



PHILADELPHIA
BAR ASSOCIATION

**RULES OF THE
LAWYER-CLIENT FEE DISPUTE
RESOLUTION PROGRAM**

Effective: January 1, 2004

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PHILADELPHIA BAR ASSOCIATION
RULES OF THE LAWYER-CLIENT FEE DISPUTE RESOLUTION PROGRAM

1. RULES FOR MEDIATION AND ARBITRATION

1.1 Definitions.

- 1.1.1 Administrator – The Executive Board of the Fee Disputes Committee of the Philadelphia Bar Association.
- 1.1.2 Advisory Opinion – A non-binding decision made by the Fee Disputes Committee pursuant to a request by a court or the Pennsylvania Lawyers Fund for Client Security (the “Fund”).
- 1.1.3 Answer – A response to the Petition, which may include a counterclaim arising out of the same circumstances as the Petitioner’s claim.
- 1.1.4 Arbitration – The submission of a Dispute at a hearing through the presentation of testimony and other evidence to the Arbitrator(s) for the purpose of determining the facts and reaching a decision.
- 1.1.5 Arbitrator(s) – A member or members of the Fee Disputes Committee assigned to conduct the Arbitration.
- 1.1.6 Dispute – A disagreement between client(s) and lawyer(s) over fees and costs for legal services.
- 1.1.7 Fee Disputes Committee (the “Committee”) – A committee of the Philadelphia Bar Association consisting of individuals from a diverse cross section of the legal and non-legal communities, the purpose of which is to provide a forum for the expeditious resolution of fee disputes.
- 1.1.8 Mediation – A non-binding proceeding, consisting of one or more sessions, in which a Mediator assists the parties in attempting to reach their own settlement.
- 1.1.9 Mediator – A member of the Committee assigned to hold a Mediation.
- 1.1.10 Parties – The Petitioner(s) and the Respondent(s).
- 1.1.11 Petition – A form provided by the Committee, the completion of which is required in order to initiate a Dispute. Information provided on the Petition allows the Committee to make an initial determination of jurisdiction and informs the Committee of the Dispute to be resolved.
- 1.1.12 Petitioner(s) – The person(s) submitting a Dispute to the Committee.
- 1.1.13 Respondents(s) – The person(s) against whom a Dispute has been filed with the Committee.

1.2 Services offered.

The Lawyer-Client Fee Dispute Resolution Program (the “Program”) offers the following services:

- 1.2.1 Mediation; binding Arbitration; or both Mediation and binding Arbitration. Where Mediation only is agreed to, the Parties may, at the conclusion of Mediation, agree to submit any unresolved issue to binding Arbitration.
- 1.2.2 Upon request of any court or the Fund, the Administrator shall appoint a lawyer member of the Committee as a sole Arbitrator to conduct a hearing and render an Advisory Opinion in connection with a Dispute.
- 1.2.3 The Program does not have authority to require a Respondent to arbitrate or mediate a Dispute. If the Parties wish to choose their own Arbitrator(s) or Mediator, they will have to do so outside of this Program.

1.3 Administrator.

The Administrator shall be responsible for all administrative functions relating to the Program.

1.4 Jurisdiction.

The Program has jurisdiction over any Dispute in which a Petition is filed, where the lawyer is either a member of the Philadelphia Bar Association or has an office in Philadelphia, or where the underlying legal matter which gave rise to the Dispute has a nexus in Philadelphia, **EXCEPT:**

- 1.4.1 Where a court or a governmental agency must approve or determine legal fees, **unless** the court or governmental agency refers the Dispute to the Committee;
- 1.4.2 Where fees for legal services are fixed by law;
- 1.4.3 Where the client seeks damages from the lawyer based upon the lawyer’s alleged malpractice or professional misconduct;
- 1.4.4 Where the Petition is filed more than four (4) years from the date when the last legal service was performed or the last payment was made, whichever occurred later;
- 1.4.5 A Dispute of less than \$350.00 or more than \$100,000.00; and
- 1.4.6 Any matter deemed inappropriate by the Administrator in its sole discretion.

1.5 Initiation of proceedings under the Program.

1.5.1 Proceedings shall be initiated by filing with the Administrator the following:

1.5.1.1 A completed Petition in the form attached as Exhibit A; and

1.5.1.2 An Agreement to Proceed to Mediation signed by Petitioner(s) in the form attached as Exhibit B or an Agreement to Submit to Common Law Arbitration signed by Petitioner(s) in the form attached as Exhibit C, or both.

1.5.2 Upon receipt of the Petition and Agreement(s), and provided the Program has jurisdiction, the Dispute shall proceed as follows:

1.5.2.1 The Administrator shall transmit a copy of the Petition and Agreement(s) to the Respondent(s) with a request to agree to Mediation and/or Arbitration.

1.5.2.2 The Respondent(s) shall have thirty (30) days from the date of transmission to respond in accordance with paragraph 1.5.2.3. Upon request, at the discretion of the Administrator, the Respondent(s) may be granted a maximum extension of thirty (30) days to respond.

1.5.2.3 If the Respondent(s) agree(s) to Mediation and/or Arbitration, the Respondent(s) shall execute and return to the Administrator the applicable Agreement(s) and may file an Answer.

1.5.2.4 If any Respondent fails to respond within thirty (30) days or any extension thereof, or does not agree to Mediation and/or Arbitration, the Committee shall have no jurisdiction over the Dispute, except as provided in 1.2.2.

1.6 Appointment, disqualification and substitution of Mediators and Arbitrators.

1.6.1 The Administrator shall appoint a Mediator and/or Arbitrator(s) who are members of the Committee.

1.6.2 No Mediator or Arbitrator shall serve in any Dispute in which that Mediator or Arbitrator (1) has a financial or personal interest in the Dispute; (2) has a bias regarding any of the Parties or their lawyers; (3) has a financial relationship with any of the Parties or with any of the lawyers for any of the Parties; or (4) is unable to serve due to time constraints or disability.

1.6.3 The Mediator or Arbitrator shall immediately disclose in writing to all of the Parties and the Administrator:

1.6.3.1 if he or she knows or learns of any circumstances that may create an appearance of bias or prevent a prompt hearing or meeting with the Parties;

1.6.3.2 if there is any actual or potential conflict of interest reasonably known to the Mediator or Arbitrator(s);

1.6.3.3 if he or she is or was related by blood or marriage to any Party or to any Party's lawyer;

1.6.3.4 if he or she is or was an officer, director or shareholder of a corporation which is a Party;

1.6.3.5 if he or she is or was a partner, surety, guarantor, creditor, debtor, employer, employee, member or trustee of any Party or any Party's lawyer;

1.6.3.6 if he or she is or was adverse to any Party or to any Party's lawyer, or has asserted any claims against or defended any claims brought by any Party, any Party's lawyer, or any Party's lawyer's law firm;

1.6.3.7 if he or she has any financial interest in the Dispute or otherwise has any interest which could be affected by the outcome of the Dispute;

1.6.3.8 if he or she has any professional or social relationship with any of the Parties or their lawyers; and

1.6.3.9 if he or she has served as a lawyer for any of the Parties, or as a mediator or arbitrator in any matter involving any of the Parties.

1.6.4 Immediately upon learning of any information providing a basis for challenge, any Party may challenge the Mediator or Arbitrator(s) for cause.

1.6.5 A challenge of the Mediator or Arbitrator(s) shall be addressed to the Administrator, with a copy simultaneously transmitted to the other Parties, but not to the Mediator or Arbitrator(s).

1.6.6 Any challenge shall be determined by the Administrator, and such determination shall be final and binding. If the Administrator disqualifies the Mediator or any Arbitrator, the Administrator shall immediately appoint another Mediator (the "Substitute Mediator") or Arbitrator (the "Substitute Arbitrator"), and shall inform the Parties in writing.

1.6.7 If the Mediator or an Arbitrator withdraws, is unable to perform or is disqualified, the Administrator shall promptly appoint a Substitute Mediator or a Substitute Arbitrator, and shall inform the parties in writing.

1.6.8 The procedures set forth in this Rule 1.6 shall apply to Substitute Mediators and Substitute Arbitrators.

1.7 Participants in Mediation and Arbitration

The Parties shall have the right to be represented by a lawyer or other representative at any Mediation or Arbitration. At the sole discretion of the Mediator or Arbitrator(s), additional persons also may be allowed to attend any Mediation or Arbitration.

1.8 Venue.

All Mediations and Arbitrations shall take place within Philadelphia County, unless otherwise agreed upon by each party and the Mediator or Arbitrator(s).

1.9 Service of notice.

All notices relating to the Mediation or the Arbitration shall be sent by regular mail to the Party's and to his/her representative's address on file with the Administrator or by other means of transmission as agreed upon by the Parties or their representatives.

1.10 Waiver of Liability.

The Philadelphia Bar Association, the Administrator, the Mediator and the Arbitrator(s), and their respective employees, employers, partners and agents, shall not be liable for any injury or damage caused in whole or in part by any act, any failure to act or any omission, including any negligent act, any negligent failure to act or any negligent omission, in connection with or arising out of any Mediation or Arbitration under the Program.

2. MEDIATION RULES

2.1 Mediation Procedures.

2.1.1 After consultation with the Parties, the Mediator shall determine the length and format of the Mediation. The initial Mediation should occur within thirty (30) days after appointment of the Mediator. The Mediator shall notify all Parties and the Administrator of the date, place and time of all Mediations.

2.1.2 If one or more Parties fail to attend a Mediation, the Mediator may terminate the Mediation.

2.1.3 At the request of a Party or the Mediator, the Mediator may meet separately with one Party and/or the Party's representative. All communications during such meetings shall be kept confidential, unless the Party or the Party's representative authorizes the Mediator to disclose such communications to the other Party and/or the Party's representative.

2.2 Conclusion of the Mediation.

After the Mediation is concluded, the Mediator shall promptly send a letter to the Administrator stating whether the Dispute was settled. If the Dispute was not settled, and if the Parties have agreed, the Dispute shall be submitted to Arbitration, in accordance with the rules set forth in Section 3.

2.3 Confidentiality

2.3.1 Except as provided in Rules 2.3.3, (i) the Parties or any other person or entity shall not file or serve any pleading, petition, motion, subpoena, discovery request or any other legal paper that would disclose, or seek disclosure of, any information, any communication or any document produced or disclosed in connection with the Mediation, (ii) the Parties or any other person or entity shall not call upon or subpoena the Parties or any of their respective lawyers or representatives to testify in any action or

proceeding regarding any information, any communication or any document produced or disclosed during or in connection with the Mediation, and (iii) the Parties or any other person or entity shall not call upon or subpoena the Mediator to testify in any action or proceeding regarding any information, any communication or any document produced or disclosed during or in connection with the Mediation.

2.3.2 Except as provided in Rule 2.3.3, the Parties and their representatives shall not divulge any information, any communication or any document disclosed in connection with the Mediation. Nothing communicated in connection with the Mediation shall be introduced as evidence, disclosed to any other person or entity (including any court or any arbitrator), be construed for any purpose as an admission against interest, or be used for any reason whatsoever (including impeachment) in any action or proceeding.

2.3.3 Information, communications or documents previously produced or disclosed to a Party, or information, communications or documents which are otherwise discoverable shall not be rendered confidential, inadmissible or non-discoverable because such information, communication or document was produced or disclosed in connection with the Mediation.

2.3.4 Except as required by law, the Mediator shall maintain the confidentiality of the Mediation.

2.3.5 No record or transcript shall be made of the Mediation.

3. ARBITRATION RULES

3.1 Appointment of Arbitrator(s)

The Administrator shall appoint the Arbitrator(s) as follows:

3.1.1 In any Dispute where the amount in controversy is from \$350.00 to \$2,000.00, the Administrator shall appoint one lawyer member of the Committee as the sole Arbitrator (the “Sole Arbitrator”).

3.1.2 In any Dispute where the amount in controversy exceeds \$2,000.00, the Administrator shall appoint two lawyer members and one non-lawyer member of the Committee as the Arbitrators (the “Panel”). The Administrator shall appoint one of the lawyer members as Chair of the Panel (the “Panel Chair”).

3.1.3 The Administrator shall give written notice of appointment(s) to all Panel members and all Parties.

3.2 Scheduling the Arbitration.

The Arbitration shall be held within sixty (60) days of the appointment of the Panel or the Sole Arbitrator. Unless extended by the Administrator, if the Arbitration is not held within sixty (60) days of the appointment, the Administrator may reassign the Dispute to a new Panel or Sole Arbitrator.

3.3 Notice of Arbitration.

The Panel Chair or Sole Arbitrator shall schedule the Arbitration and send notice to the Parties, their lawyers and representatives in the form attached hereto as Exhibit D at least twenty (20) days before the Arbitration.

3.4 Continuances.

A Panel Chair or Sole Arbitrator may, for good cause, continue the Arbitration and advise the Administrator.

3.5 Panel Quorum.

If one or more Panel members do not attend the Arbitration, then the parties and the Panel Chair may agree to proceed with fewer than three (3) Panel members. If an agreement to proceed is reached, the Parties shall execute the Waiver in the form attached hereto as Exhibit E. If no such agreement is reached, the Arbitration shall be rescheduled and held within thirty (30) days.

3.6 Attendance.

3.6.1 Except for good cause shown, if neither the Petitioner nor the Petitioner's representative appears at the Arbitration or obtains a continuance of the Arbitration, the Petitioner's claim shall be dismissed with prejudice. Except for good cause shown, if neither the Respondent who has filed a counterclaim nor the Respondent's representative appears at the Arbitration or obtains a continuance of the Arbitration, the Respondent's counterclaim shall be dismissed with prejudice. The Administrator shall determine whether good cause has been shown.

3.6.2 The Panel shall require Parties who are present to submit such evidence as the Panel may require for the making of an Award. An Award shall not be based solely on the failure of a Party to attend the Arbitration.

3.7 Arbitration.

3.7.1 At the Arbitration, each Party shall be entitled to testify, call witnesses, present evidence, and cross-examine. Each Party or witness shall testify under oath or affirmation. The Panel or Sole Arbitrator may question the Parties and their witnesses, determine the admissibility, relevance and materiality of the evidence offered, and may exclude evidence that the Panel or Sole Arbitrator deems to be cumulative, irrelevant or otherwise inadmissible. The rules of evidence shall not be strictly applied.

3.7.2 The Panel or Sole Arbitrator shall have the discretion to limit the length of the Arbitration. The length of the Arbitration shall not exceed six (6) hours. The Arbitration must be completed within thirty (30) days of the first Arbitration date.

3.8 Waiver of Arbitration.

3.8.1 If all Parties waive the Arbitration in writing, the Panel or Sole Arbitrator may decide the Dispute on written submissions alone.

3.8.2 If after reviewing the written submissions, the Panel or Sole Arbitrator concludes that an Arbitration is required, the Panel or Sole Arbitrator shall hold an Arbitration in accordance with these Rules.

3.9 Decision.

3.9.1 Immediately upon conclusion of the Arbitration, the Panel or Sole Arbitrator shall determine the appropriate disposition of the Dispute. In those Disputes heard by a three-member Panel, a majority must agree with the proposed decision. Where a Panel consists of less than three members, the decision must be unanimous.

3.9.2 Within five (5) business days after the conclusion of the Arbitration, the Panel Chair or Sole Arbitrator should submit in writing a proposed decision to the Administrator. The Panel Chair or Sole Arbitrator shall try to avoid legal terminology and to use language that the Parties will easily understand. The proposed decision shall be in the format of Exhibit F.

3.10 Award.

3.10.1 The Administrator shall review the proposed decision.

3.10.2 When the decision is final, an Award shall be issued in the form attached hereto as Exhibit G, which shall be transmitted with the decision to the Parties and their representatives, if any.

3.10.3 If a non-binding Arbitration is held in accordance with Rule 1.2.2, a non-binding opinion shall be transmitted as requested by the court or the Fund.

3.11 Enforcement.

If a Party does not comply with the Award, the Administrator may provide such information as it deems appropriate to allow a Party to enforce the Award.

3.12 Confidentiality.

Except as required by law, the Arbitrators shall maintain the confidentiality of the Arbitration.

**PHILADELPHIA BAR ASSOCIATION
LAWYER-CLIENT FEE DISPUTE PETITION**

DIRECTIONS: If you are filing a fee dispute as a client, you must have been the person who has received the legal services of the lawyer. You may not file a fee dispute petition if you paid legal fees on behalf of another person. Please answer all of the following questions completely. Failure to answer all questions will delay the processing of your claim.

1. Client Information:

Name: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Phone # Mobile: _____ Home/Work: _____
Fax: _____ E-mail: _____

2. Lawyer Information:

Name: _____
Firm Name: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Phone # Office: _____ Mobile: _____
Fax: _____ E-mail: _____

3. Was the client referred to the lawyer by the Lawyer Referral and Information Service of the Philadelphia Bar Association?

Yes: _____ No: _____

4. Please state the type of case handled by the lawyer. (Examples: Criminal, Bankruptcy, Divorce, Personal Injury, Contract)

EXHIBIT A

5. When did the client hire the lawyer? Month: _____ Year: _____
6. Has the case been completed? If yes, please state the date when services were completed. If no, please explain.
7. What was the amount of the fee charged?
8. Has the fee been paid? Please state how much money the client has paid the lawyer.
9. a. Did you pay the lawyer, or did someone else pay the lawyer on your behalf?
- b. If someone else paid the fee, please state their name, address, email address, telephone number and relation to you.
10. If applicable, how much money are you seeking from the other party?
11. Did you have a written fee agreement? If yes, please attach a copy of the fee agreement or other information to show the existence of a fee agreement.
12. a. If you will appear at an Arbitration or Mediation and have a representative, please state the name, address, email address and telephone number of your representative.
- b. If you are incarcerated or otherwise unable to appear at an Arbitration or Mediation, please state the name, address, email address and telephone number of your representative.
13. Please state, in specific detail, the nature of your complaint regarding the fee. If more space is needed, attach additional pages.

**PHILADELPHIA BAR ASSOCIATION
FEE DISPUTES COMMITTEE**

AGREEMENT TO PROCEED TO MEDIATION

This Agreement to Proceed to Mediation is entered into by and between

_____ (the "LAWYER") and

_____ (the "CLIENT").

WHEREAS, a Dispute has arisen between LAWYER and CLIENT on the amount of legal fees the LAWYER is entitled to receive from the CLIENT,

NOW, THEREFORE, LAWYER and CLIENT acknowledge that they have received the Rules of the Lawyer-Client Fee Dispute Resolution Program.

LAWYER and CLIENT expressly agree that the Philadelphia Bar Association, the Administrator, the Mediator and the Arbitrator(s), and their respective employees, employers, partners and agents, shall not be liable for any injury or damage caused in whole or in part by any act, any failure to act or any omission, including any negligent act, any negligent failure to act or any negligent omission, in connection with or arising out of any Mediation or Arbitration under the Program.

LAWYER and CLIENT expressly agree to mediate their Dispute by submitting to the Rules of the Lawyer-Client Fee Dispute Resolution Program of the Philadelphia Bar Association.

LAWYER and CLIENT intend to be legally bound by this agreement.

Client's Signature Date Client's Signature Date

Lawyer's Signature Date Lawyer's Signature Date

EXHIBIT B

**PHILADELPHIA BAR ASSOCIATION
FEE DISPUTES COMMITTEE**

AGREEMENT TO SUBMIT TO COMMON LAW ARBITRATION

This Agreement to Submit to Common Law Arbitration is entered into by and between

_____ (the "LAWYER") and

_____ (the "CLIENT").

WHEREAS, A Dispute has arisen between LAWYER and CLIENT on the amount of legal fees LAWYER is entitled to receive from CLIENT,

NOW, THEREFORE, LAWYER and CLIENT acknowledge that they have received the Rules of the Lawyer-Client Fee Dispute Resolution Program.

LAWYER and CLIENT expressly agree that the Philadelphia Bar Association, the Administrator, the Mediator and the Arbitrator(s), and their respective employees, employers, partners and agents, shall not be liable for any injury or damage caused in whole or in part by any act, any failure to act or any omission, including any negligent act, any negligent failure to act or any negligent omission, in connection with or arising out of any Mediation or Arbitration under the Program.

LAWYER and CLIENT expressly agree to submit the Dispute to Common Law Arbitration by submitting to the rules of the Lawyer-Client Fee Dispute Resolution Program and the following:

- (a) That the Award of the Committee shall be final and binding and shall have the force and effect of a verdict by jury.
- (b) That a judgment may be entered on the Award on application of a party made more than 30 days after an Award is made by the Committee under 42 Pa. C.S. Section 7341 (relating to common law arbitration).
- (c) On such application on the Award in any Court of competent jurisdiction, the Court shall enter an Order confirming the Award and shall enter a judgment or decree in conformity with the Order under 42 Pa. C.S. Section 7342 (b) (relating to confirmation and judgment).

LAWYER and CLIENT intend to be legally bound by this agreement.

_____ Client's Signature	_____ Date	_____ Client's Signature	_____ Date
_____ Lawyer's Signature	_____ Date	_____ Lawyer's Signature	_____ Date

EXHIBIT C

**PANEL CHAIR
Address**

Date

Client
Client's Address

Lawyer
Lawyer's Address

**Re: Fee Dispute #00-00
X v. X**

Dear Client and Lawyer:

I am the Chair of a Panel of the Fee Disputes Committee of the Philadelphia Bar Association, which will hear and decide your fee dispute. The other members of the Panel are:

Lawyer Panel Member
Non-Lawyer Panel Member

The hearing on the matter has been scheduled for _____, 20__ at ____ m., at _____, _____, PA. You must be present at the hearing and bring any witnesses and evidence to be presented. You may bring a lawyer or someone else to represent you at the hearing. The hearing will be conducted in accordance with the rules of the Lawyer Client Fee Dispute Resolution Program. **You should review the rules prior to the hearing.**

If one party does not appear, the hearing may still take place.

Very truly yours,

Panel Chair

cc: Lawyer Panel Member
Non-Lawyer Panel Member
Managing Attorney, Fee Dispute Committee

EXHIBIT D

FEE DISPUTE #

: **FEE DISPUTES COMMITTEE**
:
: **OF THE**
:
: **PHILADELPHIA BAR ASSOCIATION**
:

WAIVER

The Parties to this Dispute have entered into an Agreement to Submit to Common Law Arbitration. Rule 3.1.2 of the Lawyer-Client Fee Dispute Resolution Program provides that this Dispute shall be heard by a panel consisting of two lawyers and one non-lawyer. The Panel Chair has learned that one or more panel members is unable to attend the hearing and has advised the parties of their right under the Lawyer-Client Fee Dispute Resolution Program to request that the hearing be rescheduled before a full panel.

Notwithstanding the foregoing, the Parties to this Dispute hereby waive only their right to a hearing before a three-member panel, and consent to a hearing before the panel member(s) in attendance. The Agreement to Submit to Common Law Arbitration shall remain in full force and effect.

Client Date

Lawyer Date

EXHIBIT E

**PANEL CHAIR
Address**

Date

Chair, Fee Disputes Committee
Philadelphia Bar Association
1101 Market Street
11th Floor
Philadelphia, PA 19107

**Re: Fee Dispute #00-00
X v. X**

Dear Chair:

The Panel Chair's letter should include the following information in narrative form:

1. The date the Panel was appointed.
2. Names of Panel members.
3. Names of Parties and their representatives, if applicable.
4. Date and location of hearing.
5. Names of participants in attendance.
6. Issues raised by Petition, Answer and Counterclaim, if applicable.
7. Brief review of evidence presented by each Party.
8. Resolution of conflicts in evidence.
9. Resolution of issues presented.
10. Decision of Panel written in a manner that is enforceable, without conditions or contingencies.

* Please note that your decision will be transmitted with the Award to the Parties and their representatives, if applicable.

Very truly yours,

Panel Chair

cc: Lawyer Panel Member
Lay Panel Member

EXHIBIT F

FEE DISPUTE #00-00

PARTY A : FEE DISPUTES COMMITTEE
:
VS. : OF THE
:
PARTY B : PHILADELPHIA BAR ASSOCIATION

AWARD OF PANEL

The Parties submitted this Dispute to Arbitration and agreed in writing to be legally bound by the Fee Dispute Committee's Award. Judgment may be entered on the Award in any court of record in the Commonwealth of Pennsylvania in accordance with Title 42 Pa. C. S. A. §§ 7341 & 7342.

The Committee makes the following Award:

Co-Chair, Fee Disputes Committee

Date: _____

EXHIBIT G