



STATE BAR OF WISCONSIN

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STATE BAR OF WISCONSIN COMMITTEE ON RESOLUTION OF FEE DISPUTES

Approved by the State Bar of Wisconsin Board of Governors, December 6, 2019

Committee Rules

The State Bar Committee on Resolution of Fee Disputes has been established so lawyers and clients who have a dispute about legal fees and related costs can submit their dispute to binding arbitration and to obtain an arbitrator's decision and award which may be enforced by a court of competent jurisdiction under Chapter 788 of the Wisconsin Statutes. Other kinds of disputes related to rendering legal services cannot be arbitrated under these Rules.

The arbitration services of the Committee are available to both the lawyer and the client, who should carefully review these rules before requesting or agreeing to arbitration. Any questions about these rules should be addressed to the Program Administrator, State Bar of Wisconsin, P.O. Box 7158, Madison, WI 53707 (800-444-9404 ext. 6624 or email feearb@wisbar.org). Requests for arbitration are accepted only on the form provided and described in Rule 9. The advantages to the arbitration process are described in the enclosed brochure.

COMMITTEE PROCEDURAL RULES

Appointment of District Fee Arbitration Panel Members

1. The State of Wisconsin is divided into Districts for purposes of these Rules, each of which has a Fee Arbitration Panel from which volunteer arbitrators are selected to arbitrate individual disputes. The Fee Arbitration Panels are to consist of at least nine lawyers and, where possible, three nonlawyers. Every effort is made to have nonlawyers serve as panelists.
2. Lawyers on each district panel are to be selected from a diverse and broad spectrum of the State Bar and from law firms, sole practitioners, corporate counsel, government counsel, licensed but not practicing attorneys, and from diverse substantive areas of the law. Lawyer members must be members of the State Bar in good standing and must have practiced or been licensed for at least five years before appointment.
3. The State Bar President shall appoint the chairperson for each District. Panelists, both lawyers and nonlawyers may be appointed by the district chairperson or the State Bar President. Panelist shall serve three year terms. As each panelist's term expires, a successor is to be appointed for a term of three years. A panelist may serve multiple or successive terms.
4. If a panelist's term expires before a pending arbitration proceeding has ended, the panelist's term shall be extended until that arbitration proceeding has ended. However, this limited extension shall not delay the appointment of a successor, which successor may immediately serve on other panels.

Jurisdiction

5. The Committee has jurisdiction over disputes concerning legal fees (and associated costs) paid, charged or claimed for services performed for the client by an attorney under an express or implied contract establishing

an attorney-client relationship. The attorney must be licensed to practice law in Wisconsin or have been granted permission to represent the client in the matter pending before a court or agency in the state of Wisconsin.

6. A “party” to the arbitration means each person who has agreed in writing to binding arbitration in the same matter.

7. When a request for arbitration is made and the responding party consents, no party may withdraw from the arbitration without the agreement of all parties. The Committee does not have jurisdiction to arbitrate disputes concerning:

- (a)** Fees which have been approved by a court or which a court by law has the exclusive jurisdiction to fix or determine; or,
- (b)** Fees which are the subject of a pending lawsuit, unless the court before which the lawsuit is pending requests the involvement of the Committee and the parties on referral agree to arbitration under these rules.

Confidentiality

8. Once a request for arbitration has been submitted, no party, party representative, Panel Member, District Chair, Program Administrator or member of the program administrative staff shall provide information on the arbitration to anyone not a party to the arbitration. The records, documents, files, proceedings, transcripts, notes, testimony and the arbitration decision shall not be made available to the public or to any person or body not involved in the dispute. This prohibition of disclosure shall not prevent disclosure required by law, or supreme court rules; internal disclosure among Panel Members, the District Chair, the Program Administrator or members of the program administrative staff for purposes of administering or conducting the arbitration; or disclosure to one party of information another party has submitted in the arbitration for purposes of administering the arbitration or issuing the Arbitration Decision under Rule 34. The parties shall not disparage each other with respect to any matter arising in the arbitration. This does not limit disclosure necessary to enforce or review the decisions under Wisconsin Statute Chapter 788.

Processing Complaints

9. Requests for arbitration are to be submitted to the State Bar of Wisconsin Fee Arbitration Program, using the application form and process developed by the Committee. The application should detail the facts of the fee dispute, the names and addresses of the parties to the dispute, the amount of the dispute and any other persons who may be directly affected by the outcome. An attorney or a client may request arbitration.

10. The Administrator shall acknowledge receipt of a request for arbitration and provide a copy of the request to the other party involved in the dispute, encouraging each party to resolve the dispute amicably or that the non-requesting party returns the consent to arbitration within thirty (30) days. The consent is to be made on the form and through the process provided for this purpose.

The consent is to include consent to the current prevailing judgment rate of interest on any portion of an award not paid within thirty (30) days after an award under Rule 34, unless the parties previously contractually agreed to other interest terms.

The signed, including electronic signatures, consent of the parties to submit to arbitration shall include a provision that they agree to comply with the arbitration decision within thirty (30) days of the date of mailing the decision.

Arbitration – Preliminary Procedures

11. Arbitration under these Rules is binding and can be enforced under the provisions of Rules 38 through 40. Neither a client nor a lawyer is obligated to arbitrate under these rules, but both are encouraged to do so. Exception: when a client is obtained through the Lawyer Referral Program (LRIS) the attorney must agree to enter into arbitration.

The hearing shall be assigned to a one-member panel for disputes involving amounts of \$5,000 or less and to a three-member panel for disputes involving amounts over \$5,000, unless the parties and the District Chair agree to a lesser number of panel members.

Upon receipt of a timely consent to arbitrate, the dispute is to be forwarded to the appropriate District Chairperson who shall assign a Panel Chairperson and remaining panel members, if applicable, to hear that dispute. The District chairperson shall assign a Panel Chairperson, who is a lawyer, and two others, one of whom shall be a non-lawyer, if a non-lawyer panelist is available, if not, then a lawyer can be chosen in place of a non-lawyer. In designating panelists, the District Chairperson shall strive to rotate panelist selections equitably.

12. Panelists are vested with all the powers and duties granted and imposed upon arbitrators by Chapter 788 of the Wisconsin Statutes, consistent with the terms of these rules.

- 13.** The single arbitrator or Panel Chairperson assigned to the arbitration shall make reasonable offers to:
- (a)** Schedule and notice the hearing within thirty (30) days after receiving the request for arbitration;
 - (b)** Attempt to hold the hearing within ninety (90) days after receiving the request for arbitration dependent on all party's schedules;
 - (c)** Mail or email written notice of hearing and other pertinent information to panel members and the parties;
 - (d)** Notify the program administrator and the district chair of the date scheduled of the hearing once it is set; and,
 - (e)** File a decision within thirty (30) days after the close of the hearing (subject to any delay for transcript preparation purposes pursuant to Rule 21 and written summaries pursuant to rule 28). A decision is filed when it is mailed, emailed or sent by facsimile to the Program Administrator, as specified in Rule 36.

A decision of a three-member panel shall be made by a majority rule if not by unanimous vote. Failure to meet these dates does not affect the validity of the decision.

Any other error in procedure not affecting the substantive rights of the party claiming the error shall not impair the validity of the decision.

14. If an appointed panelist cannot ethically or conscientiously hear the assigned dispute, the panelist shall notify the Panel Chairperson of the inability to hear the dispute and the reasons for it. The District Chairperson shall select a replacement panelist.

15. Unless the parties otherwise agree, the dispute shall be heard in the district in which the attorney had his or her principal office at the time of rendering the services involved in the fee dispute or as reasonably set by all parties and panelists.

16. If all three members of a panel are not present at the time set for a hearing, the panelists present may, in their discretion, postpone the hearing or, with the parties' consent, proceed with the hearing with no fewer than two panelists.

17. If a member of a three-member panel dies or becomes unable to serve while the matter is pending hearing or decision and award, the proceeding shall then be assigned to a new panel for rehearing unless the parties consent to proceed to hearing or decision with one or both of the remaining panelists.

18. A party may waive the right to an oral hearing and submit the party's position in writing, together with exhibits, for the panel's decision on that basis. The arbitrators may, if they deem it desirable after submission in writing, require oral testimony of any party or witness after notice to all parties.

Arbitration –Hearing Procedures

19. A party's appearance at a scheduled hearing constitutes a waiver by that party of claims of deficiency in the notice of hearing.

20. At the hearing, a party may present evidence, cross-examine witnesses and raise the same kinds of defenses a party may raise in matters before courts. A party may be represented by an attorney at any stage of the arbitration. The arbitration shall be governed by the Small Claims rules of evidence, which are set out in Wis. Stat 799.209. Evidence shall be admitted in the arbitration if it has reasonable probative value. An essential finding of fact may not be based solely on a party's oral hearsay statement unless it would be admissible under the Rules of Evidence.

21. If a party wishes to make a record of the hearing, the party must use a certified court reporter to do so and must advise the Panel Chairperson that a court reporter will be used at the hearing at least ten days before the hearing begins. The chair should then give notice to all parties. The ten-day period may be waived or shortened by agreement if the parties and the Panel Chairperson agree.

The party recording the hearing must pay for the fees and transcript costs of the court reporter unless the other party also wants a copy of the transcript. In which case, all requesting parties will equally share the court reporter's fees and costs of the transcript. When a party asks for a transcript, the Panel Chairperson is also entitled to a copy and each party asking for a transcript shall share on an equal basis the cost of the panel's copy.

In such event, the thirty (30) day time period for the panel to make its decision as stated in Rule 13 is extended for the number of days between the end of the hearing and the date the panel receives the transcript or written summaries. The hearing is deemed closed when the hearing actually ends and not when the transcript or written summaries are received.

22. Parties are entitled to be present during the hearing. Non-lawyer parties may have an individual accompany the non-lawyer party during the hearing to provide moral support but not representation. Permitted attendance of such a person shall be at the discretion of the Panel Chairperson, who shall grant such permission freely but who shall also have the authority to limit this person's attendance reasonably considering such factors as whether the individual will testify as a witness in the arbitration. At the discretion of the Panel Chairperson, all witnesses may be excluded from the hearing until they have testified. The hearing is not open to members of the public except as specified in this rule.

23. If a hearing cannot be finished on the day it begins, the arbitrators may schedule the hearing to finish on the first available date that works for the parties, witnesses, attorney for a party and the arbitrators, recognizing the circumstances of the parties and the desire for a speedy determination. At the sole discretion of the Panel Chairperson the first date of a hearing or a continued hearing date may be postponed. In making this determination the Panel Chairperson shall consider the request of any party or panel members and determine whether or not there is a good reason for the postponement request.

24. The Panel Chairperson is in charge of the hearing. The Panel Chairperson is the person who rules on the admission and exclusion of evidence, on questions of procedure and on other issues that may arise concerning the hearing. Decisions on evidence are to be made under Wisconsin Small Claims procedure outlined in Sec. 799.209, Wis. Stats.

25. The arbitrators may request opening statements at the beginning of the hearing (your statement of what the dispute is about) and will set which party goes first with that party's evidence. Generally the attorney starts. All parties will be given an equal chance to present appropriate evidence. The arbitration hearing will be kept as informal as possible while still assuming that both or all parties have a fair hearing.

26. Witnesses (which include a party) must testify under oath or affirmation just as in court proceedings. Any member of the arbitration panel may give the oath to witnesses testifying at the hearing.

27. When a party properly given notice of the hearing date fails to appear at the hearing, the panel may, at its discretion, proceed with the hearing based on the evidence given by the party who has or parties who have appeared or via the original submission and to render a binding decision and award.

28. Just before ending the hearing, the panel will make a final request of all the parties whether they have further evidence to give. If the answer is "no," the hearing will be closed.

The arbitrators will note the final request for evidence and the closing of the hearing in their file and will set the date for submitting written summaries (memoranda or briefs) of the evidence and the conclusions to be reached, if the arbitrators or any of the parties ask for such a summary.

In such event, the 30-day time period for the panel to make its decision as stated in Rule 13 is extended for the number of days between the end of the hearing and the date the panel receives the transcript or written summaries. The hearing is deemed closed when the hearing actually ends and not when the transcript or written summaries are received.

29. If there is a good reason to do so, a hearing may be reopened by the panel on its own or by a written request of a party at any time before the arbitrators have filed their decision.

30. If a party dies or becomes incompetent between the time an arbitration is started (a request for arbitration is filed and is agreed to by the other party) and the time the arbitration hearing is closed, the arbitration proceeding shall be what is called "abated" (treated as if it never occurred). However, this will not prevent either party to go to a court of proper jurisdiction to attempt to seek the same or similar relief there.

If the death or incompetence occurs after the hearing ends but before the arbitrators reach their decision and award, the decision and award are just as binding upon the estate, heirs, personal representatives, successors and assigns in the case of death of a party and upon the estate or guardian in the case of a party becoming incompetent as if it would have been on the party itself.

31. Arbitrators and parties shall not discuss outside of the arbitration any information on rates for legal services that was disclosed over the course of the arbitration.

32. Arbitrators and parties shall not change the rates they charge for providing legal services based on any information disclosed during the course of the arbitration or in a decision or award resulting from the arbitration.

Fee Structure on Binding Arbitration

33. There is a fee for arbitration, which is based on the amount in dispute and which is to be paid by each party. The fee schedule will be established by the Committee and reviewed annually.

A party must pay the designated fee upon requesting arbitration or upon consenting to arbitration. The requesting party's fee shall not be refunded if the other party does not consent to arbitration. There shall be no refunds of, adjustments to, or offsets against, the arbitration fees.

The Arbitration Decision

34. The Arbitration decision and award, is to be in writing and signed (including electronic signature) by the sole arbitrator or by all three arbitrators for three-member panels. If there is a dissent on a three-member panel decision and award, the decision and award shall be signed separately, indicating the majority and minority votes. Unless the written contract for legal services provides otherwise, the decision and award may grant any remedy or relief deemed proper, including a direction for specific performance. A decision and award may include interest accrued prior to the date of the decision and award at the legal rate unless the parties have contractually agreed to other interest terms in writing. A decision and award may also be entered on the consent of the parties.

- 35.** No particular form is required for the decision. However, at the minimum, it is to consist of:
- (a)** A preliminary statement reciting the jurisdictional facts (e.g., that the hearing was held upon notice and proper consent to arbitration, that the parties were given an opportunity to testify under direct and cross examination, etc.);
 - (b)** A brief statement of the dispute, the findings of fact, and,
 - (c)** The decision and award.

The decision and award and any exhibits admitted into evidence constitute the record for enforcement or review under Wisconsin State Statutes Chapter 788.

36. The decision and award shall be signed as provided in Rule 34. The sole arbitrator or the chairperson of the three-person panel shall send by mail, email or fax the decision and award to the Program Administrator and retain a copy for his or her files.

The Program Administrator shall provide a signed copy of the decision by to each party and the District Chairperson for his or her files. The date the decision and award is mailed shall serve as notice of the commencement of the 30-day agreement to comply with the arbitration decision and award. The date the decision and award is mailed shall serve as notice to the parties that the dispute is concluded.

Confidentiality of Decision

37. The decision and award shall not be disclosed to any individual or entity other than the parties identified in Rule 36 who are to receive a copy of the decision and award. However, in the event a party appeals the decision and award under Chapter 788 of the Wisconsin Statutes, the decision and award may be filed with the court and used in that court proceeding. In addition, if either party does not comply with the decision and award within 30 days of its mailing as provided in Rule 36, the other party may file the decision and award with a court to be used to obtain an Order Confirming the decision and award. A party filing a decision and award with a court pursuant to this Section shall request that the decision and award is sealed so as to remain confidential except among the parties to the court action, or as ordered by the court. However, a judgment obtained pursuant to Section 788.12 shall not be considered confidential because of these rules.

Enforcement or Review of the Decision

38. The decision filed may be enforced or reviewed pursuant to Wisconsin State Statutes Chapter 788.

39. If the decision or award is rendered in favor of the attorney to the dispute, the decision shall terminate the dispute and further provide that within 30 days:

- (a)** The client shall pay that amount of the disputed legal fees and/or associated costs contained in the decision.
- (b)** The client shall pay interest, computed under Rule 10, if the entire award is not paid within 30 days of the date of the decision, under Rule 34.
- (c)** The attorney shall return to the client any client documents that the attorney is holding (except for copies made at the expense of the attorney, which may be retained).
- (d)** The attorney representing the client in any pending litigation or other matter, which gave rise to the dispute, if necessary and at the request of the client, shall stipulate to the substitution of new counsel in any such litigation or matter.

40. If the decision or award is rendered in favor of the client to the dispute, the decision shall terminate the dispute and further provide that within 30 days:

- (a)** The attorney shall return any funds or other property of the client held by the attorney in excess of the amount of the award.
- (b)** The attorney shall release, remove or dismiss any lien in excess of the amount of the award the attorney claimed or filed concerning the dispute without any cost to the client but with written notice to the client.
- (c)** The attorney shall return to the client any client documents that the attorney is holding (except for copies made at the expense of the attorney, which may be retained)
- (d)** If the attorney is representing the client in any pending litigation or other matter, at the request of the client, the attorney shall stipulate to the substitution of new counsel in any such litigation or matter and return to client any documents or file the attorney is holding (except for copies made at the expense of the attorney, which may be retained).

Procedural Irregularities

41. The failure of an arbitration decision to be filed within the initial thirty (30) day or the extended time period specified in Rules 13, 21 and 28, respectively, shall not impair the validity of the arbitration award. Any other

error in procedure not affecting the substantive rights of the party claiming the error shall not impair the validity of the decision. This provision is intended to be interpreted in a manner consistent with Wisconsin State Statutes Chapter 788.

Amendment of Committee Rules and Fee Arbitration Districts

42. The Committee on Resolution of Fee Disputes shall submit any revisions or amendments to these Rules to the Board of Governors for approval.

43. The Board of Governors shall approve any changes in Fee Arbitration Districts. Changes in Fee Arbitration Districts are to be based on demands for arbitration services and panel member availability among the districts and any other relevant program-related concerns.

Immunity

44. All parties agree that members of the Fee Arbitration Committee, Panel, Program Administrator or program staff person shall have no liability for any official act or omission related to any arbitration under these rules. The arbitrators may not be called as witnesses in any proceeding with regard to the subject of fee arbitration.

Multiple Clients or Attorneys in the Same Dispute

45. The Rules recognize that more than one attorney may represent the same client in a matter or more than one individual may be the client in the same matter. Where necessary to give plain meaning to these rules as applied to a given dispute, the terms “party,” “attorney” or “client” shall be read in the plural.