



FEE DISPUTES COMMITTEE | RULES & PROCEDURES

Article I | Purposes

The Fee Disputes Committee of the Nashville Bar Association (the "Committee") has been created to carry out and to advance the following purposes and goals:

1. To afford members of the public an opportunity for impartial review of any fee dispute with an individual attorney.
2. To afford a convenient forum where attorneys may obtain assistance in settling controversies with other attorneys regarding fees or their division.
3. To offer an arbitration service in questions involving attorneys' fees.
4. To keep down litigation over fees.

Article II | Organization

1. The Committee shall be composed of not less than 20 members of the Nashville Bar Association, appointed by the President, each of whom will serve for a term of one year. The President shall designate a Chair of the Committee, whose duties are set out below.
2. The Chair shall have the following duties and responsibilities:
 - a. To conduct such meetings of the Committee as the chair may consider necessary in carrying out the duties of the Committee.
 - b. Subject to the confidentiality provisions of Article VII Section (3) hereof, to receive and respond to inquiries and complaints from members of the public and other attorneys relating to matters which may come within the jurisdiction of the Committee.
 - c. To appoint members of the Committee to arbitration panels for the purpose of carrying out the procedures contained herein.
 - d. To cause to be maintained a docket of all matters referred to the Committee and to file with the Executive Director, at least annually, a written report setting forth the status and disposition of all matters.
 - e. To cause to be filed with the Executive Director the written award of each panel of arbitrators in respect of matters referred for arbitration.
 - f. To undertake such other duties and responsibilities as the President may from time to time delegate to the Committee.

Article III | Jurisdiction & Referrals

1. The Committee shall act only in respect of actual, existing disputes or controversies between or among client and attorney or attorney and attorney, concerning the nature and/or amount of attorneys' fees. The Committee will only act upon matters involving a member of the Nashville Bar Association or non-member attorneys who regularly maintain an office for the practice of law in Davidson County, Tennessee. However, for a limited and reasonable time, as determined by the Board of Directors in consultation with the Committee, the Committee may act upon matters involving non-member attorneys practicing in certain

counties designated by the Tennessee Supreme Court, or its designee, until such time as those counties or their Bar Associations have created a committee to address fee disputes. As requested by the Tennessee Supreme Court, the Committee may assist the designated counties or their Bar Associations with the creation of fee disputes resolution process. All procedures set forth herein shall apply to the actions of the Committee regarding non-Davidson County attorneys.

2. The Committee shall take action only upon written requests for arbitration referred to the Chair by any of the following:
 - a. The President;
 - b. The office of the Chief Disciplinary Counsel to the Board of Professional Responsibility of the Supreme Court of Tennessee;
 - c. Any member of the Committee;
 - d. By either party to a dispute which is within the jurisdiction of the Committee as determined by the Chair;
 - e. The judge of any court in the State of Tennessee;
 - f. The Executive Director of the Nashville Bar Association.

3. The request for arbitration shall be in writing and need be in no particular form. If necessary to clarify the nature of the dispute, including existence of committee jurisdiction, the Chair, or the panel chair, may require the initiating party to provide additional information concerning the dispute prior to the hearing.

4. If upon a written request for arbitration the Chair is of the opinion that the matter referred is not within the jurisdiction of the Committee, the Chair shall so notify the requesting party of this determination, in writing, and shall send a copy of such notification to the Executive Director.

Article IV | Procedure Upon Referral

1. The NBA staff, under the supervision of the Executive Director, shall provide general information to those initiating complaints, including a copy of the rules, and the agreement to arbitrate.

2. Upon receipt of a written request for arbitration of a dispute within the Committee's jurisdiction, the NBA staff shall promptly notify the respondent attorney in writing of the request for arbitration and shall furnish the involved attorney a copy of the request, a copy of these Rules and Procedures and an Agreement to Arbitrate in the form of Exhibit A. The requesting party shall also be provided a copy of these rules at the time of the notification.

3. The Chair shall request the responding attorney to execute and return the Agreement to Arbitrate, or otherwise respond to the request, within seven days. If in the judgment of the committee chair, an attorney demonstrates a pattern or practice of declining to arbitrate (*or fails, without cause, to respond to the Chair's request within 20 days, which shall be construed as a refusal to arbitrate*), the Chair shall notify the requesting party and the President of this decision and the Committee shall thereafter take no further action with respect to the matter.

4. The NBA staff shall also send the Agreement to Arbitrate to the initiating party with the request that the initiating party execute the Agreement to Arbitrate and return it to the Chair within seven days. If the initiating party fails, without cause, to return the fully executed Agreement to Arbitrate within 20 days, the initiating party will be deemed to have withdrawn the request for arbitration. The Chair or President may, however, for sufficient reasons, reactivate the matter upon request of the initiating party made within a reasonable time.

5. Promptly upon receipt of the Agreement to Arbitrate, executed by both parties, the Chair shall appoint three members of the Committee to serve as arbitrators. The Chair shall also designate one of the panel members to act as panel chair. In the event

that the amount in dispute is \$1,000 or less, the Chair shall appoint only one arbitrator to hear the dispute. In the event the amount in dispute is less than \$2,000, but more than \$500, the Chair may appoint one arbitrator to hear the dispute. The Chair shall provide each panel member (or the sole arbitrator) copies of (a) the written request for arbitration, (b) such other letters or materials as may relate to the dispute; and (c) a copy of these Rules and Procedures.

6. A person appointed by the Chair as an arbitrator shall disclose to the Chair any fact or circumstances which may have the tendency, in actuality or in appearance, to affect his or her impartiality, such as a close personal acquaintanceship with either party, their counsel or any personal involvement in the subject matter of the arbitration. The Chair shall communicate such information to the parties and shall determine whether the panel member should be disqualified.

7. If any panel member should be disqualified, resign, refuse or otherwise be unable to participate on the panel, or should either party to the dispute request that a member of the panel not participate, the Chair shall fill the vacancy in accordance with the applicable provisions of these Rules. Request for disqualification of a panel member shall be made in writing to the Chair not less than five days prior to the date set for the hearing. If the dispute involves a member of the committee and either party to the dispute requests in writing that a member of the panel be disqualified, then the President shall appoint an arbitrator who is not a member of the committee to hear the dispute.

8. The panel chair shall, within 10 days of being appointed, set a time and place for the hearing. The time shall be no earlier than 15 days and no later than 45 days after the date of the panel's appointment. The panel chair is encouraged but not required to utilize the NBA offices to conduct such matters. The chair must contact the NBA office at 615-242-9272 to schedule a hearing in the bar office. Each party shall be given written notice of the time and place of the hearing and the names of each member of the panel at least seven days prior to the hearing date.

Article V | Hearing Procedures

1. Evidence. At the hearing the parties may testify and offer such evidence as they desire, in any form desired. The panel shall be the judge of the relevancy and materiality of evidentiary matters and conformity to legal rules of evidence shall not be necessary. Each party shall be given the opportunity to cross-examine the other party and his or her witnesses. Affidavits or unsworn statements may be received and considered, with the panel giving such weight thereto as may be appropriate in the circumstances.

2. Order of Proceedings. The arbitrators may ask the parties for statements concerning the dispute and inquire into settlement opportunities. The initiating party shall then present its testimony and any other proof which may be material to the controversy. The responding party will be given the opportunity to cross examine the initiating party and other witnesses. The responding party will then present its testimony and other proof and submit to cross examination by the initiating party. The arbitrators may examine either party or their witnesses concerning any aspect of the dispute and may require either party to produce any tangible evidence which may assist in the resolution of the controversy.

3. Exhibits. Exhibits may be received into evidence by the arbitrators. Exhibits shall be maintained as a part of the record until an award has been issued, or the matter otherwise closed, and the time for appeal has expired. The parties shall have thirty (30) days after the determination of the matter in which to withdraw their exhibits. The panel chair shall have the authority to have exhibits not so withdrawn destroyed.

4. Oaths. The panel chair may require the parties and other witnesses to testify under oath, administered by a person qualified to administer oaths. If requested by either party, testimony shall be taken under oath. The names and addresses of all witnesses shall be recorded and maintained as a part of the permanent record.

5. Stenographic Record. A stenographic record of the hearing shall not be necessary but may be provided by either party at its own expense. Each panel shall otherwise determine the method of preserving evidence adduced at the hearing.

6. Absence of a Party. If either party, having been given notice of the time and place for the hearing, fails to appear at the hearing, the panel may, in its discretion, proceed to hear evidence and render an award in the absence of a party. Upon good cause shown by the party who failed to appear within a reasonable time after the hearing or issuances of the award, the panel chair may reopen the proof, and, following notice to the other party, receive testimony and other evidence from the non-appearing party. The receipt of such additional proof shall be handled in accordance with these Rules and Procedures.

7. Representation by Counsel.

a. Any party to a fee dispute may be represented by counsel at any stage of the arbitration. Non-lawyer parties will frequently not be represented by counsel at the hearing and in such cases the hearing shall be conducted so as to ensure a full presentation of facts and circumstances pertinent to the positions of both parties.

b. So that possible conflicts of interest may be identified prior to the hearing, the identity of counsel for either party shall be disclosed to the panel chairman at least five (5) days prior to the hearing; the panel chair shall communicate the identity of counsel to the remaining panel members prior to the date of the hearing.

8. Continuances. The panel chair may grant continuance of the hearing on any reasonable grounds.

9. Majority Decision. All awards shall be by majority vote of the arbitrators. If a decision cannot be reached the Chair shall order a rehearing or appoint a new panel to hear the dispute.

10. Award.

a. The award shall be made by the panel with reasonable promptness and within thirty (30) days after the hearing. If the award has not been issued within thirty (30) days, either party may request the Chair to appoint a new panel to rehear the dispute. The Chair may, in his or her discretion, either appoint a new panel or attempt to cause the original panel to issue its award as quickly as possible.

b. The award shall be in writing and signed by the panel members joining in the award. The award shall set forth findings and conclusions in such detail as the panel members consider appropriate. In the event payment or refunding of any portion of the fee in issue is awarded to either party, the award may specify a time within which payment shall be made. In the event the award specifies a refund of any portion of a fee, the award shall specify a time for payment, which shall not exceed 10 days. Copies of the award shall be furnished to both parties and to the Chair. The Chair shall submit a copy of the award to the President no later than the next quarterly status report following issuance of the award.

11. Mediation and Settlement. It is the policy of the Nashville Bar Association to encourage settlement of fee disputes between members and their clients, whenever and to the fullest extent possible. Upon request of the parties, the panel of arbitrators may undertake to informally mediate the dispute and participate in settlement discussions prior to commencement of the hearing. If successful, the settlement shall be entered in an award. If settlement is not possible, the panel shall proceed with the hearing and render such award as justice and fair dealing shall require.

12. Appeal. There shall be no appeal of an award except on the grounds, and in the same manner, specified in the Uniform Arbitration Act, 29 T.C.A., Section 5-301, et seq. Upon application of either party, or upon motion of any panel member, the panel chair may grant a new hearing upon majority vote of the panel. If said motion is granted, such new hearing may be before the same panel, or before a new panel to be appointed by the Chair, as determined by the Committee Chair in his or her sole discretion.

13. Enforcement of Award. The award may be enforced by either party in accordance with procedures established by the Uniform Arbitration Act, 29 T.C.A., Section 5-301, et seq., or as otherwise provided by the statutes of the State of Tennessee pertaining to enforcement of arbitration awards. The failure of a party attorney to act in accordance with an award shall be reported by the Chair to the President, who shall bring the matter before the Board of Directors for such action as may be appropriate.

Article VI | Judicial Referrals

1. In addition to arbitrating disputes for the purpose of entering an award in accordance with the Uniform Arbitration Act, 29 T.C.A., Section 5-301, et seq., the Committee may also accept appointment by any court to act as Special Master under Rule 53 of the Tennessee Rules of Civil Procedure for any matter which is within the jurisdiction of the Committee as set forth in Article III. In the case of such appointment, the powers of the Committee shall be as set forth in the Court's order of reference, and paragraphs 1, 2, and 3 of Article IV and paragraphs 11, 12, 13 and 14 of Article V shall not apply.

2. The Committee shall accept court appointment as Master in such disputes or controversies concerning attorneys' fees over which the Court believes it must retain jurisdiction and the ultimate power of decision. The Chair may respectfully decline such appointment if he or she determines that the dispute is not within the jurisdiction of the committee, or that acceptance of the appointment would be inconsistent with the committee's goals and purposes set forth in Article I.

3. Procedure. The procedure upon acceptance of a court appointment as Master under TRCP 53 shall be the procedure set forth above in Article IV, paragraphs 4-7, and in Article V, paragraphs 11-14, above, the panel shall issue a written report and recommendation to the Court as set forth in TRCP 53.04.

Article VII | Miscellaneous

1. Retention of File. The Committee Chair shall maintain the files pertaining to all written requests for arbitration made to the Committee for the Chair's term of service and for the term of service of the preceding Chair. All other files shall be forwarded to the Executive Director of the Nashville Bar Association who shall maintain them in the records of the bar association for at least 5 years.

2. Failure to Prosecute. Upon the failure of the initiating party to execute the Agreement to Arbitrate, respond to notices given by a panel chairman, or to appear for the hearing, the panel chair may notify the parties that the matter is being considered closed and return the file to the Chair.

3. Confidentiality. The members of the Committee shall strictly observe the confidential nature of proceedings. By agreeing to arbitrate, the non-lawyer party shall be deemed to have waived the attorney-client privilege in respect of matters relevant to the dispute. The panel chair shall confirm the parties' understanding and consent to this waiver prior to commencement of the hearing.

4. The provisions of the Code of Professional Responsibility, as adopted by the Supreme Court of Tennessee, relating to attorney fees shall be observed in proceedings under these Rules.

5. All proceedings hereunder shall be provided without fees or costs to either party, as a service of the Nashville Bar Association.

6. Amendments to Rules. Proposed amendments to these rules may be submitted to the Board of Directors upon approval of a majority of the members of the Committee.