



CHESTER COUNTY BAR ASSOCIATION

RULES

of the

FEE DISPUTE COMMITTEE

As amended through April 30, 2017

Published by:

Chester County Bar Association

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The *RULES* as amended, were adopted by the Fee Dispute Committee of the Chester County Bar Association on November 1, 1983, effective immediately, and amended through April 30, 2017.

PURPOSE

- 1.1 The purpose of the Fee Dispute Committee is to provide for the expeditious resolution through mediation and/or arbitration of any dispute involving charges for professional services by attorneys whose principal offices are located in Chester County.
- 1.2 Additionally, the purpose is to provide for mediation and/or arbitration of fee disputes between attorneys in their professional capacity and physicians, stenographers, consultants and expert witnesses where the fee dispute arises out of a professional relationship other than that of attorney-client if both parties agree to be bound.
- 1.3 Additionally, a purpose is to review complaints for referral, when appropriate, to the Disciplinary Board of the Supreme Court of Pennsylvania.
- 1.4 Disputes not subject to mediation and/or arbitration include:
 - (a) Disputes where the fees and/or costs charged to or paid by the client or on the client's behalf have been determined pursuant to statute or by court order, rule, or decision;
 - (b) Disputes where a third person is responsible for payment of the fees and the client fails to join in the request for arbitration.

STANDING COMMITTEE

- 2.1 The Fee Dispute Committee ("Committee") shall be a Standing Committee of the Chester County Bar Association.

APPOINTMENT OF COMMITTEE

- 3.1 The Committee shall consist of at least ten (10) members, one to be designated as Chairman, to be appointed by the President of the Chester County Bar Association in accordance with the procedures of the Association established for the appointment of standing committees.

- 3.2 All Committee Lawyer members shall be members in good standing of the Chester County Bar Association.
- 3.3 Each member shall serve for a term of one (1) year.
- 3.4 Committee Lawyer members shall be selected to provide representation from a broad spectrum of the Bar from the standpoint of both firm organization, types of practice and areas of the County.
- 3.5 Committee Lawyer members shall be experienced in the practice of law and no Lawyer member of the Committee shall have practiced for less than ten (10) years.
- 3.6 The Committee Chair shall recommend for appointment to the Committee such number of lay members as the Committee Chair shall deem necessary in order to provide one lay member for each Panel, when required by these rules.
- 3.7 The Chairman of the Committee, in consultation with the Executive Director of the Bar Association, shall decide routine questions of procedure and interpretation of these rules.
- 3.8 The Committee shall elect a Vice-Chairman who shall serve as Chairman in the event of disqualification or other disability of the Chairman.
- 3.9 Each member shall complete 1 CLE on the topic of Fee Dispute Mediation.

JURISDICTION

- 4.1 The Committee shall have jurisdiction in disputes, as described in Rules of Professional Conduct 1.1 and 1.2, arising within Chester County.
- 4.2 The Chester County Bar Association Fee Dispute Committee shall not have jurisdiction or authority to participate in any matter which is banned by the statute of limitations as set forth in 42 Pa.C.S.A. 5501 et seq., and the case law pertinent thereto.

INITIATION OF PROCEEDINGS

- 5.1 Proceedings of the Committee shall be initiated by a written complaint on a form provided by the Bar Association.
- 5.2 The complainant shall fully identify himself and the respondent with whom he has a dispute.
- 5.3 Proceedings may be brought by either client or attorney.

INFORMAL ARBITRATION

- 6.1 After the complaint is filed with the Committee, the Chairman shall endeavor to resolve the dispute informally by appointing a mediator to communicate

directly with the complainant and the respondent.

- 6.2 If the dispute is resolved informally, the complaint shall be deemed to have been withdrawn and the parties shall execute a mutual release provided by the Fee Dispute Committee.
- 6.3 The mediator shall be required to report to the Committee thirty (30) days after his/her appointment concerning the progress, if any, he/she has made in mediation. If the mediator reports that the dispute cannot be mediated successfully, but in no event later than sixty (60) days after the appointment of the mediator, the matter shall be deemed ripe for arbitration.

NOTICE TO RESPONDENT

- 7.1 A copy of the complaint shall be served upon the respondent immediately after it is filed with the Bar Association

RIGHT TO COUNSEL

- 8.1 Each party to a dispute has the right to be represented at his own expense by an attorney-at-law at the hearing or at any stage of mediation and/or arbitration.

REFERRAL TO ARBITRATION PANEL

- 9.1 When a matter is ripe for arbitration, both parties will be sent forms requesting their submission of the matter to binding arbitration before a panel appointed by the Fee Dispute Committee. The parties will be advised that they have thirty (30) days in which to return the executed forms to the Chester County Bar Association.
- 9.2 If both parties consent to such arbitration, a panel shall be appointed and a hearing conducted to inquire into the propriety of the attorney's fee, to determine whether the Code of Professional Responsibility, the Rules of Professional Conduct, or other considerations of fairness require changes in such fee, and, if so, to set the amount of such fee.
- 9.3 If the complainant fails or refuses to submit the matter to arbitration, he shall be notified that if an executed copy of the submission to binding arbitration form is not returned within the thirty (30) days as provided for in Rule 9.1 of the Rules of the Fee Dispute Committee, the file will be declared closed and the complainant will not be permitted to reopen or bring the matter before the Fee Dispute Committee. If the attorney fails or refuses to submit the matter to arbitration by signing the submission to binding arbitration:
 - (a) he/she shall be notified of the content of EC-23 and that it may be applicable.
 - (b) he/she shall be advised that Disciplinary Counsel of the Disciplinary Board of the Supreme Court requests that we proceed with a review of disputed fees with or without the consent of the attorney.
 - (c) a panel will be appointed and a hearing conducted pursuant to the Rules of the Fee Dispute Committee to determine whether the attorney's

fee is illegal, clearly excessive, or otherwise in violation of Rule 1.5 of the Rules of Professional Conduct, as applicable.

9.4 The attorney and complainant shall be entitled to participate fully in that hearing.

9.5 The hearing shall be held within thirty (30) days after the referral of the complaint to the arbitration panel, unless continued by order of the chairman of the panel and the Committee shall render its award within fifteen (15) days after the close of the hearing. The award of the Committee shall be made by a majority of the members of the panel, or by the one member of the Committee who is designated as sole provided herein.

9.6 The notice of hearing must notify the parties of their right to present witnesses and documentary evidence in support of their positions and, at their own expense to have a record of the proceeding made.

9.7 The term "party" as used in these Rules refers to a party to an arbitration and shall include all parties that have executed a consent to binding arbitration.

ARBITRATION PANEL

10.1 The arbitration panel shall consist of two members in good standing of the Chester County Bar Association and one non-lawyer. An alternate member of the Bar Association shall also be named to each panel to sit in the event of unavailability of one of the two attorney panel members. The non-lawyer member shall be chosen from a list of volunteers assembled by the Bar Association and the Committee chairman for that purpose. An alternate non-lawyer shall be chosen from a list of volunteers to sit in the event of unavailability of the non-lawyer panelist.

10.2 One member of the arbitration panel shall be designated as chairman of arbitrators by the chairman of the Committee.

10.3 Members of the arbitration panel, other than the chairman, need not be members of the Fee Dispute Committee.

10.4 In cases where the amount in controversy is less than \$500.00 the arbitration panel shall consist of one member only, who shall be a member of the Fee Dispute Committee.

CHALLENGE

11.1 Each party may challenge without cause not more than two (2) members of the arbitration panel.

11.2 All such challenges must be exercised within ten (10) days following notification of the appointment of the original panel. Challenges for good cause may be made after the said ten (10) day period if the grounds therefore could not have

been previously ascertained by exercise of reasonable diligence. Said challenges shall be in writing, addressed to the Chairman of the Chester County Bar Association Fee Dispute Committee and delivered within the said ten (10) day period to the office of the Bar Association.

- 11.3 The chairman of the Committee shall appoint appropriate replacements for those members of the panel who have been challenged. The new panel members thus appointed shall be subject to challenge only for good cause shown. Any such challenge shall be ruled upon by the chairman of the Committee, whose decision shall be final.

ARBITRATION HEARING

- 12.1 The rules and principles of Common Law Arbitration, as set forth in 42 Pa.C.S.A.7341 shall apply to this Committee and to the parties who have agreed to be bound to the decision of the Committee.
- 12.2 On the hearing date, the arbitration panel shall meet, take testimony of and receive evidence and have a complete and full hearing of the matter.
- 12.3 The chairman of the arbitrators may adjourn the hearing from time to time as necessary. Upon request of a party of the arbitration for good cause, or upon his own determination, the chairman of arbitrators may postpone the hearing from time to time.
- 12.4 The chairman of arbitrators shall preside at the hearing. He shall be the judge of the relevance and materiality of the evidence offered and shall rule on the questions of procedure. He shall exercise all powers relating to the conduct of the hearing, and conformation to legal rules of evidence shall not be necessary.
- 12.5 The parties to the arbitration are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing.
- 12.6 On request of any party to the arbitration or any arbitrator, testimony of witnesses shall be given under oath. When so requested, chairman of the arbitrators may administer oaths to witnesses testifying at the hearing.
- 12.7 If any party to arbitration who has been notified fails to appear at the hearing, the presiding arbitrators may either postpone the hearing or proceed with the hearing and determine the controversy upon the evidence produced, notwithstanding such failure to appear and enter a binding decision.
- 12.8 In the event the chairman of the arbitrators postpones the hearing at the request of one of the parties, the hearing shall promptly be rescheduled within ten (10) days of the date of the postponement. The party requesting the postponement is responsible to reschedule the hearing. The panel may only postpone the

hearing one (1) time per party.

- 12.9 Any party may have the hearing reported at his own expense, if he does so, he must provide a copy free of charge to the Committee. Further, in such event, any other party to the arbitration shall be likewise entitled to a copy of the transcript at his own expense by arrangement made directly with the reporter.
- 12.10 In the event of the death or incapacity of a party to the arbitration proceeding prior to the close of the hearing, if the applicable statute of limitations has not elapsed, the proceeding shall abate without prejudice to either party to proceed in a court of proper jurisdiction to seek such relief as may be warranted pursuant to the Judiciary Code.
- 12.11 In the event of death or incapacity of a party after the close of the hearing but prior to a decision, the decision shall be binding upon the heirs, administrators or executors of the deceased and upon the estate or guardian of the incompetent.

ARBITRATION DECISIONS

- 13.1 A decision of the arbitration panel shall be rendered within fifteen (15) days after the close of the hearing in duplicate original.
- 13.2 The arbitration decision shall be made by a majority of the arbitration panel. The decision shall be submitted in duplicate in writing, signed by members concurring therein. It shall state only the amount of the award, if any, and the terms of payment if applicable.
- 13.3 The decision shall be forwarded to the chairman of the Committee, in care of the Executive Director of the Bar Association, who will mail a copy of the decision to each party to the arbitration.
- 13.4 If a majority of the arbitration panel cannot agree on a decision, the matter shall be resubmitted, de novo, to a new panel.
- 13.5 Judgement may be entered on the decision in any court of competent jurisdiction by filing therein the agreement, the decision, and a Praeceptum to the Prothonotary or Clerk to enter into judgment.
- 13.6 If, after hearing held pursuant to Rule 9.3 (c), an arbitration panel shall find a violation by the attorney of Rule of Professional Conduct 1.5, as applicable, the attorney only shall be advised. The arbitration panel shall further advise the attorney of the action it finds necessary to cure the violation of the applicable Rule. If the attorney persists for a period of fifteen (15) days in his refusal to take the action thus recommended by the arbitration panel, then the finding of the panel and the fact of the attorney's refusal to conform to that finding shall be reported within thirty (30) days thereafter to the Fee Dispute Committee for possible referral to the Disciplinary Board.

WAIVER OF HEARING

- 14.1 If both parties in writing waive a hearing, the arbitration panel may dispense with the hearing and decide the matter on written submissions. In such cases, the panel shall give each party suitable time to present his case in writing and to respond to the assertions of the other. If the panel, after reviewing the written submissions concludes that a hearing is necessary, it shall call one; otherwise, it shall render its decision on such submission.

NEW MATTER OR PREVIOUSLY UNDISCOVERED EVIDENCE

- 15.1 Before closing the hearing, the arbitration panel shall specifically inquire of all parties whether they have further evidence to submit in whatever form. If the answer is negative, the hearing shall be declared closed and a notation to that effect made by the arbitrators as well as the date of submission of memoranda or briefs, if requested by the arbitrators.
- 15.2 The hearing may be reopened by the arbitration panel on their own motion or on application of a party at any time before the decision is signed.

CONFIDENTIALITY

- 16.1 All records, documents, files, proceedings and hearings pertaining to the mediation or arbitration of any fee dispute under these rules shall be confidential, and shall not be open to the public or any person not involved in the dispute. The decision of the arbitration panel may be made available to those having legitimate interest therein.

PENDING COURT ACTION

- 17.1 Both parties agree that the decision of the panel of arbitrators shall be the final determination of the subject matter and any pending litigation shall be withdrawn by the party who brought it.

NOTICES

- 18.1 The following matter shall be sent to the parties by certified mail, return receipt requested:
- (a) notice of the date, time and place of the hearing or any continuation or rescheduling thereof;
 - (b) notice of the decision of the arbitration panel;
 - (c) notice to an attorney who fails or refuses to submit a matter to arbitration;
 - (d) notice to complainant that the file has been closed in accordance with Rule 9.3 of the Rules of the Fee Dispute Committee.
- 18.2 With the foregoing exceptions, all other notices and correspondence shall be sent to the parties, panel members, mediators, and others by ordinary first-class mail at the address supplied to the Bar Association by such persons.
