

**Rules of the
Legal Fee Arbitration Board
of the
Massachusetts Bar Association**

**As Amended and
Effective September 1, 2012**

20 West Street Boston, MA 02111-1218 • TELEPHONE (617) 338-0500 • FAX (617) 338-0550

Introduction

Since 1974, the Massachusetts Bar Association (MBA) has provided for the arbitration of fee disputes between clients and attorneys through the Legal Fee Arbitration Board (Board), a public service program of the MBA. The Board is a standing committee of the MBA of not less than twelve members. All members of the Board are volunteers appointed by the MBA President. The Board oversees the administration of the legal fee arbitration program, recommends appropriate policies to the MBA's House of Delegates and trains the profession and the public on resolving fee disputes. The Board's authority is derived from the MBA's House of Delegates and Executive Management Committee.

The legal fee arbitration program provides an alternative to the Small Claims, District, or Superior Courts to resolve fee disputes between attorneys and their clients and between attorneys. The Board provides a resource for both attorneys and clients by answering questions about legal fees disputes, publishing model fee agreements, and presenting educational programs that promote healthy communications between attorneys and clients about their professional association.

To begin the arbitration procedure, one of the parties to a legal fee dispute must file a "Petition for Arbitration." Once the Board has received the petition, it will ask for the agreement of the other party to participate. The Agreement to Arbitrate only addresses the issue of what is a fair and reasonable fee. The Board does not have the authority to compel anyone; attorney or client, to submit to its jurisdiction and the arbitrators cannot make any rulings beyond the fairness of the legal fee.

The Board wants open and full discussions at all hearings. At the hearing a single arbitrator decides all matters involving total fees charged of \$10,000 or less, and a three member panel will decide all matters involving total fees charged of more than \$10,000. The strict rules of evidence do not apply and parties are not required to have an attorney represent them. Parties are encouraged to have an attorney represent them if they have any doubts about their ability to represent themselves.

In reaching a decision, arbitrators may hear evidence about claims of malpractice and professional conduct, but shall only use that evidence to decide on the propriety of the fees charged. No award of affirmative relief can be granted for injuries relating to a claim of malpractice or professional misconduct. Thus, arbitrators may rule that an attorney's fee was inappropriate because of the way the case was handled, and reduce the fee. Arbitrators may not award damages or reduce the fee to compensate for other losses incurred by the client because of the way the case was handled, but evidence will be heard on a claim of the attorney's mishandling of a case to decide whether the fee charged for the ultimate services rendered was fair. The decision of the arbitrator(s) is delivered to the parties promptly after the hearing. Board awards are final and binding.

NOTE: Please carefully read the rules prior to submitting to the jurisdiction of the Board.

The Rules

I. Appointment of Board

- A) The Board will consist of 12-21 members, one to be designated as Chair, to be appointed by the MBA President in accordance with the procedures of the MBA established for the appointment for standing committees. All decisions by the Board shall require a simple majority of a quorum.
- B) All Board members shall be members in good standing of the Massachusetts Bar Association.
- C) To the extent feasible the Board shall consist of at least one representative from each county.

II. Jurisdiction of the Board

A) Role of the Board

1) The Board has jurisdiction over fee disputes voluntarily presented to it by the parties, including any necessary party subsequently joined, if the matter involves disputes concerning fees for legal services or for expenses charged by a Massachusetts attorney.

2) The Board also has jurisdiction over fee disputes between attorneys in their professional capacity and physicians, stenographers, consultants and expert witnesses where the fee dispute arises out of a professional relationship other than that of attorney-client.

3) The Board does not have jurisdiction to render awards in disputes where the dispute has been finally adjudicated before a court, or where the services were rendered by an attorney who is not authorized to practice law in the Commonwealth. The Board shall not award damages or increase or reduce the fee to compensate for other claims of any party, but evidence shall be heard regarding a claim of the attorney's handling of a case or a client's actions to determine whether the fee charged for the ultimate services rendered was fair. The chair or his or her designee shall rule on all unresolved jurisdiction issues which ruling shall be final (*amended 6/5/92 and 6/21/00*).

4) The arbitration process shall be conducted according to the Board's rules and subject to the requirements of Massachusetts General Laws, Chapter 251, "Commercial Arbitration."

B) Role of the Arbitrators

1) The Arbitrators exercise their authority to resolve disputes brought to them through the Board. The arbitrators shall convene an impartial hearing in

accordance with these rules and applicable law and shall render an award that states the reasonable fee for legal services, including costs and disbursements if in dispute.

2) The Chief Arbitrator shall oversee the hearing and shall also decide pre-hearing and other procedural questions that may arise.

C) Role of the Administrator and Staff

1) The Administrator of the Board shall be employed by the MBA to oversee the day-to-day administration of the Board. Within the MBA staff structure, the Administrator shall coordinate the program and support the Committee in fulfillment of its activities. The Administrator's duties shall include, but are not limited to, the duty to:

a) appoint an arbitrator or arbitration panel;

b) convene hearings in accordance with these rules and send all required notices to the parties;

c) receive the correspondences of the Board and answer accordingly;

d) maintain records pertaining to each matter filed with the Board and periodically submit statistical and other information to the Board;

e) convene training sessions for new arbitrators and to report to the President of the MBA all vacancies on the Board and the panels of arbitrators; and

f) perform any other duties that are reasonable or necessary to carry out the purposes of the Board.

III. Obligations of the Parties

A) Definitions

1) A "party" to the arbitration is the Petitioner, the Respondent, and any other necessary party who has been joined.

2) A "necessary party" is a person without whom the case cannot be fairly adjudicated.

3) A "Petitioner" is a person who starts a fee arbitration by filing a Petition to Arbitrate with the Board.

4) A "Respondent" is a person who agrees to the arbitration process by filing a Respondent's Agreement with the Board.

B) Arbitration is a contract. Once the Petition for Arbitration of a Fee Dispute and the Respondent’s Agreement to Arbitration of a Fee Dispute are filed, the parties are bound by their agreement to arbitrate, and bound to arbitrate with any party determined to be necessary by the Chief Arbitrator if that necessary party agrees to arbitrate. If any party determined to be necessary by the Chief Arbitrator refuses to arbitrate, the arbitration will be dismissed without prejudice to any of the parties unless the party determined to be necessary has previously signed an arbitration agreement, in which case the matter will be stayed and the parties will be given a period of sixty (60) days to file an action to compel arbitration by the refusing necessary party. If no action is filed within said sixty (60) days, the arbitration will be dismissed without prejudice to any of the parties.

C) The Petitioner shall initiate the arbitration process by filing a Petition for Arbitration of a Fee Dispute with the Board, together with the required filing fee, unless such fee is waived in accordance with subsection 4 below. The responding party must file a Respondent’s Agreement to Arbitration of a Fee Dispute with the Board within a reasonable time, together with the required filing fee. This fee may also be waived in accordance with subsection 4 of this Rule. By so filing his or her Petition or Respondent’s Agreement, the parties agree to submit to the jurisdiction and Rules of the Board and to be bound by its decision.

1) In an attorney vs. attorney dispute, the parties’ Joint Petition must be accompanied by non-refundable filing fees determined as follows:

- a) MBA Members each pay a \$125.00 filing fee.
- b) Non MBA Members each pay a \$250.00 filing fee.

2) In any other dispute, the non-refundable filing fees shall be as follows:

- a) The Petition shall be accompanied by an initial \$25.00 filing fee.
- b) The Respondent’s Agreement shall be accompanied by a filing fee based on the total amount of legal fees charged as provided below:

<u>Total Amount of Legal Fees Charged</u>	<u>Filing Fee</u>
Up to \$2,500.....	\$ 50
Above \$2,500 to \$5,000.....	\$ 75
Above \$5,000 to \$25,000.....	\$150
Above \$25,000.....	\$225

c) Promptly after the Respondent’s Agreement is filed, the Petitioner shall pay the balance of the filing fee due based on the total amount of legal fees charged as provided below.

<u>Total Amount of Legal Fees Charged</u>	<u>Filing Fee</u>
Up to \$2,500.....	\$ 25
Above \$2,500 to \$5,000.....	\$ 50
Above \$5,000 to \$25,000.....	\$125
Above \$25,000.....	\$200

3) Filing fees may be paid by credit card, check or money order payable to the “Massachusetts Bar Association”

4) The Board shall consider written requests from any Petitioner or Respondent seeking a waiver of the filing fee. All requests shall be submitted with the Petition or Respondent’s Agreement, as the case may be, and shall state supporting reasons.

D) No later than ten (10) business days before the date of the first scheduled hearing, each party must submit to the Board:

- 1. A list of all witnesses who may testify;
- 2. Copies of any written documentation in support of its case;
- 3. If either party made or kept copies of time records, copies of such records; and
- 4. The name, summary of qualifications and anticipated testimony of any proposed expert witness together with a statement as to why the party believes expert testimony is needed.

Expert testimony is normally not allowed in cases before the Board because hearing panel members have experience in the subject of the reasonableness of legal fees. Any identification of proposed expert testimony is subject to a ruling by the Chief Arbitrator, in his or her discretion, to make an exception to this rule. Except for the identification and request for expert testimony, the Chief Arbitrator may in his or her discretion, grant or deny any motion to waive the ten (10) day requirement, taking into consideration such factors as the material relevance of an unlisted witness, the length and complexity of records and whether good cause existed for the failure to submit the information within the required time limits.

Pre-hearing motions to dispose of all or part of a case will almost always be denied to preserve the right to a hearing. No such motion will be entertained unless the party wishing to file such a motion submits a statement of not more than one page as to why the motion should be filed. The other party will be allowed to file an objection of no more than one page. The request will be decided by the

Chief Arbitrator in his or her discretion, understanding that the primary goal is to preserve the right to a hearing. *(amended 3/1/05)*

- E) Any party may waive his or her right to appear personally at the hearing and may agree to submit the case on the documentary evidence. An opposing party may not withdraw from the arbitration because the other party will not appear at the hearing. A party who waives appearance at the hearing shall do so on a form provided by the Board with proper notice to all parties. If a party waives personal appearance at the hearing, his or her attorney may appear for the party at the hearing.

IV. Notice to the Parties

- A) Unless otherwise agreed, all notices to parties required under these rules shall be sent by first class mail or delivered by personal service pursuant to Massachusetts General Laws, Chapter 251. By the agreement of the parties, the Board and the parties may also use facsimile transmission or other written forms of electronic communication to give the notices required under these rules.
- B) All notices shall be sent to a party's last known address. All parties are obligated to keep the Board informed of their current mailing addresses. Any party who has not complied with this paragraph may not object to an action of the Board on the grounds that he or she did not receive proper notice.
- C) Upon receipt of a Petition to Arbitrate, the Board shall notify the Respondent that a Petition has been filed and shall offer him or her an opportunity to file a Respondent's Agreement. Notice to the Respondent shall contain a copy of the Petition to Arbitrate, the Petitioner's name, address and phone number, a Respondent's Agreement Form and the Rules.
- D) After the dispute is referred to an arbitration panel for hearing, the Board shall notify the Petitioner and Respondent of the name(s) of the panel member(s) appointed to arbitrate the dispute ("Notice of Hearing"). The Notice of Hearing shall also include the date, time and place of the arbitration hearing.
- E) The Notice of Hearing shall inform the parties of their right to counsel, their right to present witnesses and documentary evidence in support of their positions, their right to have a stenographic record of the proceedings made at their own expense in accordance with section IV(E)(1) below, and their right to challenge appointment of any arbitrator in accordance with section V(B)(2) of these Rules.

1) A party shall have the right to the making of a stenographic record of the proceedings made at their own expense. Such record shall not be the official record of the proceeding.

- F) When a party is represented by counsel in an arbitration proceeding, counsel shall file written notice of such appearance with the Board, together with proof of service on the other parties. The Notice of Appearance shall state the name, address, and telephone number of the attorney, and the name of the party he or she represents. Thereafter, any notice or other written communication required to be served on or furnished to a party shall be sent to the attorney of record for such party.
- G) A party's appearance at the arbitration proceeding without objection at the beginning shall be evidence of proper notice of the hearing.
- H) Maintenance of Files: It is the responsibility of the parties to maintain files of materials submitted in this arbitration process. The Fee Arbitration Board will not maintain any document other than the award document once the award has been issued.

V. Appointment and Challenge of Arbitrators; Scheduling of Hearing

- A) Appointment of Arbitrator(s)
 - 1) Once the Respondent's Agreement is received by the Board, the dispute is ready to be scheduled for a hearing and selection of the arbitrator(s). Once the Administrator selects the arbitrator(s), notice of the hearing with the name(s) of arbitrator(s) shall be sent to the parties.
 - 2) Disputes involving total fees of \$10,000.00 or less will be heard by one attorney arbitrator. The sole arbitrator shall be an attorney with arbitration experience and familiarity with the area of legal practice from which the dispute arises. *(amended 6/1/07)*
 - 3) Disputes involving total fees of more than \$10,000.00 will be heard by a panel of three arbitrators. The panel will consist of two attorneys, one with familiarity with the area of legal practice from which the dispute arises, and one non-attorney arbitrator. The Administrator shall appoint a Chief Arbitrator, who shall be an attorney with arbitration experience. *(amended 6/1/07)*
- B) Challenge of Arbitrator(s)
 - 1) Any party may challenge any arbitrator for cause. If the Board receives a challenge, the Administrator shall make a determination as to whether the arbitrator should be dismissed, and, if dismissed, shall name a substitute

arbitrator and shall notify the parties. To the extent that it is practical, any challenge of an arbitrator must be made in writing, and received within seven (7) business from the date of the original Notice of Arbitrator Appointment.

2) If there is no challenge, the hearing shall proceed as scheduled before the appointed arbitrator(s).

C) Scheduling a Hearing

1) The Administrator shall schedule a hearing in a mutually convenient location, taking into consideration to the extent possible the convenience of the arbitrator(s) and the parties, as well as hearing room availability.

2) Hearings shall proceed as scheduled. If a party requests a continuance, the request must be received at least three (3) business days prior to the hearing and must be for good cause shown. Once received, the staff shall inform the opposing party and Chief Arbitrator of the request. If the opposing party contests the request, the Chief Arbitrator shall decide whether to grant the request. If there is no opposition to the request for a continuance, the Secretary shall re-schedule the hearing and so notify the parties and arbitrator(s). All parties shall be notified of a denial for a continuance. All continuances are subject to a fee of \$50 payable by a party causing a postponement. The administrator has discretion to waive the postponement fee.

VI. The Hearing and Award

A) Discovery

1) Discovery shall be at the discretion of the Chief Arbitrator as provided in Massachusetts General Laws, Chapter 251, section 7. Discovery shall be in accordance with the Massachusetts Rules of Civil Procedure but shall be limited to the following:

a) Requests for production of documents and things, and entry upon land for inspection may be made without prior approval, but objections and motions to compel must be made to the Chief Arbitrator. Neither responses to requests nor requested documents shall be filed with the arbitrator(s) except that a response may be filed in connection with a motion to compel and except that documents may be submitted as evidence pursuant to section III.D.

b) Requests for depositions of witnesses who may not be present at the hearing must be approved by the Chief Arbitrator prior to the taking of the deposition.

2) All pleadings, motions, objections, documentary evidence and other communications of the Chief Arbitrator or the Arbitration Panel shall be submitted through the

Board at the MBA. A party filing motions, objections, documentary evidence, or other communications subsequent to the Respondent's Agreement shall send copies to the Board and all other parties. Failure to send copies of documentary evidence to all other parties may result in exclusion of those documents at the hearing.

3) Untimely submission of evidence pursuant to section III.D. may be challenged at the hearing, and if challenged, the Chief Arbitrator may refuse to accept the evidence.

B) Subpoenas

1) Requests for the issuance of a subpoena must be made to the Chief Arbitrator at least ten (10) business days before the hearing date. Fees for witness attendance shall conform with applicable Massachusetts fee regulating authorities.

C) The Hearing

1) A Chief Arbitrator shall preside at all hearings. If the case is heard by only one attorney arbitrator, that arbitrator is the Chief Arbitrator.

2) The Chief Arbitrator shall make all decisions regarding the conduct of the hearing, including rulings on continuances, admissibility or timeliness of evidence and any other questions of law, relevance or procedure. Strict conformity to legal rules of evidence shall not be necessary. The Chief Arbitrator shall be responsible for interpreting rules of law and procedure so as to ensure the fairness of the process to all parties. The decisions of the Chief Arbitrator shall be final.

3) The Chief Arbitrator shall declare the hearing closed after all testimony is taken and all documentary evidence is submitted, and shall record the date the hearing is closed. The Chief Arbitrator may continue the hearing to another date for further testimony or to allow for the submission by mail of further documentary evidence, and shall set a date and time when the hearing will be deemed closed. After the hearing is declared closed, no further evidence will be accepted.

4) a) The parties to the arbitration are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing. The parties shall testify in the order determined by the Chief Arbitrator at the hearing. The Chief of a Fee Arbitration Board panel may permit witnesses to testify using any means of communication by which all persons participating in the hearing may simultaneously hear (and preferably see) each other during the testimony, upon a showing of good cause, understanding that testimony by a physically present witness is normally expected and "good cause" for the purpose of this rule

requires a showing of substantial cost and inconvenience to the proceedings, not merely convenience to the witness and that the level of cost and inconvenience required to be shown will vary depending upon how critical the witness is to the facts of the matter being heard with the cost to be borne by the party requesting testimony without physical presence. Parties will be allowed the opportunity to elicit information from other parties or witnesses, whether by cross-examination or by questions directed to the Arbitration Panel or by testimony of the other parties or witnesses. (*amended 3/1/05*)

b) The parties shall be allowed reasonable time for argument, which may be by opening or closing statement.

c) The arbitration panel shall have the right to question parties, their representatives, and witnesses at any time during the hearing.

D) Arbitration Decision and Award

1) The decision of an arbitration panel shall be made within ten (10) business days of the close of the hearing.

2) The decision shall be made by a majority of the arbitration panel, in writing, and signed by the members concurring therein. The decision shall state the amount of the award, if any, the terms of payment, if applicable, and the factors that may have influenced the panel's decision. The arbitration panel also has the discretion to award costs incurred in the proceeding, excluding attorney's fees.

3) A copy of the decision and award shall be mailed by the Administrator to each party or its representative.

E) Right of Appeal

The parties shall be informed of their rights of appeal pursuant to Massachusetts General Laws, Chapter 251.

VII. Dismissals and Adjournments

A) Dismissals

1) After the Petition is filed with the Board, but before the close of the hearing, the Board may dismiss a case if:

a) the parties have settled the dispute;

b) the Respondent fails to submit the dispute to arbitration within a reasonable period of time;

c) a party dies or becomes incompetent;

d) all necessary parties have not been joined pursuant to Section III(E) herein; and/or

e) the Board determines that it lacks jurisdiction.

2) Absence of an Arbitrator

a) If the sole arbitrator becomes unavailable after hearing but prior to rendering a decision, the hearing shall be null and void and the matter shall be assigned to a new arbitrator for rehearing. If a member of the arbitration panel becomes unavailable after the hearing but prior to rendering a decision, the two remaining arbitrators shall render a decision with the consent of the parties, or absent such consent, the matter shall be reassigned to a new panel for rehearing.

b) If a sole arbitrator or all three (3) members of an arbitration panel are absent, the hearing shall be postponed and adjourned to another date and time convenient to all parties.

c) If any arbitrator fails to appear for the hearing or becomes unavailable after the hearing or prior to the decision, the Administrator shall appoint additional arbitrators as necessary, or continue the hearing to another date, or proceed with the consent of all parties. If the hearing is continued, a new Notice of Hearing shall be sent to all parties and their representatives.

d) If the majority of the arbitration panel cannot agree on a decision, the matter shall be resubmitted, de novo, to a new panel.

3) Absence of parties

a) If any party, who has been duly notified, fails to appear or leaves the hearing before its completion, the Chief Arbitrator may either postpone or proceed with the hearing and determine the controversy upon the evidence produced.

4) Settlement of the dispute

a) If after the hearing begins, the parties settle the dispute, the arbitrator(s) may dismiss the Petition.

b) Upon request of the parties, the Chief Arbitrator may enter any settlement as an award of the arbitration panel.

5) Closing the hearing

The Chief Arbitrator, for good cause, may close the hearing at his or her discretion or upon the request of a party.

VIII. Confidentiality

Unless otherwise required by law, all arbitration proceedings including any stenographic record thereof, documents, records, files, and awards shall be held confidential by the Board and arbitrator(s), and all parties and representatives and shall not be open to the public or any person not involved in the arbitration process.

IX. General Discretionary Authority of the Board

If an issue arises during the arbitration process, which cannot be resolved by reference to Massachusetts General Laws, Chapter 251 or the Rules of the Fee Arbitration Board, the Board shall have all the authority to make any determination necessary to effectuate a fair resolution of the dispute, within the spirit of the Statute and these Rules.

ARTICLE X – MEDIATION OPTION

This section applies if the parties agree to mediate as part of their original submission to the Fee Arbitration Board.

1. Mediation is an informal way to settle disputes. The Mediator will act as an intermediary between the parties to assist them to reach a settlement. The Mediator does not have authority to make a decision.
2. Mediation is limited to one two-hour session. Additional time of one additional session maximum is at the mediator's discretion.
3. The Administrator will arrange the mediation to take place at a time and place convenient for both parties without unduly delaying arbitration. The parties have a right to be represented by counsel at their own expense.
4. If the parties reach an agreement, the Mediator will assist them in drafting the agreement based a standard FAB form that will be signed by the parties. **THE MEDIATOR DOES NOT PROVIDE LEGAL ADVICE TO ANY PARTY AS PART OF THIS PROCESS.**
5. If the parties cannot settle the dispute, it will be scheduled for an arbitration hearing.
6. Mediation proceedings are confidential. The parties shall maintain the confidentiality of the mediation. No party shall rely on, refer to or

attempt to introduce as evidence at any later proceeding, any of the following: (1) Discussions relating to settlement of the dispute; (2) Admissions by either party in the mediation; (3) Any proposals or statements by the mediator; or (4) Any party's position on any proposal made by the Mediator.

Overview of the Steps

- Step 1) The parties discuss the fee dispute and seek to resolve differences**
- Step 2) Discussions are unsuccessful and a party calls the Board. The party seeking resolution of the dispute (the Petitioner) submits a "Petition for Arbitration" form and a non-refundable filing fee.**
- Step 3) A copy of the "Petition" is sent to the opposing party (the Respondent) with a response form entitled "Respondent's Agreement" for completion and submission.**
- Step 4) Once the Response is received, the Petitioner will receive a copy of the Response from the Board.**
- Step 5) Within a month, the parties will receive notice of a hearing date and the names(s) of the arbitrator(s) appointed to hear the case.**
- Step 6) If the parties have not challenged the arbitrator(s), the hearing will proceed as scheduled with the appointed arbitrator(s).**
- Step 7) A hearing will convene. After the parties present their sides, the arbitrator(s) will close the hearing and issue an award to the Board Administrator.**
- Step 8) The Administrator sends the award to the parties or their representative(s).**