

## **FEE ARBITRATION PROCEDURAL RULES**

### **RULE I. PREAMBLE**

The fee arbitration program must conduct proceedings in fee arbitration matters under the following standards.

### **RULE II. SELECTION OF ARBITRATORS**

**(a) Referral to Arbitrators.** The bar's fee arbitration program accepts matters on the filing of the parties' written agreement to arbitrate under chapter 14 of these rules or on entry of an order by the Supreme Court of Florida. Where both parties have signed a written agreement to arbitrate under Chapter 14 of these rules, the proceeding is referred to in these rules as an agreed arbitration. A party who has consented to arbitration may withdraw consent unilaterally at any time prior to the bar's receipt of written consent of the other party. Once all parties have agreed to arbitration, a party may not withdraw consent to an agreed arbitration unless all parties agree to the withdrawal.

The matter is referred to a sole arbitrator when the amount in controversy is \$15,000 or less unless otherwise agreed by the parties.

The matter is referred to a panel of 3 arbitrators, 1 of whom is designated panel chair for the case, if the amount in controversy exceeds \$15,000 unless otherwise agreed by the parties.

The parties may stipulate to the use of 1 or 3 arbitrators for any amount in controversy.

All 3-member panels will consist of at least 1 nonlawyer and 1 lawyer unless waived by the parties.

**(b) Eligibility to Serve.** Any arbitrator designated as a sole arbitrator or panel member must disclose any reason why the arbitrator cannot ethically or conscientiously serve. When an arbitrator declines or is unable to serve, staff will designate another arbitrator. The standing committee chair has the authority to remove a sole arbitrator or panel member from hearing a particular matter if, in the judgment of the chair, the member should not serve.

**(c) Postponements.** The panel chair, with consent of all parties, may postpone the hearing or proceed with fewer than 3 members if all panel members are not present at the hearing time.

**(d) Death or Inability to Serve.** A substitute panel member will be appointed by the panel chair unless the parties consent to proceed with the hearing if any member of the panel dies or becomes unable to continue to serve while the matter is pending, but before an award has been made. If a substitute panel member is appointed, the substitute member will review any evidence admitted and any evidence recorded in the proceedings. The substitute member will review evidence admitted and an oral summary by the panel chair followed by argument by the parties if the proceedings were not recorded.

**(e) Powers of Arbitrators.** Arbitrators are vested with all the powers and assume all the duties granted and imposed upon arbitrators in accordance with chapter 682, Florida Statutes.

**(f) Time.** The panel or the sole arbitrator assigned will hold the hearing within 45 days after receipt of the assignment and will render the award within 10 days after the close of the hearing, unless extended by the chair of the standing committee for good cause. Failure of an arbitrator or panel to comply with these time requirements does not divest the arbitrator or panel of the authority to conduct proceedings authorized by these policies and applicable rules.

### **RULE III. RECORD OF PROCEEDINGS**

Any party may provide, at the party's cost, the service of a stenographer to record the proceedings. If the proceedings are transcribed, the party must provide the arbitrators with a copy of the transcript no later than 30 days after adjournment of the arbitration proceedings. The transcript will be open to inspection by all parties to the arbitration. The proceedings may be recorded by tape recorder or other electronic means by stipulation of the parties.

### **RULE IV. HEARINGS**

**(a) Setting and Notice of Hearing.** The panel chair or the sole arbitrator will coordinate with the parties and panel members, set a time and place for the hearing, and serve written notice on the parties to the arbitration by registered or certified mail, facsimile, or e-mail at the address

on the agreement to arbitration form not less than 10 days before the hearing. The panel chair or sole arbitrator will provide a copy of the hearing notice to the program administrator. A party's appearance at a scheduled hearing constitutes a waiver of any deficiency in the notice of hearing.

**(b) Absence of Party.** The arbitration may proceed in the absence of a party who, after notice, fails to attend or obtain a postponement from the panel chair or sole arbitrator. Postponement will only be granted on good cause shown. Despite the absence of a party or parties, no award may be made without the submission of evidence to support the claim.

**(c) Representation by Counsel.** Each party has the right to be represented by counsel at any arbitration hearing.

**(d) Presentation of Evidence.** The parties may agree to waive an evidentiary hearing and may submit their positions and contentions in writing, with any exhibits, to the panel or sole arbitrator who will render a final decision based on the information submitted. Parties must simultaneously provide a copy of any evidence and any communication sent to the panel or sole arbitrator to all other parties. The parties and panel or sole arbitrator may not engage in ex parte communications at any time before, during or after the arbitration on issues directly related to the arbitration. The panel or sole arbitrator may disregard any specific evidence or communication that was not simultaneously provided to the other parties unless the party submitting the evidence or communication can show extreme prejudice to that party's case. The panel or sole arbitrator must require all parties and witnesses to be sworn before they testify. The panel or sole arbitrator may request opening statements and prescribe the order of proof. All parties will be given a reasonable opportunity to present evidence. Depositions will be allowed only for the perpetuation of testimony. All other pre-hearing discovery is prohibited. The procedures for subpoenas and witness attendance are as provided in the Florida Rules of Civil Procedure. Fee expert witness testimony is permitted but not required. Any party who intends to call an expert witness to testify about fees must disclose, in writing, the full name, contact information (business address, telephone number, and email address), and a detailed summary of all expert witness opinions and anticipated testimony no less than 15 calendar days before the first day of the scheduled final hearing. Any opposing party who intends to call a rebuttal expert witness to testify about fees must disclose in writing the full name, contact information, (business address, telephone number, and email address),

and a detailed summary of all rebuttal expert witness opinions and anticipated testimony no less than 5 calendar days before the first day of the scheduled final hearing. In determining a reasonable fee under Rule Regulating The Florida Bar 4-1.5, the panel or sole arbitrator may consider any evidence the panel or sole arbitrator deems relevant to the fee issues in that case including, but not limited to, the testimony and opinions provided by the respective fee expert witnesses. Subpoenas may be enforced as provided in the Florida Statutes, or as elsewhere provided in chapter 3 of the Rules Regulating The Florida Bar.

**(e) Right of Party to Attend; Appearance by Telephone.** All parties have the right to attend all hearings. The panel or sole arbitrator may exclude any other witnesses or other persons from the hearings. The panel or sole arbitrator may permit a person to appear or give testimony by telephone at hearings held under these rules. Any person who participates by authorized telephone appearance may not testify unless that person is physically present before an officer authorized to administer oaths and is administered an oath.

**(f) Presiding Arbitrator.** The panel will select 1 of their members as chair. The panel chair or the sole arbitrator presides at the hearing and rules on the admission and exclusion of evidence and on questions of procedure, and exercises all powers relating to the conduct of the hearing. The hearing should be informal in nature, without strict observance of the rules of evidence or the Florida Rules of Civil Procedure.

**(g) Factors to Consider Regarding Reasonable Fees.** In reaching a decision, the panel or sole arbitrator may consider all factors the panel or sole arbitrator deems relevant including, but not limited to, the parties' intention and understanding when the representation was undertaken, as well as those factors for determining the reasonableness of a fee enumerated in Rules Regulating The Florida Bar 4-1.5(b) and (c).

## **RULE V. CLOSING OF HEARINGS**

The arbitrators must specifically inquire of all parties whether they have any further evidence to submit in any form. The hearings will be closed if the parties have no further evidence to submit. The arbitrator(s) may hold executive session to consider the issues raised and reach a decision as to an award at the end of the hearing. The mental processes of the arbitrator(s) employed in reaching an award are not subject to discovery or

use in any proceeding. The bar will keep fee arbitration files for 2 years from the date of the submission of the award to the parties.

## **RULE VI. THE AWARD**

The arbitrators will submit a written award to the parties and the program administrator on the form prescribed by the standing committee, signed by the arbitrators, which includes a brief explanation of the basis of the award. The award is binding if signed by a majority of the arbitrators. The arbitrators may grant any lawful relief, including specific performance, unless the agreement to arbitrate or request for and notice of arbitration provides otherwise. Any dissent must be signed separately. An award may also be entered on the consent of all the parties. The hearing may not be reopened after the award is signed, except on consent of all parties and the chair or sole arbitrator. The award may be confirmed, set aside, modified, or corrected only in accordance with Florida Statutes.

## **RULE VII. STANDARDS FOR MEDIATOR AND ARBITRATOR APPROVAL AND TRAINING**

**(a) Eligibility.** Persons eligible to be program arbitrators are:

- (1) retired judges and justices of the courts of the state of Florida;
- (2) persons who were members of circuit fee arbitration committees at the time of or before the merger of the grievance mediation and fee arbitration programs;
- (3) persons who have served on a circuit grievance committee for 1 year or more;
- (4) any other person who is in good standing as an arbitrator with the American Arbitration Association, American Health Lawyers Association, Association for Conflict Resolution, JAMS (formerly known as Judicial Arbitration and Mediation Services, Inc.), Financial Industry Regulatory Authority, Inc. (FINRA), or any other similarly recognized conflict resolution organization; and
- (5) any other person who, in the committee's opinion, possesses the requisite education, training, or certification in alternative dispute resolution to be a program arbitrator.

Members of The Florida Bar must be members in good standing and who have no pending recommendation of minor misconduct or finding of probable cause to be eligible for appointment.

**(b) Approval.** The committee may approve applicants as program arbitrators if they meet the eligibility requirements stated above and have agreed to accept at least 2 referrals per calendar year.

The committee may decline to approve applicants who do not meet the eligibility requirements set forth above or have been found guilty of, pled guilty to, or been disciplined for misconduct that, in the opinion of the committee, renders those persons inappropriate for service as program arbitrators.

**(c) Training of Arbitrators.** All newly approved arbitrators must attend a training course approved by the committee before being assigned any cases. After this initial training, all arbitrators must attend a bar arbitrator training course no less than every 5 years.

**(d) Cessation of Referrals and Removal of Approval.** The bar will refer no additional referrals to an arbitrator after probable cause has been found against that arbitrator until the case has been completed. The standing committee may revoke approval of a program arbitrator for any reason that the committee may use to deny initial approval, or for any other reason that the committee believes would render a program arbitrator unfit.

**(e) Reimbursement of Expenses.** Program arbitrators are not compensated for time devoted to or travel incurred in connection with an arbitration conducted within the circuit in which the arbitrator resides. Program arbitrators who conduct arbitrations outside the circuit in which the arbitrator resides may be reimbursed for mileage at the rate approved by the bar's Budget Committee. Program arbitrators may be reimbursed for out-of-pocket expenses that include, but are not limited to: court reporter fees; telephone calls; photocopying fees (at a maximum of \$.25 per page); and translation services.

## **RULE VIII. DEATH OR INCOMPETENCE OF A PARTY**

An arbitration proceeding abates on the filing of suggestion of death of a party or notice of adjudication of incompetency of a party, unless the personal representative or the guardian of the party consents to go forward. An arbitration award made when a party dies or is found incompetent after

the close of proceedings is binding on the heirs, administrators, or executors of the deceased and on the estate and guardian of the incompetent.

Approved and effective on January 27, 2012 by The Florida Bar Board of Governors.

## **RULE IX. INTERVENTION**

Any member of The Florida Bar or law firm comprised of one or more lawyers who are members of The Florida Bar claiming an interest in a fee arbitration between members of The Florida Bar or between a member of The Florida Bar and a client or clients, may be permitted to assert a right by intervention in that fee arbitration, but the intervention is subordinate to the propriety of the main fee arbitration, unless otherwise ordered by the arbitrator or arbitrators. Any member of the Florida Bar or law firm claiming a right by intervention may serve a notice of intervention on the arbitrator or arbitrators and the parties to the fee arbitration of the existence of that interest at least 7 days before the hearing date in the notice required under Rule IV(a). By serving any notice of intervention, the intervening member of the Florida Bar or law firm submits to the jurisdiction of the arbitration, consents to the arbitrator's entry of the award, and agrees to be bound by any final award issued in the arbitration proceeding.

### **Comment**

This rule recognizes that while fee disputes may arise between lawyers and their former clients, these fee disputes often implicate the law firms who employ the lawyers or with which the lawyers are associated. The rule is intended to permit a law firm to participate in a fee arbitration where it has an interest in the outcome of the dispute.

The rule is based on Florida Rule of Civil Procedure 1.230, which permits "[a]nyone claiming an interest in pending litigation to assert a right by intervention." This rule loosely follows the same procedure as employed by the courts, but adds a time-frame so that parties to a fee arbitration have reasonable notice of an intervention before the final hearing. Since participation in fee arbitrations is voluntary, interventions in fee arbitration proceedings are conditioned upon the intervenor's: (i) submission to the

jurisdiction of the arbitration; (ii) consent to the arbitrator's entry of an award; and (iii) willingness to be bound by the final award.