STATE BAR OF ARIZONA
FEE ARBITRATION COMMITTEE

RULES OF ARBITRATION OF FEE DISPUTES

As promulgated by the Fee Arbitration Committee and adopted by the Board of Governors of the State Bar of Arizona ("State Bar").

I. PURPOSE COMPOSITION OF THE COMMITTEE, AND DEFINITIONS

A. The purpose of the State Bar of Arizona Fee Arbitration Committee (hereinafter designated as the "Committee") is to provide a forum for the binding arbitration of Fee Disputes. This program is available to all parties who agree to be bound by the Award.

B. The Committee shall consist of members appointed by the president of the State Bar, one of whom must be designated by the president as chair of the Committee.

C. Definitions:

**Agreement to Arbitrate** or **Agreement**: The approved State Bar form signed by all Parties consenting to arbitration of a Fee Dispute.

**Attorney** or **Lawyer**: A person admitted to the practice of law in the State of Arizona, or any person who appears, participates or otherwise engages in the practice of law in the State of Arizona over whom the Committee has jurisdiction pursuant to the Rules of the State Bar.

**Award**: The final written determination of the Arbitrator(s) in a Fee Dispute.

**Client**: Any party who enters into a Fee Agreement with a Lawyer for legal services and/or advice.

**Fee Dispute**: A disagreement between a client/payer and the Attorney charging the fees, or between two Attorneys, regarding the reasonableness of legal fees and/or costs arising out of a representation concerning or involving an Arizona legal matter.
**Fee Agreement**: Any agreement between a Lawyer and Client containing the terms and conditions of their relationship. May also be called a retainer letter, retention letter, retainer agreement, employment letter or agreement, advance deposit letter or agreement, etc.

**Fee Arbitration Program Administrator**: The staff person or designee of the State Bar responsible for administering the State Bar Fee Arbitration Program.

**File**: The Committee’s records and papers in a specific Fee Arbitration matter.

**Party**: The Client, Lawyer, the Lawyer's assignee and any third person or entity who has been joined by the Client or Lawyer in the Fee Dispute.

**Petition**: A written request for Fee Arbitration on the form approved by the Committee and the State Bar.

**Petitioner**: The Attorney or Client requesting Fee Arbitration.

**Respondent**: The Attorney or Client with whom the Petitioner has a Fee Dispute.

**Rules**: The Rules of Arbitration of Fee Disputes as promulgated by the Committee and adopted by the Board of Governors of the State Bar.

### II. JURISDICTION OF THE COMMITTEE

A. The Committee’s jurisdiction includes the Arbitration of Fee Disputes:

1. Between and among Attorneys when the fee arrangement arose, where both Parties agree to be bound by executing an Agreement to Arbitrate in the form provided by the State Bar of Arizona;

2. Between a Client and their Attorney, where both Parties agree to be bound by executing an Agreement to Arbitrate;

3. Between an Attorney licensed to practice in Arizona when the Client-Attorney relationship that gave rise to the fee dispute began and a third Party who has paid or agreed to pay the Attorney’s fees, only if the Client joins as a co-Petitioner or co-Respondent, as the case may be, and all Parties agree to be bound by executing an Agreement to Arbitrate;

4. Between a Client and the law firm to which the fee in dispute may be owed or has been paid, where all Parties agree to be bound by executing an Agreement to Arbitrate. In such case, Agreements to Arbitrate must be executed by any Attorney of the firm;
5. Where ordered by a Court of competent jurisdiction; or

6. As a result of any disciplinary investigation or proceeding conducted pursuant to the Rules of the Arizona Supreme Court, including diversion agreements between a respondent and the State Bar or orders of the Attorney Discipline Probable Cause Committee, Presiding Disciplinary Judge or a Hearing Panel.

Committee Comment:
1) The State Bar Fee Arbitration Program only has jurisdiction over the reasonableness of fees as defined by ER 1.5. For example, the program has no jurisdiction to arbitrate liens filed by third parties against awards being held in attorney trust accounts under ER 1.15.

2) A dispute over the reasonableness of the fees must exist between the Client and the Attorney for the matter to qualify for Fee Arbitration. The State Bar Fee Arbitration Program is not to be used by Parties as a collection agency.

3) Attorneys admitted pro hac vice to the State Bar are subject to the Committee’s jurisdiction.

B. Except as ordered by a Court of competent jurisdiction, the Committee will not have jurisdiction over a Fee Dispute:

1. If any Party declines to execute the Agreement to Arbitrate in the form provided by the State Bar.

2. If there already has been a determination made as to the validity of the fee;

3. If an action on the dispute is pending in another forum;

4. If the dispute is in the nature of a compulsory counter-claim that could have been raised in another proceeding;

5. In the absence of a stipulation of the Parties, if the Petition is filed more than three years after the Attorney-Client relationship has been terminated or the final billing has been received by the Client, whichever is longer; or

6. If the amount in controversy is less than $500.

C. Any member of the Committee, or staff to the Committee, may decline jurisdiction in a particular case where the interests of justice would be served by dismissal or where Fee Arbitration is unlikely to lead to a resolution of the Fee Dispute.
III. SCOPE OF THE FEE ARBITRATION HEARING

A. The issue before an Arbitrator or a Fee Arbitration panel (hereinafter collectively referred to as “the Arbitrator”), in accordance with ER 1.5, Ariz. R.S.Ct. 42. (attached), is whether the fees charged were reasonable for the work that was performed. If disputed, the Arbitrator also may determine the reasonableness of costs.

B. The issues regarding reasonableness of fees and costs will be limited to those set forth in the Petition, the Respondent’s response, other written submissions by the Parties, and the testimony and written evidence presented at the hearing.

IV. STARTING THE ARBITRATION: PETITION-AGREEMENT-RESPONSE

A. Arbitration proceedings must be initiated by filing a signed Petition for Arbitration and Agreement to Arbitrate with the State Bar office in Phoenix. The Petition for arbitration (the “Petition”) and Agreement to Arbitrate (the “Agreement”) must be in the form provided by the State Bar.

B. The Parties’ signatures on the Agreement must constitute:

1. An avowal that the Parties have attempted to resolve the dispute and are unable to do so, or have a reasonable belief that such an effort would be useless.

2. An agreement to hold harmless from suit the State Bar and its employees, the members of the Committee, the Arbitrator, and all others participating in good faith in the arbitration proceedings.

3. An acknowledgment that the Award of the Arbitrator is final and binding upon the Parties and that such Award may be enforced by any court of competent jurisdiction.

4. An agreement to keep the State Bar apprised of any change in address occurring subsequent to filing the Petition. A failure to keep the State Bar so apprised will be deemed waiver of notice of hearing.

5. An agreement that said dispute will be heard and determined by the Committee in accordance with the Rules of Arbitration of Fee Disputes, copies of which have been delivered to and read by each of the Parties and which Rules expressly are accepted.
6. An agreement to submit to the Arbitrator, the State Bar of Arizona Fee Arbitration Program Coordinator, and the opposing Party, no later than ten (10) days prior to the Hearing, all relevant records pertaining to the dispute, including but not limited to, the Fee Agreement, all billings, and all documents to be introduced into evidence at the hearing directly related to the Fee Dispute.

7. An avowal that no civil litigation or arbitration regarding this Fee Dispute has been filed or if a civil suit or arbitration was filed, it has been dismissed or stayed.

8. An agreement to arbitrate the dispute to conclusion, absent a subsequent written agreement signed by all Parties, agreeing to dismiss the dispute.

9. An agreement that a Lawyer Party will not charge fees and/or costs for participation in a Fee Arbitration.

10. An avowal by the Attorney that he/she has an ethical obligation to appear if he/she has signed the Agreement to Arbitrate. Any Attorney who signs the Agreement to Arbitrate can and does obligate the firm to participate in the Fee Arbitration.

11. An avowal by the Attorney that he/she has the authority to bind the firm to participation in Fee Arbitration.

12. An avowal by the Attorney that he/she will arrange for the firm to participate in the Fee Arbitration process, including, but not limited to, advising the firm’s managing partner of the fee dispute.

C. Upon receipt of the forms initiating a Fee Arbitration, the State Bar office must forward to the Respondent a copy of the Petition and Agreement. The State Bar office will request that the Respondent sign and return a copy of the Agreement with a response to the Petition. A failure to return the Agreement within twenty (20) days from the date of the transmittal letter from the State Bar will be construed as a declination to arbitrate. Upon receipt of the Agreement and response, the State Bar office will forward a copy of each to the Petitioner. If an Agreement is not timely received, the matter must be dismissed and the Petitioner(s) notified of the dismissal.

D. Parties are responsible for providing two (2) copies of their responses, replies or other documentary evidence in sole arbitrator matters and four (4) copies in panel matters.

E. The State Bar office must forward a copy of the complete File to a member of the Committee for appointment of an Arbitrator.
F. The Arbitrator, in his/her sole discretion, may authorize additional discovery procedures or may limit discovery.

Committee Comment:
*The use of discovery procedures in Fee Dispute arbitration is discouraged and should be granted only in the extraordinary case where the fee is of some magnitude and after consideration of whether the Parties are represented by counsel.*

G. A member of the Committee, staff to the Committee, or the Arbitrator may grant extensions for any act required by these rules.

V. SELECTION OF THE ARBITRATION PANEL; OBJECTIONS TO PANEL MEMBERS

A. In an arbitration proceeding where the amount in controversy is more than $20,000, any Party may request in the Agreement that the matter be heard by a Fee Arbitration panel of three (3) persons. If such a request is made, upon receipt of the file, a member of the Committee must appoint three (3) persons to serve as an arbitration panel. The panel must consist of two (2) members of the State Bar and one (1) layperson. One of the Lawyers on the panel must be designated as the panel chair. Absent such a request, a member of the Committee must appoint one (1) member of the State Bar to serve as the sole arbitrator.

B. In an arbitration proceeding where the amount in controversy is $20,000 or less, a member of the Committee must appoint one (1) member of the State Bar to serve as the sole Arbitrator.

Committee Comment:
*Parties are advised that if a panel is requested, the arbitration process will likely require additional time to accommodate recruiting panel members and coordinating with the three arbitrators’ and the Parties’ schedules, setting the hearing date, as well as additional time necessary to prepare and issue the Award.*

C. Arbitrators will be chosen in the same Arizona county in which services were performed, or in which either Client or payer resides, the law firm has an office, or the attorney works, in accordance with Rule VI.A. if practicable.

Committee Comment:
*The Arbitrator can reside in the county, travel to the county, hold a telephonic hearing, or have the Parties stipulate for the Arbitrator to determine the matter based on paper submissions see VI. J.*
D. The member of the Committee must advise all Parties of the name(s) of the appointed Arbitrator(s) by notice served personally or by first class mail. Within ten (10) days following personal service or date of the notice, any Party to the proceedings may file with the State Bar office in Phoenix an objection to the appointment of any of the Arbitrator(s). The State Bar office must promptly inform the member of the Committee of any objection. Upon notice of an objection, a new Arbitrator must be selected to replace each Arbitrator objected to, which selection is binding upon the Party previously having objected.

E. The State Bar office, with the assistance of the Committee, will maintain a list of laypersons who have indicated a willingness to act as arbitration panel members. The member of the Committee may select laypersons from sources other than such list in appointing panels.

Committee Comment:

*The list of laypersons from which Arbitration panel members may be chosen should be as broad-based as possible. Every layperson who actually serves as an Arbitrator will be given a copy of ER 1.5, Ariz. R.S.Ct. 42, which sets forth the factors to be considered in determining the reasonableness of a fee.*

VI. **VENUE OF HEARING; CONDUCT OF HEARING; RIGHT TO PRESENT EVIDENCE; RIGHT TO COUNSEL; NOTICE OF HEARING; RIGHT TO RECORD HEARINGS; EFFECT OF FAILURE TO APPEAR; POSTPONEMENT.**

A. In the absence of a stipulation of the Parties to the contrary, or a finding by the Arbitrator of a more convenient forum, the venue of the hearing must be: 1) the county in Arizona where the services were performed; or 2) the county in Arizona where the Parties contracted for the services.

B. The Arbitrator must set a date, time, and location for the hearing and must notify the Parties by personal service delivery, email with all parties consent, or by first class mail. The notice must be delivered or mailed not less than fifteen (15) days before the hearing unless the Arbitrator and all Parties agree on a shorter period. In the notice of the hearing, the Parties must be informed of their right to present witnesses and documentary evidence and to be represented by counsel.

C. Emailing to parties’ provided email address with all parties consent or mailing of the notification of hearing by first class mail to the last known address of the Parties will constitute notice. A Party’s appearance at a scheduled hearing shall constitute a waiver of any deficiency in the notice of the hearing.
D. Any Party to the arbitration may make arrangements to have the hearing recorded by a court reporter or by electronic tape recording at the Party’s own expense, provided notice is given to the opposing Party and the Arbitrator at least three (3) days prior to the scheduled hearing. In the event a hearing is tape recorded, the requesting Party must provide necessary equipment and tapes as required by the Arbitrator. Any Party to the arbitration is entitled to acquire at his/her own expense a copy of the reporter’s transcript of the testimony by making arrangements directly with the reporter. When no Party to the arbitration requests that the hearing be recorded and the Arbitrator deems it necessary to have the hearing recorded, a court reporter may be employed for such purpose if authorized by the chair of the Committee in consultation with the CEO/Executive Director of the State Bar.

E. At the time and place set for the hearing, the Arbitrator, immediately prior to commencement of the Hearing, must advise the Parties of the option to engage in settlement discussions. The Arbitrator with the consent of all Parties may facilitate the settlement discussions. If no settlement is reached, the Arbitrator will proceed with the hearing. In the event settlement is reached, the Arbitrator must prepare an Award setting forth the terms of the Parties’ agreement including without limitation the amount to which each Party is entitled, if any, the time in which such amounts are to be paid and any other terms agreed to by the Parties. The Award issued pursuant to this rule, may upon compliance with applicable process, be enforced by any court of competent jurisdiction.

F. The testimony of witnesses must be given under oath. The Arbitrator must administer oaths to witnesses.

G. The Arbitrator must preside at the hearing and must determine questions of procedure and the relevancy and materiality of the evidence offered. He/she must exercise all powers relating to the conduct of the hearing. Conformity to the legal rules of evidence is not required. In cases between Clients and Attorneys the burden of proof by a preponderance of the evidence as to the reasonableness of the fee is on the Attorney. In all other cases, the burden of proof is on the Petitioner.

H. If at the time set for the hearing all Arbitrators are not present, the hearing must be postponed unless the Parties agree that the hearing may proceed with one Lawyer member of the panel as the sole Arbitrator. A hearing must not be conducted by or proceed with two (2) members of the panel acting as Arbitrators.

I. If any Party to an arbitration who has been duly notified fails to appear at a scheduled hearing without good cause as determined by the Arbitrator, the Arbitrator may proceed with the hearing and determine the controversy upon the evidence produced. Any Award rendered will have the same force and effect as if the Parties personally attended.

J. Upon request of a Party for good cause, or upon his/her/their own determination, the Arbitrator may postpone or adjourn the hearing from time to time as necessary.
K. Upon stipulation of the Parties to waive a hearing, the Arbitrator may determine the controversy solely on the basis of the File, or by a conference telephone call, the expense for which must be borne by the respective Parties.

L. If the Parties settle the matter before appearing at the Arbitration Hearing, the Arbitrator must notify the Fee Arbitration Administrator within 10 days of the settlement.

M. Any Party and any witness may testify telephonically.

Committee Comment:
*It is generally not necessary to introduce Attorney work product as evidence in the Fee Arbitration hearing. The Fee Arbitration Program, is not a forum to address malpractice claims. If the volume of work produced is an issue, it can be demonstrated by bringing the necessary documents to the hearing, but not submitting them as exhibits. The Parties are cautioned not to submit originals to the State Bar, the opposing Parties or the Arbitrator. The State Bar and the Arbitrator are not responsible for any lost original documents.*

VII. RENDITION; FORM; SERVICE OF ARBITRATION AWARD; SETTLEMENTS; COMPLIANCE; AND OBJECTIONS

A. The hearing must be held promptly, but not longer than ninety (90) days after receipt by the Arbitrator of the Agreement. The sole Arbitrator should render the Award within twenty (20) days after the close of the hearing. A panel must render its Award by majority vote within forty (40) days after the close of the hearing. The foregoing time limits are not jurisdictional.

B. Awards must be in pleading format; on lined, numbered paper; and signed by at least one Arbitrator. The Award must include: 1) a preliminary statement reciting the jurisdictional factors; 2) A list of all persons present at the hearing; 3) a brief statement of the dispute, the amount charged, and the amount paid; 4) the findings of fact, including a determination of the reasonableness of the fee; and 5) the monetary relief if any, stating a specific sum and exactly which Party receives that sum. Where appropriate, an award of interest may be made consistent with Arizona law. The Arbitrator may not award attorney’s fees or costs incurred in the arbitration.

Committee Comment:
*All matters which go to hearing must result in a written Award. The Award must be written by at least one Arbitrator and not authored by the Parties. However, an Award for a matter settled at hearing may incorporate a Settlement Agreement, which must be signed by all Parties and the Arbitrator, and included as an attachment to the Award, to ensure that the Settlement Agreement becomes enforceable if the Award is filed and converted into a judgment. Arbitrators are encouraged to provide sufficient analysis and facts in the Award to explain the reasoning behind the Award.*
C. The original Award must be forwarded only to the Phoenix office of the State Bar for review and processing. The State Bar staff will send the Award to the Parties.

D. The Parties have thirty (30) days from the date upon which a copy of the Award is mailed to them to comply with the Award. If the Parties fail to comply with the Award within that time, the Award may be judicially confirmed pursuant to Arizona’s Uniform Arbitration Act, A.R.S. § 12-1501, et seq. Any objections or modifications to the Award may only be raised through this procedure.

VIII. RELIEF GRANTED BY AWARD; APPLICATION TO COURT; CONFIDENTIALITY; ENFORCEABILITY OF AWARD; ATTORNEY NON-COMPLIANCE WITH AWARD

A. The Award must state the amount to which each Party is entitled, if any.

B. Service of the Award on the Parties will terminate: 1) all claims and interests of the Parties against one another in the subject matter of the arbitration; and 2) all rights of the Attorney to retain possession of any property of the Client pertaining to the subject matter of the arbitration that is not awarded to the Attorney in the Award.

C. Payment of the amount awarded will constitute a complete satisfaction of all claims arising out of the subject matter of the arbitration.

D. With the exception of the Award itself, all records, documents, Files, proceedings and hearings pertaining to arbitration of any Fee Dispute under these rules will not be open to the public or to any person not involved with the dispute, but must be open to any court seeking to confirm or set aside such Award, or to comply with other law or a final order of a court or tribunal of competent jurisdiction directing the Fee Arbitration Committee or Program to disclose such information; and to the Lawyer Regulation Office, the Law Office Management Assistance Program, the Member Assistance Program, and the Board of Legal Specialization of the State Bar. A Fee Arbitrator, Fee Arbitration Panel Member, Fee Arbitration Committee Member, or Fee Arbitration Program Coordinator must reveal such information from the file to the extent they reasonably believe necessary to prevent a party from committing any criminal act, especially one that they believe is likely to result in death or substantial bodily harm. The State Bar must retain all original Awards. Arbitrators are encouraged to retain their arbitration Files for a period of two years after issuance of the Award.

E. Any binding Award may be enforced by the superior court of the county in which the arbitration hearing was held.

F. If an Attorney fails to comply with the Award within thirty (30) days from the date the Award is mailed to the Parties, in the absence of a timely filed objection, such failure will result in a referral to the Lawyer Regulation Office for Disciplinary Investigation.
IX. ARBITRATION OF FEE DISPUTES BETWEEN AND AMONG ATTORNEYS

A. The Committee will accept jurisdiction of disputes between and among attorneys only when all parties agree to be bound by the award.

B. The Arbitrator may determine whether the fee in dispute should be divided and, if so, in what proportion.

X. COMMUNICATION BETWEEN THE PARTIES AND ARBITRATOR

Verbal communication between the Parties and Arbitrators is to be avoided, if possible. Arbitrators are advised to have an associate or a secretary handle scheduling problems. All written communication to and from the Arbitrators should be copied to all Parties, their counsel, if any, and the State Bar. Ex-parte communication must be reported promptly to the opposing Party.

Amended by the Board of Governors of the State Bar of Arizona this 30th day of May 2012.

______________________________
Joseph A. Kanefield, President
State Bar of Arizona

______________________________
Renee Gerstman, Chair
State Bar of Arizona Fee Arbitration Committee

Rules Amended May 30, 2012