

CHAPTER 14. GRIEVANCE MEDIATION AND FEE ARBITRATION

14-1. ESTABLISHMENT

RULE 14-1.1 ESTABLISHMENT

The Florida Bar Grievance Mediation and Fee Arbitration Program (hereinafter “the program”) is hereby established as a means to empower complainants and respondents to resolve disputes without the involvement of formal disciplinary processes.

Added April 6, 1989 (542 So.2d 975); Amended: Nov. 14, 1991, effective Jan. 1, 1992 (593 So.2d 1035); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 20, 1994 (644 So.2d 282); Amended and Renamed May 20, 2004, (SC03-705), (875 So.2d 448).

RULE 14-1.2 JURISDICTION

(a) Fee Arbitration. The program has jurisdiction to resolve disputes between members of The Florida Bar or between a member of The Florida Bar and a client or clients over a fee paid, charged, or claimed for legal services rendered by a member of The Florida Bar when the parties to the dispute agree to arbitrate under the program either by written contract that complies with the requirements of subdivision (i) of rule 4-1.5 or by a request for arbitration signed by all parties, or as a condition of probation or as a part of a discipline sanction as authorized elsewhere in these Rules Regulating The Florida Bar. Jurisdiction is limited to matters in which:

(1) there is no bona fide disputed issue of fact other than the amount of or entitlement to legal fees; and

(2) it is estimated by all parties that all the evidence bearing on the disputed issues of fact may be heard in 8 hours or less.

The program does not have jurisdiction to resolve disputes involving matters in which a court has taken jurisdiction to determine and award a reasonable fee to a party or that involve fees charged that constitute a violation of the Rules Regulating The Florida Bar, unless specifically referred to the program by the court or by bar counsel.

The program has authority to decline jurisdiction to resolve any particular dispute by reason of its complexity and protracted hearing characteristics.

(b) Grievance Mediation. The program has jurisdiction to mediate the issues in a disciplinary file referred to the program in which the public interest is satisfied by the resolution of the private rights of the parties to the mediation. The program does not have jurisdiction to resolve the issues in a disciplinary file if any issue involved in that file must remain for resolution within the disciplinary process.

Added April 6, 1989 (542 So.2d 975); Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Amended and Renamed May 20, 2004 (SC03-705), 875 So.2d 448). Amended April 12, 2012, effective July 1, 2012 (SC10-1967); amended May 29, 2014, effective June 1, 2014 (SC12-2234).

RULE 14-1.3 AUTHORITY OF BOARD OF GOVERNORS

The board of governors shall appoint a standing committee to administer the program and the board may adopt policies for implementation thereof.

Added April 6, 1989 (542 So.2d 975); Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Amended and Renamed May 20, 2004 (SC03-705), (875 So.2d 448).

RULE 14-1.4 APPLICATION OF RULES AND STATUTES

The Florida Arbitration Code (chapter 682, Florida Statutes), shall apply to arbitrations conducted under this chapter except as modified by or in conflict with these rules.

The Florida Rules for Certified and Court-Appointed Mediators shall apply to proceedings under this chapter unless otherwise stated herein or in conflict with the provisions of this rule or the Rules of Professional Conduct. A program mediator shall not report the misconduct of another member of The Florida Bar if the Florida Rules for Certified and Court-Appointed Mediators and applicable law preclude such report.

Added May 20, 2004 (SC03-705), (875 So.2d 448).

14-2. STANDING COMMITTEE

RULE 14-2.1 GENERALLY

(a) Appointment of Members; Quorum. The board of governors shall appoint a standing committee on grievance mediation and fee arbitration comprised of:

- (1) 6 lawyers who are certified as mediators under this chapter;
- (2) 3 nonlawyers who are certified as mediators under this chapter;
- (3) 6 lawyers who are certified as arbitrators under this chapter; and
- (4) 3 nonlawyers who are certified as arbitrators under this chapter.

The board of governors will appoint a chair and vice-chair of the committee from the members listed above. A majority of members of the committee constitutes a quorum. The lawyer members of the committee shall be members of The Florida Bar in good standing.

(b) Terms. All members shall be appointed for 3-year terms, each term commencing on July 1 of the year of appointment and ending on June 30 of the third year thereafter. Terms shall be staggered so that one-third of the members of the committee shall be appointed each year. No committee member may serve for more than 2 consecutive full terms.

(c) Duties. The standing committee shall administer the program, certify mediators and arbitrators for the program, promulgate necessary standards, forms, and documents, and make recommendations, as necessary, to the board of governors for changes in the program.

Added April 6, 1989 (542 So.2d 975). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); March 23, 2000 (763 So.2d 1002); May 20, 2004 (SC03-705), corrected opinion issued July 7, 2004, (875 So.2d 448); December 20, 2007, effective March 1, 2008 (SC06-736), 978 So.2d 91).

14-3. CERTIFICATION OF PROGRAM MEDIATORS AND ARBITRATORS

RULE 14-3.1 APPLICATION REQUIRED

(a) Applications. Persons wishing to become program mediators or arbitrators shall apply to the committee for its review and certification. The committee shall promulgate standards and forms for certification hereunder. Membership in The Florida Bar shall not be required for certification.

(b) CLE Credit for Service. Members of The Florida Bar who are program mediators and arbitrators shall be entitled to a maximum of 5 hours of CLE credit in each reporting period in the area of ethics for service in the program as provided in the policies adopted under this chapter.

Added April 6, 1989 (542 So.2d 975). Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); March 23, 2000 (763 So.2d 1002); Amended and Renamed May 20, 2004, (SC03-705) (875 So.2d 448).

14-4. INSTITUTION OF PROCEEDINGS

RULE 14-4.1 ARBITRATION PROCEEDINGS

(a) Institution of Proceedings. All arbitration proceedings shall be instituted by the filing of a written consent to arbitration by written contract between the parties to the arbitration, or orders of this court in proceedings under these Rules Regulating The Florida Bar imposing a sanction or condition or probation, or by the consent form prescribed in the policies adopted under the authority of this chapter and signed by each party to the controversy.

(b) Position Statement and Relevant Documents. Each of the parties shall provide the arbitrator(s) with a concise statement of that party's position, including the amount claimed or in controversy, on the form prescribed and authorized by the standing committee. If there is a written contract regarding fees between the parties, a copy of that written contract shall accompany the request or submission.

(c) Referral by Intake Counsel or Bar Counsel. Intake counsel with the consent of the parties and concurrence of staff counsel, or bar counsel, with the consent of the parties, and the concurrence of the chief branch staff counsel, may refer appropriate cases to the fee arbitration program.

(d) Referral by Grievance Committees. Grievance committees, with concurrence of bar counsel and consent of the parties, may refer appropriate cases to the fee arbitration program.

(e) Referral by Board of Governors. The board of governors, with the agreement of the parties and upon review of a file referred to it as authorized elsewhere under these Rules Regulating The Florida Bar, may refer appropriate cases to the fee arbitration program if they meet the criteria established by the policies adopted under the authority of this chapter.

Added April 6, 1989 (542 So.2d 975). Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 20, 1994 (644 So.2d 282); Amended and Renamed May 20, 2004, (SC03-705), (875 So.2d 448); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a).

RULE 14-4.2 GRIEVANCE MEDIATION PROCEEDINGS

(a) Referral by Bar Counsel. Bar counsel, with the consent of the parties, may refer any file to the program that meets the criteria established by any policies adopted under the authority of this rule.

(b) Referral by Grievance Committees. Grievance committees, with concurrence of bar counsel and consent of the parties, may refer any file to the program that meets the criteria established by the policies adopted under the authority of this chapter.

(c) Referral by Board of Governors. The board of governors, upon review of a file referred to it as authorized elsewhere under the Rules Regulating The Florida Bar, may refer same to the program if it meets the criteria established by the policies adopted under the authority of this chapter.

(d) Referral by Referees. Referees, with concurrence of The Florida Bar, may refer any file to the program that meets the criteria established by the policies adopted under the authority of this chapter. Concurrence of The Florida Bar requires agreement of bar counsel and the member of the board of governors designated to review the disciplinary matter at issue.

(e) Referral by Order of Supreme Court of Florida. The Supreme Court of Florida may order referral of any file to the program that meets the criteria established by the policies adopted under the authority of this chapter.

Added May 20, 2004 (875 So.2d 448).

14-5. EFFECT OF AGREEMENT TO MEDIATE OR ARBITRATE AND FAILURE TO COMPLY

RULE 14-5.1 EFFECT OF REFERRAL TO MEDIATION AND FAILURE TO COMPLY

(a) Closure of Disciplinary File. Upon referral for mediation of the issues involved in a disciplinary file, the disciplinary file shall be closed without the entry of a sanction and shall remain closed except as provided in subdivision (b), below:

(b) Effect of Respondent's Failure to Attend or Comply. It shall be a violation of the Rules Regulating The Florida Bar for a respondent to fail to attend an agreed-upon mediation conference without good cause. Likewise, it shall be a violation of the Rules Regulating The Florida Bar for a respondent to fail to fully comply with the terms of a written mediation agreement without good cause.

(c) Effect of Complainant's Failure to Attend. If a file referred for mediation is not fully resolved by reason of a complainant's failure to attend without good cause, the disciplinary file based thereon may remain closed.

Added April 6, 1989 (542 So.2d 975). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Amended and Renamed May 20, 2004, (SC03-705) (875 So.2d 448).

RULE 14-5.2 EFFECT OF AGREEMENT TO ARBITRATE AND FAILURE TO COMPLY

(a) Closure of Disciplinary File. A disciplinary file that involves only fee issues shall be closed without the entry of a sanction upon the entry of an agreement to arbitrate.

(b) Effect of Respondent's Failure to Attend or Comply. It shall be a violation of the Rules Regulating The Florida Bar for a respondent to fail to attend an agreed-upon arbitration conference without good cause. Likewise, it shall be a violation of the Rules Regulating The Florida Bar for a respondent to fail to fully comply with the terms of an arbitration award without good cause.

(c) Effect of Complainant's or Other Opposing Party's Failure to Attend. If a file referred for arbitration is not fully resolved by reason of a complainant's or other opposing party's failure to attend without good cause, the disciplinary file based thereon may remain closed.

Added May 20, 2004 (875 So.2d 448).

14-6. NATURE; ENFORCEMENT OF AWARD; EFFECT OF FAILURE TO PAY RULE 14-6.1 BINDING NATURE; ENFORCEMENT; AND EFFECT OF FAILURE TO PAY AWARD

(a) Binding Determination. The parties to a proceeding under these rules are bound by the terms of the arbitration award subject to those rights and procedures to set aside or modify the award provided by chapter 682, Florida Statutes, or by the terms of an agreement reached in mediation.

(b) Enforcement of Determination. In addition to any remedy authorized in this chapter, an arbitration award may be enforced as provided in chapter 682, Florida Statutes.

(c) Effect of Failure to Pay Award. Failure of a member of the bar to pay an award within 30 days of the date on which the award became final, without just cause for that failure, will cause the member to be delinquent and ineligible to practice law, as provided elsewhere in these rules defining delinquent members.

Comment

Lack of funding, alone, does not constitute just cause under this rule.

Added April 6, 1989 (542 So.2d 975). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Renumbered and Renamed May 20, 2004, (SC03-705) (875 So.2d 448); December 20, 2007, effective March 1, 2008 (978 So.2d 91). Amended April 12, 2012, effective July 1, 2012 (SC10-1967); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).

14-7. IMMUNITY AND CONFIDENTIALITY
RULE 14-7.1 IMMUNITY AND CONFIDENTIALITY

(a) Immunity. The members of the standing committee, mediators, arbitrators, staff of The Florida Bar, and appointed voluntary counsel assisting the committee, mediators, and arbitrators, have absolute immunity from civil liability for all acts in the course of their official duties.

(b) Confidentiality of Arbitration Proceedings and Records. All records, documents, files, proceedings, and hearings pertaining to fee arbitration under these rules are public records and will be provided on request, except for any record of an arbitrator's mental processes and any record of an arbitration panel's executive session to consider the issues raised and to reach a decision as to an award.

(c) Confidentiality of Mediation Proceedings and Records. All records, documents, files, and proceedings pertaining to mediation under this chapter are made available only as provided in the Florida Rules for Certified and Court-Appointed Mediators and applicable law.

Added March 23, 2000 (763 So.2d 1002). Renumbered from rule 14-5.3 and amended May 20, 200, (SC03-705) (875 So.2d 448); amended Jan. 4, 2019, effective March 5, 2019 (SC18-1683).