiss a claim entirely, in the event that a party who has been duly notified fails to appear at the hearing, absent a properly executed Waiver of Appearance.
  - g. Postpone a hearing date upon the request of a party to the arbitration with good cause.
  - h. Select a continuation date for a hearing that cannot be completed on the first day. The time and place will be selected with due regard to the circumstances of all the parties and counsel and the desirability of a speedy determination.
  - i. Reopen the hearing on his or her own motion or on application of a party for good cause at any time before the award is signed and submitted to the Regional Chair.
2. The single arbitrator or chair of the arbitration panel shall:
  - a. Administer oaths to witnesses testifying at the hearing.
  - b. Specifically inquire of all parties whether they have further evidence to submit in whatever form before the close of the hearing. If the answer is negative, the hearing or submission shall be declared closed and a notation to that effect made by the arbitrator(s) as well as the date for submission of memoranda or briefs, if requested by the arbitrator(s).
  - c. Render an award in writing within thirty (30) days after the close of hearing or after the submission (where hearing has been waived).
- C. The parties to fee dispute arbitration may not tape record and/or videotape the arbitration proceedings.
- D. In the event of the death or incompetency of a party to the arbitration proceeding, prior to the close of the hearing or submission, the proceeding shall be abated without prejudice to either party to proceed in a court of proper jurisdiction to seek such relief as may be warranted. In the event of death or incompetency of a party after the close of the hearing or submission, but prior to a decision, the decision rendered shall be, to the extent agreed, binding upon the heirs, administrators or executors of the deceased and on the estate or guardian of the incompetent.

#### **IX. MEDIATOR/ARBITRATOR CHALLENGE:**

A party may, within ten (10) days after notice of the mediation or arbitration, challenge the mediator or arbitrator without stating reason or cause. The challenge shall be made to the Regional Chair, through the State Bar's Las Vegas Office. No party shall be allowed more than one such challenge. A mediator or arbitrator may also be challenged by any party upon showing of actual bias, which challenge shall be decided by the Regional Chair, in his or her sole discretion. When a mediator or arbitrator is disqualified by a challenge, a successor mediator or arbitrator shall be immediately reappointed.

#### **X. THE AWARD:**

- A. The award of the arbitration shall be made by the single arbitrator, or if an arbitration panel, by a majority of the arbitration panel. The Decision shall be in writing and signed by the single arbitrator or if an arbitration panel, by each panel member. If there is dissent within the arbitration panel, the Decision shall be signed separately, but the award shall be binding if signed by a majority of the panel.
- B. 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 the hearing was held upon notice pursuant to a written agreement to arbitrate, that the parties were given an opportunity to testify and to cross-examine, etc.), a brief statement of the dispute, the findings and the award. The award shall include a determination of all the questions submitted to the arbitrator(s), the decision of which is necessary in order to determine the controversy and a determination of participation by the Attorney Respondent (if required).
- C. Unless the submission or contract provides otherwise, the arbitrator(s) may grant any remedy or relief deemed proper, including a direction for specific performance. The arbitrator(s) may include in the award a direction for payment of other expenses related to the proceedings but not for fees to the arbitrator(s) or counsel. An award may also be entered on consent of all parties.
- D. Once the award is signed and submitted, the hearing may not be reopened. However, the single arbitrator or arbitration panel may, at their discretion, or at the discretion of the State Chair, reconsider and amend an award to correct a misapplication of law or fact.
- E. The arbitrator or chair of the arbitration panel shall forward the award to the State Bar who shall thereupon serve a signed copy of the award to each party to the arbitration. The award shall include a cover letter informing the parties of the appeal timeframe. Prior to closing the matter, the State Bar shall also provide the Regional Chair with a copy of the award and provide the Regional Chair three days in which to return the matter for arbitration to correct any procedural errors.

#### **XI. TIMEFRAMES:**

- A. Non-Compliance with any of the above-referenced time limitations shall not be cause to invalidate an otherwise valid award.
- B. The State Bar may reassign the fee dispute controversy to another mediator or arbitrator in the event that the timeframes for completion of the matter have been substantially exceeded.

## **XII. ENFORCEMENT OF AWARD:**

- A. If the award determines that the attorney who consented to binding arbitration is not entitled to any portion of the disputed fee, or if the client makes payment of the amount fixed in the award, then the service of the award or the payment of the fixed amount shall:
  - 1. Terminate all claim and interest of the attorney against the client or clients in respect to the subject matter of the arbitration;
  - 2. Terminate all rights of such attorney to retain possession of any documents, records or other properties of such client or clients pertaining to the subject matter of the arbitration then held under claim of attorney's lien or for other reasons;
  - 3. Terminate all rights of such attorney to oppose the substitution of one or more other attorneys designated by such client or clients in any pending litigation pertaining to the subject matter of the arbitration.
- B. In any case in which both the Petitioner and the Respondent signed consent to binding arbitration, any award rendered may be enforced by any court of competent jurisdiction.
- C. Upon the written request of the client to the State Bar when both the client and the Respondent Attorney have signed binding arbitration agreements, the Regional Chair may ask a Committee member to institute suit on behalf of the client:
  - 1. For the refund of any portion of the paid fee found to be excessive.
  - 2. For the defense of any suit by the attorney seeking to collect any unpaid portion that was determined to be excessive.
  - 3. To vacate any lien asserted by the attorney upon any property of the client for an unpaid fee charged, but determined to be excessive.
- D. Committee Members are under no obligation to initiate suit on behalf of the client and the State Bar shall notify the client if no Committee Member volunteers to perform this service.
- E. In any lawsuit by or against the client in which the client is represented by an appointed Member, no fee shall be charged for the appointed Member's services. Upon application to the Executive Director and approval by the Board, an attorney may be compensated by the State Bar for such representation. The client is responsible for the payment of all court costs incurred in connection with any said lawsuit and this responsibility for costs must be explained to the client by the appointed Member before going forward with litigation.

### **XIII. APPEALS:**

- A. A party to the fee dispute may not file an appeal on the merits of the arbitration decision. A party may file appeal to the Executive Council only if the party contends that:
  - 1. An arbitrator hearing the fee dispute failed to be disqualified in accordance with the standards set forth in section VIII of these By-Laws.
  - 2. The Committee failed substantially and materially to comply with the procedural requirements of the By-Laws; or
  - 3. There was actual fraud on the part of any arbitrator(s).
- B. The party making an appeal shall file a Notice of Appeal to the State Bar's Las Vegas Office within thirty-three (33) days after service of copy of the written arbitration award sent to the last known address provided to the Committee. The Notice of Appeal must:
  - 1. Specifically include a signed statement of the grounds for appeal relied upon and an affidavit or signed statement setting forth the factual basis therefore.
  - 2. State whether the Committee proceedings were reported.
  - 3. Be served upon the other party.
- C. The filing of a Notice of Appeal from an arbitration determination shall act as a stay of execution of any award obtained as a result of the fee arbitration process. That stay shall not be lifted until final conclusion of the fee dispute arbitration proceedings.
- D. Within thirty (30) days of receipt of the Notice of Appeal, the State Chair shall review it for compliance with the above requirements. The State Chair shall dismiss an appeal that does not meet the requirements set forth in paragraphs A (1-3) and B (1) of this section.
- E. If the Notice of Appeal and signed statement or supporting affidavit complies with the above requirements, the Executive Council shall, within forty-five (45) days, decide the issues raised by the appeal and may, at its discretion, hold a hearing (telephonically or in person) for that purpose, at which any interested party may participate. If it finds that sufficient grounds exist, the Executive Council shall remand the fee dispute for a new or supplemental arbitration hearing, or determine the matter itself if it deems such action appropriate. The Executive Council's decision shall be written and becomes final upon service on the parties by first class mail.
- F. Supreme Court Rules, specifically 86 (12), apply to all proceedings after the decision has been finalized by the Committee.

### **XIV. CONFIDENTIALITY/IMMUNITY:**

- A. With the exception of the award itself, all records, documents, files, proceedings and hearings pertaining to arbitration of any fee dispute under these rules in which both Petitioner and Respondent have consented to be bound by the result, shall be confidential. This does not apply to any party to the dispute who has executed a binding arbitration agreement or if otherwise ordered by the Board or the Supreme Court or the District Court, and unless requested by the participating attorney involved. All records, documents, files, proceedings and hearings may be disclosed to the State Bar Discipline Committee.
- B. Parties and witnesses shall have such immunity from suit as is applicable in a civil action in the jurisdiction. Members of the Committee, including mediators, arbitrators, arbitration panels and staff shall be immune from suit for any conduct in the course and scope of their official duties.