



LAWYER-CLIENT FEE DISPUTE RESOLUTION PROGRAM

RULES OF PROCEDURE

The Connecticut Bar Association has adopted the following procedures for the CBA Lawyer-Client Fee Dispute Resolution Program (the “**Program**”). The Program is overseen by the Committee on the Resolution of Lawyer and Client Disputes (the “**Committee**”), which is responsible for interpretation of these rules.

I. JURISDICTION

A. The Program will have jurisdiction over disputes about fees or retainers for legal services between:

- (i) a lawyer (or that lawyer’s law firm) who at the time of the services:
 - (a) was a member of the Connecticut bar, or
 - (b) practiced law in Connecticut or in the U.S. District Court for the District of Connecticut, or
 - (c) had a physical or virtual office in Connecticut, and
- (ii) either:
 - (a) a client of the lawyer or law firm who was at the time of the legal services a resident of or located in Connecticut, including a Connecticut corporation (a “**Connecticut Client**”), or
 - (b) a client of the lawyer or law firm located outside of Connecticut if the legal services related to Connecticut law, to activities in Connecticut, or to actual or potential litigation in the Connecticut state courts or the U.S. District Court for the District of Connecticut or an actual or potential administrative agency proceeding in Connecticut (a “**Connecticut Matter Client**”), or
 - (c) a third party (wherever located) that has agreed in writing with the lawyer or law firm, or has been ordered by a court, to pay legal fees for either a Connecticut Client or a Connecticut Matter Client (a “**Responsible Third Party**”).

However, the Program will only have jurisdiction if the lawyer or law firm and the client or Responsible Third Party, as the case may be, have either consented in writing to the use of the Program to resolve the dispute, or have been ordered to use the Program by a court or the Connecticut Statewide Grievance Committee or another administrative body. The written consent to the use of the Program may be part of an agreement signed before the



dispute has arisen, such as a fee agreement, retainer agreement, or other similar agreement. The written consent may also be obtained after the dispute has arisen. In addition, the Program will only proceed to hear a dispute when all parties have agreed or been ordered to use the same specific process (mediation, arbitration, or mediation followed by arbitration).

- B. Notwithstanding the foregoing, the following disputes are specifically excluded from the Program's jurisdiction:
- (i) Disputes over which of two or more courts has jurisdiction to fix the fee;
 - (ii) Disputes in which a fee is fixed or has been approved by a court;
 - (iii) Disputes that are the subject of a pending grievance proceeding if the body hearing the grievance advises the Program that its proceeding should take precedence; and
 - (iv) Disputes about matters other than fees or retainers for legal services. Other matters may be considered to the extent they are relevant to defenses against a claim based on a fee or retainer for legal services (*e.g.*, a client's allegation that an attorney's services were negligent or that the attorney otherwise failed to perform the services adequately may be part of a defense against the attorney's claim for fees for those services). However, affirmative claims (*e.g.*, a client's claim of damages for alleged malpractice) will not be considered in an arbitration, and may be considered in a mediation only if the mediator believes it would be beneficial and only to the extent both parties consent to the consideration of those claims.

II. SUBMISSION OF DISPUTES TO THE PROGRAM

- A. Under the supervision of the Committee, the Program will develop forms for the submission of disputes to the Program as well as other forms and Program documents, and may modify any forms or Program documents from time to time. The current version of any forms will be available on the Program website.
- B. Any lawyer, law firm, client, or Responsible Third Party may submit a dispute to the Program by completing the current version of the required forms and submitting them, along with documents required by the forms (together, the "**Petition**"), to the member of the CBA staff designated as administrator of the Program. There will be no charge for using the Program.
- C. Among other things, the forms may require the Petition to:
- (i) identify the party submitting the dispute (the "**Petitioner**") and all other parties to the dispute (collectively, the "**Respondent**") and their contact information, as well as any counsel representing the Petitioner and, if known, any counsel representing the



Respondent;

- (ii) include a concise statement of the facts and the remedy sought;
 - (iii) include the names of witnesses and other information that may be necessary for potential neutrals to determine if they have a conflict;
 - (iv) state whether the Petitioner is seeking to resolve the dispute through mediation, arbitration, or mediation followed, if the dispute is not resolved, by arbitration;
 - (v) state whether the dispute is or has been the subject of any pending court, disciplinary or grievance proceeding and, if so, briefly describe the status of such proceeding;
 - (vi) state whether either the Petitioner or the Respondent has been ordered to use the Program by a court or the Statewide Grievance Committee, and if so, attach a copy of the order; and
 - (vii) except where the Respondent has been ordered to use the Program by a court or the Statewide Grievance Committee, attach a copy of the written consent of the Respondent to use the Program, or request that the Program contact the Respondent to ask if they consent.
- D. At the Petitioner's request when there is no order or agreement to use the Program, the administrator will attempt to contact the Respondent to ask if they consent to using the Program and the specific process requested by the Petitioner (mediation, arbitration, or mediation followed by arbitration), using the contact information provided by the Petitioner. The Program will not proceed further with the case until written consent or an order requiring participation has been received, and will ordinarily limit its attempt to obtain consent to an initial letter sent by mail and/or email. The Petitioner may also seek the Respondent's consent directly.
- E. The administrator will send a complete copy of the Petition with all attachments, along with a copy of these rules, to each Respondent within a reasonable time (ordinarily not more than **15 days**) after receiving a complete Petition. The Respondent will have **30 days** from the date the materials are sent to respond in writing to the Petition, using forms provided by the Program and any required accompanying documents (the "**Response**"). If the Respondent has not previously consented or been ordered to use the Program and consents within the 30-day period, the Respondent will have an additional **15 days** from the date of consent to submit the Response.
- F. If a Petition seeking arbitration includes a written consent or order but the Respondent believes it does not apply or is not valid, the Response should state that. The Program will proceed to appoint an arbitrator, as described below, so that the question of the



applicability and validity of the agreement or order may be decided by the arbitrator. The arbitrator will have authority to determine the arbitrator's jurisdiction and the validity of the written arbitration agreement.

- G. Where a Respondent has consented or been ordered to arbitrate under the Program, the Respondent's failure to submit a Response will not delay the proceeding, which will go forward without a Response. As mediation is a voluntary procedure, either the Respondent or the Petitioner may decline to participate or cease to participate in a mediation at any time, even if they have previously agreed to participate. The Program has no power to hold either party to an agreement to mediate or require compliance with an order to participate in mediation.
- H. The Program may decline to proceed further with any mediation or arbitration case based on abusive, harassing, inappropriate, or threatening conduct by a party or counsel at any time in the course of a case.

III. MEDIATION PROCEDURE

- A. For mediation cases, the Program will appoint a single mediator for the case from the Program's panel of volunteer mediators, as follows:
 - (i) Within a reasonable time (ordinarily no more than **30 days**) after the submission of the Response or the expiration of the 30-day response period specified in Paragraph II.E, the administrator will send simultaneously to all parties an identical list of at least three neutrals chosen from the Program's panel of mediators along with each listed mediator's resume or CV. Each party will have **15 days** from the date the list is sent to respond by striking any names that are not acceptable, for any reason, and ranking the remaining names in order of preference. If a party does not respond within the 15-day period, every name on the list will be deemed accepted and ranked equally.
 - (ii) The Program will, using its discretion, appoint a mediator from among the acceptable names, taking into account the mediator's availability and the parties' ranking of the list. If all names are stricken by one or both parties, or if none of the acceptable names is available, the Program will submit a second list and follow the same procedure. If all mediators on the first and second list are stricken or unavailable, the Program will appoint a mediator of its choosing.
 - (iii) The administrator will provide the Petition and Response to the mediator. The mediator will disclose any actual or potential conflict of interest the mediator has as well as any other circumstances that the mediator believes might appear to affect the mediator's impartiality or be otherwise disqualifying. The disclosure will be submitted in writing to the administrator, and will include an affirmative statement



that, except for the matters disclosed, the mediator is unaware of any material conflict of interest or relationship with any of the parties, their representatives or witnesses that reasonably would cause doubt about the mediator's impartiality or independence. The administrator will forward the mediator's disclosures to the parties.

- (iv) If no objection is made to the mediator's appointment within **15 days** after the disclosures are sent, the appointment will be deemed confirmed.
 - (v) If any party objects in writing to the appointed mediator, or if after being appointed a mediator resigns, dies, withdraws, or refuses or becomes unable or disqualified to perform their duties, the Program will appoint a replacement mediator from the previously provided list of proposed names, if such a mediator is available and was not stricken. If no replacement mediator from the list of proposed names is available and unstricken, the Program will appoint a replacement mediator using the same procedure described above.
- B. The mediator will conduct the mediation in any manner that they deem to be appropriate under the circumstances, provided that the process maintains the parties' ability to determine whether and how to resolve the dispute. The mediator will remain neutral and will have no decision-making authority over the parties.
 - C. All mediation proceedings, including, but not limited to, communications, offers of settlement and mediator's proposals, will be confidential and will not be used or disclosed in any subsequent arbitration proceeding, except that where the mediator serves as the arbitrator in the subsequent arbitration proceeding under these rules, this limitation will apply only to communications between a party and the mediator that were not shared with the other party.
 - D. If either party requires language services (translation or interpretation) to participate in the mediation, that party will generally be responsible for obtaining them and for their expense, if any. Use of language services for mediation sessions between the parties will require the agreement of both parties, and the translator or interpreter must agree to the confidentiality of the proceedings. In some cases, the Program may be able to arrange for language services at no cost or reduced cost to the parties, but the Program will have no obligation to do so and cannot guarantee to do so. The parties may choose to take the expense of language services into account in any mediation settlement.
 - E. The mediator may terminate the mediation at any time if, in the mediator's judgment after seeking to discuss the matter with each of the parties, further efforts to mediate the dispute would be futile.
 - F. If the parties reach a settlement that they wish to have embodied in a consent arbitration



award, the parties may agree to the appointment of the mediator as arbitrator for that purpose, and upon appointment, the mediator will promptly issue a consent arbitration award containing the terms of the settlement. A party may seek confirmation of the consent arbitration award in any court having jurisdiction thereof.

- G. Any party may be represented in the mediation by counsel at their own expense, but no party is required to have counsel.

IV. ARBITRATION PROCEDURE

- A. For arbitration cases other than those that have been the subject of mediation under the Program, the Program will appoint an arbitrator for the case from the Program's panel of volunteer arbitrators, as follows:

- (i) Within a reasonable time (ordinarily no more than **30 days**) after the submission of the Response or the expiration of the 30-day response period specified in Paragraph II.E, the administrator will send simultaneously to all parties an identical list of at least three arbitrators chosen from the Program's panel of arbitrators along with each listed arbitrator's resume or CV. Each party will have **15 days** from the date the list is sent to respond by striking any names that are not acceptable, for any reason, and ranking the remaining names in order of preference. If a party does not respond within the 15-day period, every name on the list will be deemed accepted and ranked equally.
- (ii) The Program will, using its discretion, appoint a single arbitrator from among the acceptable names as arbitrator, taking into account the arbitrator's availability and the parties' ranking of the list. If all names are stricken by one or both parties, or if none of the acceptable arbitrators is available, the Program will, in its discretion, either submit a new list and follow the same procedure or appoint an arbitrator of its choosing and provide the parties with that arbitrator's resume or CV.
- (iii) The administrator will provide the Petition and Response to the appointed arbitrator. The arbitrator will disclose any actual or potential conflict of interest the arbitrator has with any of the parties or their counsel as well as any other circumstances that the arbitrator believes might appear to affect the arbitrator's impartiality or that the arbitrator regards as otherwise disqualifying. The disclosure will be submitted in writing to the administrator, and will include an affirmative statement that, except for the matters disclosed, the arbitrator is unaware of any material conflict of interest or relationship with any of the parties, their representatives or witnesses that reasonably would cause doubt about the arbitrator's impartiality or independence. The administrator will forward the arbitrator's disclosures to the parties.
- (iv) If no written objection is made to the arbitrator's appointment within **15 days** after



the disclosures are sent, the appointment will be deemed confirmed. No oath of office will be required for the arbitrator. If a party objects to appointment of the arbitrator based upon the disclosure, the objection will be referred to the arbitrator for decision.

- (v) If a party objects in writing to the arbitrator's appointment and after considering the objection, the arbitrator decides they should not continue, or if the appointed arbitrator resigns, dies, withdraws, or refuses or becomes unable or disqualified to perform their duties, the Program will appoint a replacement arbitrator from the previously provided list of proposed names, if such an arbitrator is available and was not stricken. If no replacement arbitrator from the list of proposed names is available and unstricken, the Program will appoint a replacement arbitrator using the same procedure described above.
- B. The following additional provisions apply to arbitration cases that have been the subject of mediation under the Program:
- (i) The parties will inform the administrator within **15 days** after the conclusion of the mediation whether they agree to use the person who served as mediator as the arbitrator. If they so agree, the Program will appoint that person as the arbitrator, unless the mediator declines to serve as arbitrator. If the parties do not so agree, or if the mediator declines to serve as arbitrator, the Program will appoint an arbitrator from the Program's panel of arbitrators as provided in Paragraph IV.A above.
 - (ii) The arbitration will be based on the Petition previously submitted by the Petitioner, except that the Petitioner may within **15 days** after the conclusion of the mediation submit a notice withdrawing claims that were resolved in the mediation or that have become moot. If the Respondent did not previously submit a Response or wishes to supplement the Response with supporting documents, they may submit the Response or supporting documents within **30 days** after the conclusion of the mediation.
- C. Any party may be represented in the arbitration by counsel at their own expense, but no party is required to have counsel.
- D. Within **30 days** of confirmation of the arbitrator's appointment, the administrator will schedule a telephone or video conference for the parties to discuss with the arbitrator:
- (i) The status of any court or disciplinary proceeding related to the fee dispute;
 - (ii) Any issues concerning the arbitrability of the dispute, including issues relating to the applicability or validity of a written agreement or order to arbitrate.
 - (iii) Whether a hearing is needed. If no hearing is required, the matter will be determined by the parties' written submissions under oath by the deadlines



determined by the arbitrator.

- (iv) If a hearing is needed:
 - (a) whether it will be in person or remote via videoconference or similar technology;
 - (b) the number of proposed fact witnesses and expert witnesses, and how they will testify;
 - (c) the date(s) for the hearing, which will ordinarily begin within **60 days** after the telephone conference;
 - (d) the location for the in person hearing, if any;
 - (e) deadlines and procedures for any pre-hearing written submissions and other documents; and
 - (f) other matters that the arbitrator considers relevant.
- (v) Whether language services (translation or interpretation) or other accommodations will be needed. Language services will generally be at the expense of the party requesting them, although the arbitrator may decide to reallocate between the parties all or part of the expense as part of the arbitrator's award at the end of the case. In some cases, the Program may be able to arrange for language services at no cost or reduced cost to the parties, but the Program cannot guarantee this and will have no obligation to do so.

Counsel for a party may participate in the conference instead of or in addition to the party they represent. The arbitrator will consider the views and preferences of the parties and their representatives as presented in the conference, but will have exclusive authority to determine the number of witnesses, date and location of the hearing, deadlines, and other matters related to the conduct of the arbitration as the arbitrator considers appropriate.

- E. No party or other person participating in the process will communicate with the arbitrator about the dispute except in the presence of all parties or their representatives, except that when both parties have been notified of a conference or hearing scheduled by the arbitrator, the conference or hearing may go forward, in the arbitrator's discretion, even if not all parties are present or represented. Unless the arbitrator directs otherwise, all documents and written communications to the arbitrator will be sent to the administrator for forwarding to the arbitrator (with simultaneous copies to all parties) and all oral communications and in-person meetings with the arbitrator will be arranged by the administrator.
- F. Unless the arbitrator orders otherwise, all documentary evidence to be presented at the



hearing will be submitted simultaneously to the opposing party and the arbitrator, via the administrator, at least **15 days** in advance of the beginning of the hearing. There will be no other form of discovery, absent extraordinary circumstances.

- G. The arbitrator will conduct the arbitration in such manner as the arbitrator considers appropriate, provided the parties are treated fairly and equitably and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting their case. If a party who had agreed to or been ordered to participate in arbitration does not participate, or does not present evidence, after having been given a reasonable opportunity to do so, the arbitrator will make a decision based solely on the evidence presented by the other party or parties.
- H. The arbitrator, in exercising the arbitrator's discretion, will conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process. The rules of evidence will not apply to the arbitration.
- I. The arbitrator will issue the award in writing within **30 days** after the arbitration hearing was concluded, or in the event the parties are permitted to file post-hearing submissions, after the date on which the last such submission was filed within the allowed time. The arbitration award will state who prevails, any amounts due and payment terms. The award does not need to include reasons, findings of fact or conclusions of law, but the arbitrator may include them if he or she wishes.

V. WAIVER OF LIABILITY AND MISCELLANEOUS PROVISIONS

- A. The parties waive, to the fullest extent permitted under applicable law, any claim against the arbitrator or mediator, the CBA, the Program, the Committee, and their respective members and staff, based on any act or omission in connection with the dispute.
- B. The administrator may contact a party using any contact information the party provides in writing to the Program. That communication may be via phone, email, or mail. By providing contact information to the Program, a party agrees to receive potentially confidential communications via any of the contact methods listed by the party.
- C. The administrator, appointed mediator, or appointed arbitrator may, but will not be required to, grant extensions of any deadline or expand any time limit in these rules, provided that in the absence of compelling reasons no more than one extension of any deadline will be granted to any one party.
- D. The Program will treat as confidential all information and documents submitted by any party to a mediation or arbitration under these rules, and will not voluntarily share them with anyone but the administrator, Program staff, the Committee, and the appointed mediator or arbitrator without the consent of the parties, provided that the Program may



disclose to a court, grievance committee, or other investigatory body the fact that the mediation or arbitration was initiated, whether it is ongoing, and whether it resulted in a resolution (in the case of mediation) or award (in the case of arbitration). The Program cannot guarantee the confidentiality of any documents and may be required to provide documents or information to a court, grievance committee, or other investigatory body.

- E. These rules will apply to any dispute submitted to the Program after the effective date of these rules and to any previously submitted dispute where all parties agree to submit to these rules.