



Milwaukee Bar Association Fee Arbitration

Attached are the Rules for the arbitration of fee disputes on behalf of the Milwaukee Bar Association. In consideration of the arbitration services to be rendered, the parties agree to pay **non-refundable** fees as recited below:

| | |
|---------------------------------|-----------------|
| Client..... | \$50.00 |
| MBA Member Attorney..... | \$50.00 |
| Non-Member Attorney..... | \$100.00 |

MILWAUKEE BAR ASSOCIATION
COMMITTEE ON RESOLUTION OF FEE DISPUTES

ARTICLE I. BACKGROUND

A. Purpose. Even the most careful and professional attorney will, from time to time, experience disagreements with clients regarding the payment of fees and expenses. Resolution of such disputes can prove costly, time consuming and, occasionally, embarrassing. Such disputes may also create tensions or generate publicity that reflects unfavorably on the profession.

Recognizing the above facts, and as a service for the public and for its own members, the Milwaukee Bar Association has established and maintains the Committee on Resolution of Fee Disputes (the "Committee").

B. Jurisdiction.

1. The Committee shall address only disagreements between clients and attorneys regarding fees paid, charged or claimed for legal services or the payment or reimbursement of expenses in relation to such services (together, the "fee"), provided both the client, or clients, and attorney, or attorneys, consented in writing to binding arbitration by the Committee. In addition, the Committee shall address such other matters, and undertake such other responsibilities, as directed by the Milwaukee Bar Association Board of Directors.

2. Upon consent to binding arbitration by a lawyer or client pursuant to Article III below, the Committee shall exercise jurisdiction over any disagreement concerning the fee for legal services provided by an attorney licensed to practice in this state if either (a) a nexus exists between the matter involved, the attorney or the client and Milwaukee County, (b) the attorney and client seek arbitration hereunder without such nexus and the Committee Chair or Vice Chair consents thereto or (c) the attorney is a member of the Milwaukee Bar Association (regardless of nexus). After the responding party consents to binding arbitration, no party may withdraw the request for fee arbitration or the consent to arbitration without the agreement of the other party(ies) involved. The Committee's jurisdiction does not extend to a dispute or matter over which a court maintains or accepts jurisdiction to fix or determine the fee. The pendency of a lawsuit shall deprive the Committee of jurisdiction over a dispute unless the court requests or directs the involvement of the Committee and the parties sign an agreement for binding arbitration as required herein. The Committee shall encourage the

amicable resolution of fee disputes falling within its jurisdiction and, in the event such resolution does not occur, to arbitrate and finally resolve such disputes.

C. Statutory Authority. The rules recited herein (the "Rules") hereby incorporate by reference Wisconsin Statutes Chapter 788 and the Rules shall be read in all manners to remain consistent with Wisconsin Statutes Chapter 788**ARTICLE II. ORGANIZATION OF COMMITTEE**

A. The President of the Milwaukee Bar Association (the "President") shall appoint at least 35 members to the Committee on Resolution of Fee Disputes. Each member's term shall extend for three years. Upon the expiration of each member's term, the President shall appoint a successor for an additional three-year term. No limit shall apply to the number of successive terms a member may serve.

B. The term of any member which expires while an arbitration is pending before the member or before a panel on which the member sits shall automatically continue until such arbitration concludes but such extension shall not interfere with the President's power to appoint a successor to the Committee. The President shall appoint the Chair and Vice Chair of the Committee.

C. 1. The President shall select Committee Members to provide representation from a broad spectrum of the Bar in relation to both firm organization (i.e., large firms, small firms and sole practitioners) and types of practice (i.e., general, litigation, corporate, criminal, etc.). Committee members should be experienced in the practice of law and no individual may serve on the Committee until after practicing law for at least five years.

2. The Committee Chair, with the assistance of the Vice Chair, shall assign members to arbitration panels (the "Panels") and appoint the Chair of each Panel. The Committee shall maintain at least five Panels of at least seven members each and such Panels shall reflect the diversity of membership as recited in the immediately preceding paragraph for the Committee as a whole.

D. 1. The Committee Chair and Vice Chair must serve as members of Panels and may, but need not, each chair a Panel. Except as provided in the next two paragraphs, no person may serve on more than one Panel simultaneously.

2. The Committee Chair or Vice Chair may, on an ad hoc basis, convene a Panel and serve as its Chair or appoint its Chair to consider a specific arbitration case of such an amount or character requiring, in the Chair's or Vice Chair's judgment, the convocation of a special Panel. (The Vice Chair, when mentioned in the Rules as an alternative to the Chair, may act only on the unavailability or request of the Chair.)

3. From time to time, a Panel Chair may invite a Committee member not otherwise a member of the Panel to sit with the Panel for an arbitration case when the Chair deems the expertise or experience brought by the additional member important to the resolution of the case.

E. The Committee Chair or the Committee Chair's delegate shall randomly assign arbitration cases to the Panels.

F. 1. The Committee Chair and Vice Chair and Chairs of the Panels (or their delegates), together with such other members, if any, as the Committee Chair deems appropriate shall constitute the Executive Council of the Committee.

2. The Executive Council shall oversee the work of the Committee and develop forms and procedures for the Committee, all in a manner consistent with these Rules.

3. The Executive Council of the Committee shall meet at the call of the Chair, Vice Chair or any two members upon at least five days' written notice to its members at any reasonable time, date and place. The Executive Committee shall act by the affirmative vote of a majority of those attending a meeting at which a quorum (a majority of its members) is present in person or by proxy. The number of members attending by proxy cannot exceed the number of members attending in person.

ARTICLE III. ARBITRATION PROCEDURE

A. Parties Consent.

1. An attorney or aggrieved client may submit a request for fee arbitration to the Committee at the Milwaukee Bar Association office. The request should appear on a form developed by the Committee and should state with clarity and brevity the facts of the fee dispute, the names and addresses of the parties to the dispute and those persons who may be directly affected by the outcome.

2. Upon receipt of such a request, the staff of the Milwaukee Bar Association shall promptly acknowledge it and mail a copy to the other party(ies) involved. The materials provided the party(ies) shall encourage an amicable resolution to the dispute and, in the absence of such a resolution, encourage the other party(ies) to file a written response to the request within 30 days, consenting to binding arbitration, all on forms approved by the Committee. The consent to binding arbitration shall provide that all parties agree to comply with the Panel decision within 15 days after mailing of notice of the decision and shall include agreement to the imposition of the appropriate statutory rate of interest on any portion of an

award not paid within 15 days, except as the Committee may specifically otherwise direct or the parties may otherwise previously have agreed.

B. Hearings.

1. Upon the Milwaukee Bar Association's receipt of a consent to binding arbitration signed by both parties, the Committee Chair or the Committee Chair's delegate shall forward the matter to the appropriate Panel Chair. If the amount in dispute equals \$5,000 or less, the Panel Chair shall assign the dispute to one member of the Panel for resolution (the Panel Chair may serve as that one member or assign it to another member of the Panel). No Committee member may serve as a sole arbitrator until after having served on the Committee at least two years. If the amount in dispute exceeds \$5,000, the Panel Chair shall schedule the matter for hearing by the Panel. If a dispute of \$5,000 or less poses a unique issue or an issue which the Committee Chair or Panel Chair believes requires the expertise of more than a sole arbitrator, the Committee Chair or Panel Chair may assign such a dispute to the Panel.

2. Any Panel member must disclose to the Panel Chair any instance in which the member cannot ethically or conscientiously serve in a dispute and withdraw from doing so.

3. The members of the Committee selected as an arbitrator or arbitrators of any dispute shall be vested with all the powers and shall assume all the duties granted and imposed upon neutral arbitrators by Chapter 788 of the Wisconsin Statutes, all consistent with these Rules.

4. (a) Any dispute assigned to a Panel requires a hearing. Such a hearing shall occur before, and a decision thereon rendered by, a minimum of three Panel members. If three Panel members are not present for a hearing or other action in relation to a dispute, those members present may, in their sole discretion and with the consent of the parties, decide either to postpone the deliberations or to proceed with the members present.

(b) If any member of a three-member Panel dies or becomes unable to act while the matter is pending, the proceedings to that point shall be declared null and void and the matter assigned to a new Panel for rehearing unless the parties consent to proceed with the remaining members of the Panel.

5. If all parties to a controversy so agree, they may waive oral hearings and may submit their contentions in writing, together with exhibits to the arbitrator or arbitrators assigned, who may then determine the controversy on the basis of such documents. However, the arbitrator(s) may nevertheless, if the arbitrator(s) deems it desirable, require oral testimony of any party or witness, after due notice to all parties.

6. The sole arbitrator or Panel Chair shall fix a time and place for the hearing and shall mail written notice thereof to the parties to the arbitration and to the other arbitrator(s) assigned at least ten days before the hearing. The hearing shall occur within 60 days after the arbitrator's or Panel's receipt of the assignment. A party's appearance at a scheduled hearing shall constitute a waiver of any deficiency in respect to the giving of notice of the hearing. (The term "parties" refers to a party to an arbitration and shall include all persons who have executed a consent to binding arbitration.)

7. The parties may testify, present evidence, cross-examine witnesses appearing at the hearing and raise any defenses permitted by law. Any party to an arbitration may be represented by an attorney at the hearing or at any stage of the arbitration proceeding. All parties shall have an absolute right to attend all hearings. The exclusion of other persons or witnesses waiting to be heard shall rest in the discretion of the arbitrator(s).

8. If a Panel Chair deems it necessary to make a record of the hearing and if so authorized by the Executive Director of the Milwaukee Bar Association (the "Association"), Association shall employ a certified court reporter for such purpose. In such cases, any party may obtain a copy of the reporter's transcript at the party's own expense. If a party deems it necessary to make a record of the hearing, that party shall employ a certified court reporter and shall advise the Panel Chair of the retention of the reporter at least ten days before the hearing. Agreement of the parties and of the Panel Chair may waive or shorten the ten-day period in which to provide this notice. The party wishing to make a record of the hearing and employing a reporter shall pay the total fees and transcript costs charged by the reporter. If more than one party request a copy of the transcript, regardless of which party retained the reporter, the parties shall equally share the court reporter's fees and the cost of the transcripts. If either party requests a transcript, the Panel shall be entitled to a transcript, and the party (or parties) requesting the transcript shall equally share the cost of the Panel's copy. If the Panel requests a transcript, the deadline for the panel to render its decision as specified herein shall extend for a period coextensive with the time between the close of the hearing and the Panel's receipt of the transcript, but the hearing shall, nonetheless, be deemed closed as of the actual conclusion of the hearing proceedings. The written notice of the hearing sent to the parties shall advise them of all rights.

9. If either party to an arbitration who has been duly notified fails to appear at the hearing, the arbitrator(s) may hear and determine the controversy upon the evidence produced, notwithstanding such failure to appear, and render a binding decision.

10. The sole arbitrator or Panel Chair (or the Panel Chair's delegate) shall preside at the hearing, shall rule on the admission and exclusion of evidence and on questions of procedure, and shall exercise all powers relating to the conduct of the hearing.

11. The arbitrator(s) may request opening statements and may prescribe the order of proof. In any event, all parties shall receive full and equal opportunity for the presentation of any material evidence and the arbitration proceedings shall be conducted with the greatest degree of informality as possible, consistent with the rights of the parties.

12. The testimony of witnesses shall occur under oath. The sole arbitrator or Panel Chair (or the Panel Chair's delegate) shall administer oaths to witnesses testifying at the hearing.

13. The resumption of any hearing which cannot be completed on the first day shall be fixed for such time and place as the arbitrator(s) may select with due regard to the circumstances of all parties and the desirability of a speedy determination. Upon request of a party to the arbitration for good cause or upon his (their) own determination, the arbitrator(s) may recess, adjourn or postpone the hearing from time to time.

14. Before closing the hearing, the arbitrator(s) shall specifically inquire of all parties whether they have further evidence to submit in whatever form. If the answer is negative, the hearing shall close and a notation to that effect made by the arbitrator(s) as well as the date for submission of memoranda or briefs, or other information or documents, if requested by the arbitrator(s).

15. The hearing may be reopened by the arbitrator(s) on motion of the arbitrator(s) or on written application of a party, for a good cause, at any time before the decision is signed and filed.

16. In the event of the death or incompetency of a party to the arbitration proceeding prior to the close of the hearing, the proceeding shall be abated without prejudice to either party to proceed in court of proper jurisdiction to seek such relief as may be warranted. In the event of death or incompetency of a party after the close of a hearing but prior to the decision, the decision rendered shall be binding upon the heirs and personal representative of the deceased and on the estate or guardian of the incompetent.

ARTICLE IV. ARBITRATOR'S DECISION

A. The decision of the Panel shall be made by a majority of the Panel and deemed timely rendered if mailed or sent by facsimile to the Milwaukee Bar Association by the 15th business day after the later of the close of the hearing or the deadline for submission of materials pursuant to Article III, subsection B.15 above.

B. The Panel shall record its decision in writing, signed by all members who concur therein. A dissent shall appear on a separate signed statement. Decisions shall be binding if signed by the sole arbitrator or a majority of the Panel members who participated in the matter. Unless the consent to arbitration or written contract for legal services provides otherwise, the arbitrator(s) may grant any remedy or relief the arbitrator(s) deem proper, including a direction for specific performance. An award made in a decision shall include interest as provided by statute and may include interest accrued prior to the date of decision as appropriate and permitted by law. A decision may also be entered on consent of all the parties.

C. While a decision may be in any particular form, it should, in general, consist of a preliminary statement reciting the jurisdictional facts (i.e., that the hearing was held upon notice pursuant to a written agreement to an arbitration, that the parties were given an opportunity to testify and to cross-examine, etc.), a brief statement of the dispute, the findings and the award.

D. The original and at least four copies of the decision shall be signed by the sole arbitrator or members of the Panel concurring therein. The Panel Chair shall forward the decision, together with the entire file, to the Executive Director of the Milwaukee Bar Association, who shall thereupon, for and on behalf of said Panel, mail a signed copy of the award to each party to the arbitration and notify the Committee Chair that the matter has been concluded.

E. In any case in which both the client and the attorney signed a consent to binding arbitration, the decision rendered may be enforced by any court of competent jurisdiction pursuant to Chapter 788 of the Wisconsin Statutes.

F. If the decision holds that the participating attorney or attorneys who consented to binding arbitration are not entitled to any portion of the disputed fee, service of a copy of such award on said attorney or attorneys shall:

(a) terminate all claim and interest of the participating attorney or attorneys against the participating client or clients in respect to the subject matter of the arbitration

(b) terminate all rights of such attorney or attorneys to retain possession of any documents, records or other properties of such client or clients pertaining to the subject matter of the arbitration then held under claim of attorney's lien or for other reasons; and

(c) terminate all rights of such attorney or attorneys to oppose the substitution of one or more other attorneys designated by such client or clients in any pending litigation pertaining to the subject matter of the arbitration.

G. If the decision holds that the client(s) who consented to binding arbitration is (are) obligated to pay any portion or the whole of the disputed fee, service of a copy of such award on the party(ies) shall:

(a) constitute an award compelling the party(ies) to make specific performance of a contract, enforceable against the party(ies) as a judgment for specific performance;

(b) upon satisfaction of the award, terminate all rights of such attorney or attorneys to retain possession of any documents, records or other properties of such client or clients pertaining to the subject matter of the arbitration then held under claim of attorney's lien or for other reasons; and

(c) upon satisfaction of the award, terminate all rights of such attorney or attorneys to oppose the substitution of one or more other attorneys designated by such client or clients in any pending litigation pertaining to the subject matter of the arbitration.

H. The decision may grant any other remedy or relief that the Panel deems just and necessary, that is within the scope of the agreement of the parties, and that is enforceable pursuant to Wisconsin Statutes Chapter 788, in order to effect the arbitration award.

I. All records, documents, files, proceedings and hearings pertaining to arbitration of any fee dispute under these Rules shall not be opened to the public or any person not involved in the dispute except as otherwise required by law and the rules governing the conduct of the attorneys.

ARTICLE V. PROCEDURAL IRREGULARITIES

The failure of an arbitration decision to be issued within 15 business days or the extended time period specified in Article IV, section A above, shall not impair the validity of the arbitration award. Moreover, any other error in the procedure which does not affect the substantive rights of the party claiming the error shall not impair the validity of the arbitration

award. This Article V shall apply in addition to the rules governing the review or vacating of awards issued pursuant to Chapter 788 of the Wisconsin Statutes.

ARTICLE VI. IMMUNITY

A. Neither the Committee Chair, the Vice Chair, any Panel Chair, any Committee Member or any director, officer or employee of the Milwaukee Bar Association (a "Protected Party") shall incur any liability individually or on behalf of other individuals for any act or failure to act unless such act or failure to act is due to the individual's own lack of good faith. A Protected Party may act or rely upon any of the following:

1. Any instrument, application, notice, request, signed letter, telegram or other paper or document the Protected Party believed to be genuine and to contain a true statement of facts and to be signed or sent by the proper person; or
2. The advice, opinion, records, reports or recommendations of any advisor selected by the Protected Party with reasonable care.

B. 1. Pursuant to Article X of the Association's By-Laws or similar successor provision, the Association shall indemnify any Protected Party, as an agent of the Association, in connection with any claim, suit, action or proceeding concerning the Committee, fee arbitration or related activity or the Protected Party's acts or omissions in relation thereto. Any indemnification provided herein shall be limited to amounts not collected pursuant to liability insurance policies.

2. Each member of the Committee shall maintain professional liability coverage and shall upon reasonable request, certify such coverage to the Association.