MODEL RULES FOR FEE ARBITRATION  
(February 2012)

RULE 1: GENERAL PRINCIPLES AND JURISDICTION

(A) Definitions. The following definitions shall apply in all fee arbitration proceedings:

(1) "Client" means a person or entity who directly or through an authorized representative consults, retains or secures legal service or advice from a lawyer in the lawyer's professional capacity.

(2) "Commission" means the Fee Arbitration Commission.

(3) "Decision" means the determination made by the panel in a fee arbitration proceeding.

(4) "Lawyer" means:
   (a) a person admitted to practice law in this jurisdiction;
   (b) a person formerly admitted to practice law in this jurisdiction or any other jurisdiction with respect to acts committed prior to resignation, suspension, disbarment or transfer to inactive status, or with respect to acts subsequent thereto that amount to the practice of law;
   (c) a person admitted to practice law in another jurisdiction who is specially admitted by a court in this jurisdiction for a particular proceeding;
   (d) a person admitted to practice law in another jurisdiction who practices law or renders any legal services in this jurisdiction; and
   (e) the assignee of any of the above-named persons in regard to rights or responsibilities related to the fees or costs that are the subject of the arbitration.

(5) "Panel" means the arbitrator(s) assigned to hear a fee dispute and to issue a decision.

(6) "Party" means the client, the lawyer(s) responsible for the representation, the lawyer's assignee, and any third person or entity who may be liable for payment of, or entitled to a refund of lawyer's fees.

(7) "Petition" means a written request for fee arbitration in a form approved by the Commission.

(8) "Petitioner" means the party requesting fee arbitration.

(9) "Respondent" means the party with whom the petitioner has a fee dispute.

(B) Establishment; Purpose. It is the policy of the [highest court of appellate jurisdiction] to encourage the informal resolution of fee disputes between lawyers who practice law in [name of jurisdiction] and their clients. In the event such informal resolution cannot be achieved, [highest court of appellate jurisdiction] hereby establishes through adoption of these Rules, a program and procedures for the arbitration of disputes concerning any and all fees and/or costs paid, charged, or claimed for professional services by lawyers.
(C) Commission Authority. A lawyer admitted to practice in this jurisdiction is subject to the authority of the Fee Arbitration Commission in this jurisdiction, regardless of where the conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the authority of the Fee Arbitration Commission of this jurisdiction if the lawyer provides any legal services related to the matter that is the subject of the arbitration in this jurisdiction.

(D) Choice of Law. In any exercise of the authority of the Fee Arbitration Commission of this jurisdiction, the rules of professional conduct to be applied shall be as follows:
(1) for conduct in connection with a matter pending before a tribunal, the rules of the tribunal shall apply; and
(2) for any other conduct, the rules of the jurisdiction in which the conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct.

(E) Arbitration Mandatory for Lawyers. Fee arbitration pursuant to these Rules is voluntary for clients and mandatory for lawyers if commenced by a client. If at any time the parties have agreed, in writing, to submit fee disputes to Mandatory Fee Arbitration, arbitration is mandatory for both the lawyer and the client.

(F) Binding and Nonbinding Arbitration.
(1) Fee arbitration is only binding if,
   (a) all parties have agreed in writing, after the dispute has arisen, that it will be binding, or
   (b) none of the parties have sought a trial de novo within 30 days after service of the decision. This period shall not be extended by an application for modification of decision as permitted under Rule 6(C).
(2) A party who is found to have willfully failed to appear for the arbitration hearing is not entitled to a trial de novo. The determination of whether the party’s non-appearance at hearing was willful shall be made by the court determining a motion for trial de novo. The arbitrator’s finding on the issue of willful non-appearance is admissible in the court proceeding.
(3) After all parties have agreed in writing to be bound by an arbitration decision in accordance with Rule 1(F)(1), a party may not withdraw from that agreement unless all parties consent to the withdrawal in writing. At any time during the proceedings, the parties may agree in writing to be bound by the decision.

(G) Disputes Covered. Disputes concerning fees, costs, or both paid, charged, or claimed for professional services by a lawyer are subject to these Rules, except:
(1) disputes where the lawyer is also admitted to practice in another jurisdiction, the lawyer maintains no office in this jurisdiction, and no material portion of the legal services was rendered in this jurisdiction;
(2) claims for affirmative relief for damages against the lawyer based upon
alleged malpractice or professional misconduct, except as provided in Rule 5(T); (3) disputes where entitlement to and the amount of the fees and/or costs charged, claimed, or paid to a lawyer by the client or on the client's behalf have been authorized by statute or are determinable by court order; and (4) disputes where the request for arbitration is filed more than [four] year(s) after the client-lawyer relationship has been terminated or more than [four] year(s) after the final billing has been received by the client, whichever is later, unless a civil action concerning the disputed amount is not barred by the statute of limitations.

(H) Notice of Right to Arbitration; Stay of Proceedings; Waiver by Client. (1) Prior to or at the time of service of a summons in a civil action against his or her client for the recovery of fees, costs, or both for professional services rendered, a lawyer shall deliver to the client or the person liable for payment of the lawyer’s fees if other than the client, a written notice of the client's right to arbitrate under the fee arbitration program. The notice, in a form approved by the Commission, shall include a provision advising the client that failure to file a Petition for Fee Arbitration within 30 days of receipt of notice of the right to arbitrate shall constitute a waiver of the right to arbitrate. Failure to give this notice shall be grounds for dismissal of the civil action without prejudice. (2) If a lawyer commences a fee collection action in any court or other tribunal, the lawyer must notify the court or other appropriate authority that a Petition for Arbitration was filed with the Commission within [thirty] days of service of the notice of the right to arbitrate. (3) After a client files a timely Petition, the lawyer shall refrain from any judicial or non-judicial collection activities related to the fees and/or costs in dispute pending the outcome of the arbitration. (4) Unless all parties agree in writing to the arbitration, the right of the client to petition for an arbitration is waived if: (a) the client fails to file a Petition for Arbitration within [thirty] days of service of the notice of right to arbitrate; or (b) the client commences an action or files any pleading seeking judicial resolution of the fee dispute, or seeks affirmative relief against the lawyer for damages based upon alleged malpractice or professional misconduct; or (c) the client files an answer or equivalent response in an action or other proceeding prior to filing a petition for fee arbitration, if notice of the client’s right to fee arbitration was properly given pursuant to this Rule, unless the client can show good cause for filing the answer or equivalent response after receiving notice of the right to arbitration.

Comment

[1] A fee arbitration system provides lawyers and clients with an out-of-court method of resolving disputes regarding lawyer’s fees, costs, or both that is expeditious, confidential, inexpensive, and impartial. The court should ensure adequate funding for an effective program.
[2] For the purpose of these Rules, “assignee” refers to a person to whom the lawyer has transferred any interest in or right to the fees or costs that are the subject of the arbitration.

[3] The scope of these Rules includes costs charged by the lawyer as well as fees, because in many cases, fees and costs are inextricably linked. The fee arbitration process should be able to resolve both issues in one process.

[4] A client who believes he or she may have been overcharged by a lawyer may have the lawyer's fee reviewed without incurring the expense of formal litigation. Participation in the Fee Arbitration Program is mandatory for lawyers if the request for arbitration is commenced by a client. Because the inherent regulatory authority of the highest court of appellate jurisdiction extends only to lawyers, fee arbitration is not mandatory for clients unless agreed to pursuant to these Rules. If the parties agreed, in writing, to submit their disputes over fees and costs to the Fee Arbitration Program, then arbitration is also mandatory for the client. The parties may enter into such an agreement at any time.

[5] The fee arbitration decision is binding only upon written agreement of the parties entered into after the fee dispute has arisen. While the lawyer and client may agree to enter into fee arbitration to settle a potential fee dispute before a dispute arises, the client should not be asked to surrender the right to challenge the fee arbitration decision before the dispute arises. This distinction acknowledges the fact that a client’s considerations at the onset of the client-lawyer relationship may change if the relationship becomes adversarial. In the absence of a written agreement to be bound by the arbitration decision, any party may seek a trial de novo within 30 days after service of the decision. If the parties have an existing private arbitration agreement to resolve the fee dispute outside of the Fee Arbitration Program, then private arbitration would substitute for a trial de novo. The decision becomes binding if neither party seeks a trial de novo within the 30-day period. However, a party who is found to have willfully failed to appear for the arbitration hearing is not entitled to a trial de novo following nonbinding arbitration.

[6] An alternative approach, which currently works effectively in those jurisdictions where it has been adopted, is to provide for arbitration that is both mandatory and binding in all cases. Under such a system, the arbitration decision is binding on the parties, subject to appeal only in cases of demonstrable and fundamental unfairness in the procedures utilized in deciding the matter.

[7] A lawyer should notify a client of the right to participate in the Fee Arbitration Program prior to or at the time of service of a summons in a civil action against the client to recover fees and/or costs for professional services. Notice is accomplished by delivery, to the client, in accordance with Rule 10(A), of the Notice form approved by the Commission. The client should file a Petition for Fee Arbitration within [thirty] days of receipt of service of such notice or the client waives the right to petition or maintain an arbitration proceeding under these rules. If all parties agree to set aside any purported waiver, the fee arbitration can proceed even if the client did not file the Petition for Fee Arbitration within the [thirty] day period.
[8] A third person who is not the client, but who the lawyer believes is liable for or who claims an entitlement to a refund of lawyer’s fees or costs, is entitled to receive notice of the right to arbitration and to appear as a party in fee arbitration. Fee arbitration between a lawyer and a non-client is not intended to abrogate the requirement that the lawyer exercise independence of professional judgment on behalf of the client. Absent the client’s written consent to disclosure of confidential information, a fee arbitration is not intended to abrogate the lawyer’s duty to maintain the confidentiality of information relating to the representation of the client, unless such disclosure is otherwise permitted by law, applicable rules, or court order. Absent the client’s signature on the request for arbitration, when an arbitration with a non-client is initiated, notice of the request should be sent to the client at the client’s last known address.

[9] If the parties have not entered into a written fee agreement that provides for fee arbitration, the client may waive the right to the fee arbitration program by: commencing a civil action, filing any pleading seeking judicial resolution of the fee dispute, seeking affirmative relief against the lawyer for damages based on alleged malpractice, or by filing an answer to a civil action or equivalent pleading after having received notice of the client’s right to arbitration from the lawyer, unless the client can show good cause why the answer was filed after receiving notice of the right to fee arbitration. This provision assumes that notice was properly given. Waiving the right to the fee arbitration program in these limited circumstances prevents the same facts from being the subject matter of the arbitration and a civil action, and discourages forum shopping. Nothing herein precludes a client from filing a complaint with the disciplinary authority. Nothing in these Rules prevents the filing of a malpractice action after a decision is rendered in the fee arbitration proceeding if the malpractice action is otherwise permitted under the applicable statute of limitations. In accordance with Rule 7(B)(4), a decision under these Rules is not admissible in a subsequent malpractice action or trial de novo following nonbinding arbitration except as provided in these Rules.

[10] The Fee Arbitration Program can be expanded by the Commission with applicable rules to arbitrate fee disputes between lawyers provided the petitioning lawyer gives notice to the client and the client joins the request for arbitration as a party.

[11] The Commission is not authorized to impose or require an automatic stay of any civil action or other judicial or administrative proceeding. It is the responsibility of the lawyer who commenced an action or other proceeding to collect fees to notify the court or program administering the other proceeding that a timely request for arbitration was filed. The lawyer should also agree to refrain from judicial or non-judicial collection pending the outcome of the fee arbitration.

Rule 2: FEE ARBITRATION COMMISSION

(A) Appointment of Commission. The [highest court of appellate jurisdiction] shall appoint a Fee Arbitration Commission to administer the Fee Arbitration Program. The [highest court of appellate jurisdiction] shall designate one member to serve as Chair of the Commission.
(B) Composition. The Commission shall consist of [nine] members of whom one-third shall be nonlawyers. Members shall be appointed for terms of three years or until a successor has been appointed. Appointments shall be on a staggered basis so that the number of terms expiring shall be approximately the same each year. No members shall be appointed for more than two consecutive full terms, but members appointed for less than a full term (either originally or to fill a vacancy) may serve two full terms in addition to such part of a term.

(C) Duties of the Commission. The Commission shall have the following powers and duties:

1. to appoint, remove and provide appropriate training for lawyer and nonlawyer arbitrators and arbitration panels;
2. to interpret these Rules;
3. to approve forms, and decision form language;
4. to establish written procedures that afford a full and equal opportunity to all parties to present relevant evidence;
5. to issue an annual report and periodic policy recommendations, as needed, to the [highest court of appellate jurisdiction] regarding the program;
6. to maintain all records of the Fee Arbitration Program;
7. to determine challenges for cause where an arbitrator has not voluntarily acceded to a challenge;
8. to determine challenges to the Fee Arbitration Program’s jurisdiction to arbitrate a dispute, including claims that the client has waived the right to arbitration or that the dispute is not subject to the Fee Arbitration Program;
9. to educate the public and the bar about the Fee Arbitration Program; and
10. to perform all acts necessary for the effective operation of the Fee Arbitration Program.

Comment

[1] Overall authority to administer the Fee Arbitration Program is delegated by the [highest court of appellate jurisdiction] to the Commission. Both lawyers and nonlawyers serve on the Commission. Commission members are appointed by the court for a three year terms. The court should ensure diversity in the membership of the Commission.

[2] Members may be appointed for a period not to exceed two consecutive full terms and a portion of an additional term, if appointed originally to less than a full term. A rotation system is employed in the appointment of members so that, generally, the terms of one-third of the members expire annually. This procedure preserves continuity while inviting the fresh ideas that new personnel inevitably bring to a task.

[3] The Commission has the duty to inform the bar and the public about the Fee Arbitration Program through such means as brochures, public service announcements, and any other means available. There should be a central place where the public can call with questions about lawyers and which can refer appropriate matters to the Fee Arbitration Program. Members of the bar
should be encouraged to inform any member of the public known to have a fee dispute with a lawyer about the right to seek fee arbitration or to pursue other available means to resolve the dispute, such as mediation.

[4] Depending on funding, pro bono requirements, and other considerations, the Commission may authorize the reimbursement of reasonable costs and expenses to its members and to arbitrators. The Commission may employ staff to perform functions delegated by the Commission. The Commission can authorize local bar associations to sponsor and conduct fee arbitration programs. However, a client who believes he or she may not be able to obtain a fair resolution at the local level should be permitted to utilize the statewide program.

Rule 3: ARBITRATORS

(A) List of Approved Arbitrators. The Commission shall maintain a list of approved arbitrators and shall adopt written standards for the appointment of the arbitrators. Such standards should ensure appropriate training and experience for arbitrators as well as diversity in the background and experience of the arbitrators. Arbitrators shall be appointed for terms of [three] years and may be reappointed. For good cause, the Commission may remove an arbitrator from the list of approved arbitrators, and may appoint a replacement member to serve the balance of the term of the removed member.

(B) Panels. The Commission shall appoint panels from the list of approved arbitrators. For disputes involving [$7,500] or more, the panel shall consist of three arbitrators of whom one shall be a nonlawyer member. For disputes involving less than [$7,500], or in any case if the parties so stipulate, the panel shall consist of a sole arbitrator who shall be a lawyer. If the panel consists of three members, the Commission shall designate one lawyer member to act as Chair of the panel and to preside at the arbitration hearing. When a three-member panel is appointed, all panel members must be present for the panel to proceed, except, the parties may agree, in writing, to accept a single lawyer arbitrator in lieu of a three member panel.

(C) Area of Practice. At the option of the client, one member of a three-member panel or the sole arbitrator shall be a lawyer with significant experience in the same area of law as the underlying matter that gave rise to the dispute. The client shall be informed of this option (as part of the notice of the right to arbitration).

(D) Impartiality. Within [five] days of the notification of appointment to a panel, an arbitrator shall notify the Commission of any reason why the arbitrator's impartiality might reasonably be questioned, including, but not limited to the circumstances listed in ABA Model Code of Judicial Conduct Rule 2.11(A). Upon notification of the conflict, the Commission shall appoint a replacement from the list of approved arbitrators.
(E) **Challenges.** Each party may disqualify one arbitrator without cause and may challenge any arbitrator for cause. A challenge for cause must include the reason for the challenge. Any challenge or request for disqualification shall be filed within [fifteen] days after service of the notice of appointment. If the challenge or request for disqualification is not timely filed, it will be ineffective, unless good cause is shown why the request was not timely filed. An arbitrator shall accede to a reasonable challenge and the Commission shall appoint a replacement. If an arbitrator does not voluntarily accede, the Commission shall decide whether to appoint a replacement. The decision of the Commission on challenges shall be final.

(F) **Prohibited Contact with Arbitrators.** A party or a lawyer or representative acting for a party shall not directly or indirectly communicate with an arbitrator regarding a matter pending before such arbitrator, except:

1. at scheduled hearings;
2. in writing with a copy to all other parties, or their representative counsel, if any, and the Commission;
3. for the sole purpose of scheduling a hearing date or other administrative procedure with notice of same to other parties;
4. for the purpose of obtaining the issuance of a subpoena as set forth in these Rules; or
5. in the event of an emergency.

(G) **Duties.** The panel shall have the following powers and duties:

1. to take and hear evidence pertaining to the proceeding;
2. to administer oaths and affirmations;
3. to compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding;
4. to consider challenges to the validity of subpoenas;
5. to issue decisions; and
6. to perform all acts necessary to conduct an effective arbitration hearing.

**Comment**

[1] The Commission appoints both lawyers and nonlawyers to serve as arbitrators for [three] year renewable terms, and maintains a list of approved arbitrators. An arbitration panel composed of lawyers and nonlawyers results in a more balanced evaluation of fee disputes and enhances the credibility of the fee arbitration program for clients. When a Petition is received, the Commission appoints from the list of approved arbitrators a panel of one or three arbitrators to hear the matter, depending on the amount in dispute. The Commission may hire staff or designate a presiding arbitrator to handle the appointment of panels or other administrative tasks as delegated by the Commission. The number of people on the list of approved arbitrators should not be so large as to prevent the participating arbitrators from obtaining sufficient experience in the program.
[2] Appointments to the list of approved arbitrators should represent all segments of the profession and the general population, including diversity on the basis of race, gender and practice setting. Arbitrators should also be dispersed throughout the state to increase access to the fee arbitration process.

[3] The Commission should adopt written standards for appointment of arbitrators which should include compliance with training requirements, ability to meet minimum time and case commitments, years in practice, and experience. All panels of more than one arbitrator should include one nonlawyer member.

[4] Members of panels exercise a quasi-judicial role and should, therefore, be disqualified upon the same grounds and conditions applicable to judges. The Commission should provide that within [fifteen] days after service of the notice of appointment, any party may file one peremptory challenge. In the event of a peremptory challenge, the Commission should relieve the challenged arbitrator and appoint a replacement.

[5] Panels do not render advisory opinions but, rather, adjudicate fee controversies between lawyers and clients.

[6] In jurisdictions with a high volume of arbitration cases, consideration should be given to having pre-set arbitration panels that meet at specified times to simplify the scheduling of hearings.

Rule 4: COMMENCEMENT OF PROCEEDINGS

(A) Petition to Arbitrate. A fee arbitration proceeding shall commence with the filing of a Petition for Arbitration on a form approved by the Commission and by paying the appropriate filing fee as established by the [highest court of appellate jurisdiction]. Any person who is not the client of the lawyer, but who has paid or may be liable for the lawyer's fees, may commence or join the arbitration as a party to the arbitration. The Petition for Arbitration must be signed by the client and/or any other proper party seeking fee arbitration.

(B) Commission Review. The Commission shall review the Petition to determine if it is properly completed and if the Commission has jurisdiction. If the Petition is not properly completed, the Commission will return it to the petitioner and specify what clarification or additional information is required. If the Commission believes, based on the face of the Petition, that the fee arbitration program does not have jurisdiction, the petitioner shall be so advised. The parties shall be given an opportunity to submit written statements supporting their respective positions. The Commission will make a determination of whether jurisdiction should be accepted based on these Rules and the written materials submitted.
(C) Service of Petition; Response. Within [five] days of the receipt of a properly completed Petition, the Commission shall serve a copy of the Petition, along with a Fee Arbitration Response Form on the respondent, and provide notice to the law firm, if any, with which a lawyer-party is associated that a petition for arbitration has been filed. Within [twenty] days after service, the respondent shall file the completed Fee Arbitration Response Form with the Commission, which shall forward a copy to all other parties. If the respondent is a lawyer, the respondent shall set forth in the response the name of any other lawyer or law firm who the lawyer claims is responsible for all or part of the client's claim. Within [five] days of receipt of the response, the Commission shall serve on the lawyer(s) named in the response a copy of the Petition for Arbitration and a Fee Arbitration Response Form for completion, with a copy to the law firm, if any, with which a lawyer-party is associated. Within [twenty] days after service, the lawyer(s) may file the completed Fee Arbitration Response Form with the Commission which shall forward a copy to all other parties.

(D) Failure of a Lawyer Respondent to Respond. Failure of a lawyer respondent to file the Fee Arbitration Response Form shall not delay the scheduling of a hearing; however, in any such case the panel may, in its discretion, refuse to consider evidence offered by the lawyer that would reasonably be expected to have been disclosed in the response.

(E) Client Consent Required. If a lawyer files a Petition for Arbitration, the arbitration shall proceed only if the client files a written consent within [thirty] days of service of the Petition.

(F) Settlement of Disputes. If the dispute giving rise to the Petition for Arbitration has been settled, upon reasonable confirmation of that settlement, the matter shall be dismissed by the Commission or by the panel if one has been assigned.

(G) Appointment of Panel. The Commission shall, within [ten] days after receipt of the Petition for Arbitration, appoint a panel and mail to the parties written notification of the name(s) of the panel member(s) assigned to hear the matter.

Comment

[1] The fee arbitration process begins with the filing of a Petition for Arbitration on a form approved by the Commission. The respondent has twenty days after service to return the Fee Arbitration Response Form. The process is commenced either unilaterally by a client or by the lawyer with the client's consent. If it is initiated by the client, participation is mandatory on the part of the lawyer.

[2] The Fee Arbitration Program is designed to be simple and fast. Consequently, most cases should be concluded within six months.
[3] The respondent lawyer(s) named by the client as being the person(s) responsible for refunding an unearned fee is entitled to identify another lawyer(s) as being responsible for providing such refund to the client. The client must be notified that another lawyer(s) has been so named and that the client has the right to join that named individual in the fee arbitration.

[4] Nothing in these Rules precludes a client from naming more than one lawyer in a fee arbitration if each named lawyer has either had direct or actual responsibility for the underlying representation or is named as the billing lawyer for the underlying representation.

[5] If a respondent lawyer fails to timely file a Fee Arbitration Response Form, the hearing will nonetheless be held in the normal course and the panel may, in its discretion, refuse to consider evidence offered by the respondent lawyer that would reasonably be expected to have been disclosed in the Response. This is not intended as a default procedure. It will still be necessary for the panel to assess the evidence presented and issue a decision.

[6] The Commission must serve a copy of the Petition and the Fee Response Form on the law firm, if any, of which a lawyer is a member. The purpose of this rule is to assure that where a law firm is due a fee, or is obligated therefore, the law firm will have notice of the arbitration and an opportunity to participate. Notice of the fee arbitration proceeding also allows the associated law firm the opportunity to identity and address problematic billing patterns in a timelier manner.

Rule 5: HEARING

(A) Notice of Hearing. The panel shall set the date, time and place for the hearing. The panel shall send written notice of the hearing to the parties not less than [thirty], but no more than [sixty], days in advance of the hearing date, unless otherwise agreed by the parties.

(B) Representation by Counsel. Any party, at their expense, may be represented by counsel.

(C) Recording of Proceedings. No stenographic, audio, or video recording of the hearing is permissible.

(D) Continuances. For good cause shown, a panel may continue a hearing upon the request of a party or upon the panel's own motion.

(E) Oaths and Affirmations. The testimony of witnesses shall be by oath or affirmation administered by the sole arbitrator or panel Chair.

(F) Panel Quorums. All three arbitrators shall be required for a quorum where the panel consists of three members. A panel of three arbitrators shall act with the concurrence of at least two arbitrators. Any dissenting positions must be filed with the majority decision.
(G) Appearance; Failure of a Party to Appear. Appearance by a party at a scheduled hearing shall constitute waiver by said party of any deficiency with respect to the giving of notice of hearing. The panel shall proceed in the absence of any party or representative who, after due notice, fails either to be present or to obtain a continuance. A decision shall be made on the basis of the petition, response, testimony of the party in attendance and other materials presented, and not based on the default of a party. The panel shall require parties who are present to submit such evidence as the panel may require to issue a decision. A decision may be made in favor of a party who is absent if the evidence so warrants. If neither party appears, the panel will issue a decision based on the petition, response, and other materials presented prior to the arbitration.

(H) Waiver of Personal Appearance. Any party may waive personal appearance and designate a lawyer or nonlawyer representative to appear at the hearing to submit the client’s written testimony and exhibits with the client’s written declaration under oath to the panel. Such declarations shall be filed with the panel at least [ten] days prior to the hearing. If all parties, in writing, waive appearances at a hearing, the matter may be decided on the basis of written submissions. If the panel concludes that oral presentations are necessary, the panel may schedule a hearing.

(I) Telephonic Hearings. In its discretion, a panel may permit a party to appear or present witness testimony at the hearing by telephonic conference call.

(J) Stipulations. Agreements between the parties as to issues not in dispute and the voluntary exchange of documents prior to the hearing are encouraged.

(K) Evidence. The panel shall accept such evidence as is relevant and material to the dispute and request additional evidence as necessary to understand and resolve the dispute. The rules of evidence [of the jurisdiction] need not be strictly followed. The parties shall be entitled to be heard, to present evidence and to cross-examine parties and witnesses. The panel shall judge the relevance and materiality of the evidence.

(L) Subpoenas. Upon request of a party the panel shall issue in blank subpoenas for witnesses or documents necessary to a resolution of the dispute. The requesting party shall be responsible for service of the subpoenas.

(M) Reopening of Hearing. For good cause shown, the panel may reopen the hearing at any time before a decision is issued.

(N) Death or Incompetency of a Party. In the event of death or incompetency of a party, the personal representative of the deceased party or the guardian or conservator of the incompetent may be substituted.
(O) Burden of Proof. The burden of proof shall be on the lawyer to prove the reasonableness of the fee by a preponderance of the evidence.

(P) Order of Proof. The parties shall present their proof in a manner determined by the panel.

(Q) The Commission shall not lose jurisdiction, nor shall any arbitration be dismissed or any decision invalidated or modified in any way, solely because of the Commission’s or panel’s failure to comply with time requirements set forth in these Rules.

(R) Upon request, the panel may permit the client to be accompanied by a person for personal assistance or support. Any such person shall be subject to the confidentiality of the arbitration proceedings.

(S) No discovery is allowable except as specifically set forth in these Rules.

(T) Evidence relating to claims of malpractice and final orders of professional misconduct shall be admissible only to the extent that those claims bear upon the fees, costs, or both, to which the lawyer claims to be entitled. The arbitrators shall not award affirmative relief, in the form of damages or offset or otherwise, for injuries underlying any such claim. Nothing in these Rules shall be construed to prevent the arbitrators from awarding the client a refund of unearned fees, costs, or both previously paid to lawyer.

Comment

[1] The goal of these Rules is to provide a setting for hearings that is informal yet fair. To that end, the panel has discretion to grant postponements but need not permit the process to be subverted by unexcused absences. The panel will receive the evidence and testimony offered and judge its relevance and materiality. While the hearing may be conducted informally, witnesses should be required to testify under oath. Support persons are permitted to provide support or assistance to the client.

[2] Clients may be hesitant to participate in the fee arbitration program or pursue other civil remedies to settle a fee dispute for fear that confidential information may be disclosed by the lawyer as permitted under Rule 1.6 of the Model Rules of Professional Conduct. The prohibition against recordings in fee arbitration proceedings helps to ensure that any disclosure of the client’s confidential information is limited to the fee arbitration proceedings.

[3] There is no provision for formal discovery; however, the panel has the power of subpoena, subject to rules of relevancy and materiality.

[4] The burden of proof in fee arbitration is on the lawyer to prove the reasonableness of the
fee by a preponderance of the evidence. See, Rule 1.5 of the ABA Model Rules of Professional Conduct, Rule 1.5 which provides that a lawyer's fee shall be reasonable.

[5] The panel should admit evidence relating to claims of malpractice and professional misconduct, but only to the extent that those claims bear upon the fees, costs, or both to which the lawyer claims to be entitled. The panel may not award affirmative relief in the form of damages for injuries underlying any such claim.

Rule 6: DECISION

(A) Form of Decision. The panel's decision shall be in writing and shall include the names of the responsible lawyer(s), a clear statement of the amount in dispute, all questions submitted to the panel, whether and to whom monies are due, and a brief explanation of the decision. The panel shall be authorized to include an allocation of the filing fee in the arbitration decision; however, it shall not include an award for any other costs of the arbitration, including lawyer's fees resulting from the arbitration proceeding, notwithstanding any contract between the parties providing for such an award of costs or lawyer's fees.

(B) Issuance of Decision. The decision should be rendered within [thirty] days of the close of the hearing or from the end of any time period permitted by the panel for the filing of supplemental briefs or other materials. No decision is final or is to be served until the decision is approved for procedural compliance by the Commission or its designee. The arbitrator or panel Chair shall forward the decision to the Commission, which shall serve a copy of the decision on each party to the arbitration. At the time of service of the decision on the parties, the parties shall also be provided with notice of post-arbitration rights, on a form approved by the Commission.

(C) Modification of Decision.

1. On application to the panel by a party to a fee dispute, the panel may modify or correct a decision if:
   (a) there was an error in the computation of figures or a mistake in the description of a person, thing, or property referred to in the decision;
   (b) the decision is imperfect in a matter of form not affecting the merits of the proceeding; or
   (c) the decision needs clarification.

2. Any party may file an application for modification with the panel within [twenty] days after service of the decision and shall serve a copy of the application on all other parties. An objection to the application must be filed with the panel within [ten] days after service of the application for modification.

3. An application for modification shall not extend the thirty day time period to seek trial de novo under these Rules.

4. Any corrected or amended decision shall be served by the Commission. The time for filing a petition to correct, amend, or vacate the decision begins from the date of service of the amended or corrected decision or the date of denial of
the request for correction or amendment of the decision.

(D) Retention of Files. The Commission shall maintain all fee arbitration files for a period of [three] years from the date a decision is issued.

Comment

[1] In order to bring a final and speedy conclusion to fee disputes, the decision of the panel is required to be in writing and should be rendered within thirty days. Discretion to extend the time period for unusually complicated or difficult matters should be provided.

[2] Where the petitioner has paid a filing fee for fee arbitration, the arbitrator(s) may allocate the filing fee between both parties. Contracts between the parties providing for lawyer’s fees and costs should not be enforced as part of the fee arbitration decision.

[3] The decision should be accompanied by a notice on a form approved by the Commission advising the parties of their rights to judicial relief subsequent to the arbitration proceeding.

Rule 7: EFFECT OF DECISION; ENFORCEMENT

(A) Compliance with Decision.
(1) Where the parties have agreed to be bound by the arbitration or have settled the dispute, the parties shall have [thirty] days from service of the written decision or the date the stipulation of settlement is signed by the parties to comply with the decision or settlement.
(2) Where there is no agreement to be bound by the arbitration, any party is entitled to a trial de novo if sought within thirty days from service of the written decision, except that if a party willfully fails to appear at the arbitration hearing, that party shall not be entitled to a trial de novo. The determination of willfulness shall be made by the court. The party who failed to appear at the arbitration shall have the burden of proving that the failure to appear was not willful. In making its determination, the court may consider any findings made by the arbitrators on the subject of a party's failure to appear. If a trial de novo is not sought within 30 days, the decision becomes binding.

(B) Trial De Novo.
(1) If there is an action pending, the trial de novo shall be initiated by filing a rejection of arbitration decision and request for trial in that action within 30 days from service of the written decision.
(2) If no action is pending, the trial de novo shall be initiated by the commencement of an action in the court having jurisdiction over the amount in controversy within thirty days from the service of the written decision.
(3) The party seeking a trial de novo shall be the prevailing party if that party obtains a judgment more favorable than that provided by the arbitration decision, and in all other cases the other party shall be the prevailing party. The
prevailing party may, in the discretion of the court, be entitled to an allowance for reasonable attorney's fees and costs incurred in the trial de novo, which allowance shall be fixed by the court. In determining the lawyer's fees, the court shall consider the decision and determinations of the arbitrators, in addition to any other relevant evidence.

(4) Except as provided in this Rule, the decision and determinations of the arbitrators shall not be admissible in any action or proceeding and shall not operate as collateral estoppel or res judicata.

(C) Petition to Confirm, Correct, or Vacate the Decision.

(1) If a civil action has been stayed pursuant to these Rules, any petition to confirm, correct, or vacate the decision shall be filed with the court in which the action is pending, and shall be served in accordance with the [jurisdiction's statutes or rules of civil procedure.]

(2) If no action is pending in any court, the decision may be confirmed, corrected, or vacated by petition to the court having jurisdiction over the amount of the decision, in accordance with the [jurisdiction's statutes or rules of civil procedure].

(3) A court confirming, correcting or vacating a decision under these rules may award to the prevailing party reasonable fees and costs including, if applicable, fees or costs on appeal, incurred in obtaining confirmation, correction or vacation of the decision. The party obtaining judgment confirming, correcting, or vacating the decision shall be the prevailing party except that, without regard or consideration of who the prevailing party may be, if a party did not appear at the arbitration hearing in the manner provided by these Rules, that party shall not be entitled to lawyer's fees or costs upon confirmation, correction, or vacation of the decision. In determining the lawyer's fees, the court shall consider the fee arbitration decision and determinations of the arbitrator(s), in addition to any other relevant evidence.

Comment

[1] Thirty days is considered a reasonable time period in which to expect the parties to comply with the decision. The thirty days begins to run when the decision in the fee arbitration process is served on the parties or when a settlement agreement is signed.

[2] The Commission itself has no authority to enforce a decision. Either party may use the summary action mechanisms that are provided by the jurisdiction to obtain a judgment consistent with the panel's decision as expeditiously as possible.

[3] Reasonable fees and costs may be awarded to the prevailing party in an action to confirm, correct or vacate a panel decision, unless the prevailing party failed to appear at the arbitration hearing in the manner provided in these Rules. This exception should encourage full participation of the parties in the arbitration proceeding.
Every jurisdiction is encouraged to consider developing means of assisting clients in enforcing decisions. Some jurisdictions use a panel of pro bono lawyers to assist the clients in obtaining civil judgments. Some jurisdictions refer lawyers who fail to comply with a decision or judgment to an appropriate agency for administrative, non-disciplinary action such as that used in the jurisdiction for failure to comply with mandatory continuing legal education requirements or failure to pay registration fees.

**Rule 8: CONFIDENTIALITY**

(A) Confidentiality of Proceedings. Except as may be otherwise necessary for compliance with these Rules or to take ancillary legal action with respect thereto, all records, documents, files, proceedings and hearings pertaining to the arbitration of any dispute under these Rules shall be confidential and closed to the public, unless ordered open by a [court of general jurisdiction] upon good cause shown, except that a summary of the facts, without reference to the parties by name, may be publicized in all cases once the proceeding has been formally closed.

(B) Confidentiality of Information. A lawyer may reveal information relating to the representation of the client to the extent necessary to establish his or her fee claim. In no event shall such disclosure be deemed a waiver of the confidential character of such information for any other purpose.

(C) Confidentiality and Non-Clients. A fee arbitration between a lawyer and a non-client does not limit the lawyer’s duty to exercise independence of professional judgment on behalf of the client.

Comment

[1] Rule 8(B) is consistent with Rule 1.6(b)(5) of the ABA Model Rules of Professional Conduct, which permits limited disclosure of otherwise confidential information "to the extent the lawyer reasonably believes necessary to establish a claim or defense . . . in a controversy between the lawyer and the client . . . ."

[2] Fee arbitration may proceed between a non-client and the lawyer. In arbitrations where the client is neither a party nor a witness and is not present at the arbitration hearing, the lawyer should exercise care to avoid abrogating the lawyer’s duty to maintain the confidentiality of information relating to the representation of the client. See also Rule 1, Comment [4].

**Rule 9: IMMUNITY**

(A) Parties and Witnesses. Parties and witnesses shall have such immunity as is applicable in a civil action in the jurisdiction.

(B) Commissioners; Arbitrators; Staff. Members of the Commission, panels and
staff shall be immune from suit for any conduct in the course and scope of their official duties.

Rule 10: SERVICE

(A) Method. Service on any party other than a lawyer shall be by personal delivery, by any person authorized by the Chair of the Commission, or by deposit in the United States mail, postage paid, addressed to the person on whom it is to be served at his or her office or home address as last given to the Commission.

(B) Official Address of Lawyer. Service on an individual lawyer shall be at the latest address shown on the official membership records of the [highest court of appellate jurisdiction or state bar association.] Notice to a law firm shall be at the address as shown in the Petition for Arbitration Form unless the law firm designates a lawyer to be responsible for the arbitration, in which case, service shall be at the designee's latest address shown on the official membership records of the [highest court or state bar association.] The method of service shall be in accordance with section 10(A) above.

(C) Service on Represented Parties. If either party is represented by counsel, service shall be on the party as indicated in Rules 10(A) and 10(B), and on the counsel at the latest address shown on the official membership records of the [highest court of appellate jurisdiction or state bar association.]

(D) Completion of Service. The service is complete at the time of deposit. The time for performing any act shall commence on the date service is complete and shall not be extended by reason of service by mail.