

FEE DISPUTE RESOLUTION PROGRAM

RULE OF THE COMMITTEE

I. MISSION

The Mission of the Fee Dispute Resolution Committee is to govern and promote, for the benefit of the public, The Missouri Bar, and the courts system, a voluntary non-judicial procedure for resolving fee disputes between clients and lawyers through expeditious, uniform, and impartial investigation, mediation, and/or arbitration by qualified individuals at no charge.

II. PARTICIPATION

Participation by the parties within the Fee Dispute Resolution Program is voluntary. Although the Supreme Court of Missouri has suggested in the Rules of Professional Conduct that lawyers should conscientiously consider participating in fee dispute resolution programs to resolve fee disputes, The Missouri Bar does not have the authority to require lawyers or clients to participate.

III. OVERSIGHT OF THE PROGRAM

The Missouri Bar Fee Dispute Resolution Committee, established by The Missouri Bar Board of Governors, oversees the operation of The Missouri Bar Fee Dispute Resolution Committee. The committee is composed of (four) members of The Missouri Bar and (three) residents of Missouri who are not members of The Missouri Bar.

The members of the Committee are appointed and removed by the Board of Governors. No member of the Committee will serve more than two, four-year terms and any portion of an unexpired term to which the member has been appointed. The Board of Governors will fill a vacancy by appointing a member for the duration of an unexpired term and may remove any member for cause. The president of The Missouri Bar annually appoints the chair and vice-chair.

The program administrator is a member of the professional staff of The Missouri Bar, and is assigned duties by the executive director of The Missouri Bar.

IV. CONFIDENTIAL PROCEEDINGS

To create an atmosphere that encourages a resolution of fee disputes, all pending and closed matters within the Fee Dispute Resolution Program are confidential. No information relating to a Fee Dispute Resolution Program matter may be released to any non-party without the express written consent of all complainants and respondents in the matter, except that any party may provide a copy of a binding arbitration award to a court of competent jurisdiction in an enforcement action under Chapter 435, RSMo.

To participate in the Fee Dispute Resolution Program, each party must agree to be bound by complete confidentiality regarding all meetings, proceedings, records, communications, documents and files related to the process.

The Committee will establish procedures to maintain the confidentiality of files assigned to facilitators, mediators and arbitrators. The Committee will maintain a paper file of all Fee Dispute Resolution Program matters until the paper file is fully converted to an electronic format. The Committee will retain the electronic file for 10 years from the date a matter is closed. During that time, a party may request and obtain a copy of any document filed by that party, a settlement agreement signed by that party, or a copy of any binding or non-binding arbitration award issued in the matter. No other documents from a closed file will be provided to a party.

Lawyer-volunteers serving as facilitators, mediators and arbitrators within this program have an obligation to comply with Rule 4-8.3(a): "A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate professional authority."

Lawyer-volunteers may release only the confidential information that is required to comply with Rule 4-8.3(a).

V. JURISDICTION

Authority and Requirements to Accept Cases in the Program

As used in this rule, the term "lawyer" refers to an individual or law firm. The Fee Dispute Resolution Committee has the authority to assist lawyers and clients to resolve disputes concerning legal fees and expenses relating to their legal matter under the following circumstances:

1. A lawyer-client relationship must have been established or implied between the lawyer and client.

2. The legal services must have been provided within the State of Missouri.
3. The lawyer must have been admitted to practice law in the state of Missouri at the time the lawyer-client relationship was formed. (If the lawyer has been disbarred when the dispute arises, the matter will be referred to The Missouri Bar's Client Security Fund.)
4. The request for assistance with a fee dispute should be made by the person who was the actual client. Other parties who may have paid all or a portion of the fee, or who assumed responsibility for the payment of the fee may join the client in the process. Under extraordinary circumstances, the Committee may use its discretion to accept matters without the client joining in the complaint.
5. The amount in dispute must be at least \$500.00. Attempts may be made to informally resolve disputes in the amount of \$1,000.00 or less.
6. Except under extraordinary circumstances, the program will accept cases up to two years from the last date that the lawyer provided legal service related to the matter.
7. The Missouri Bar Fee Dispute Resolution Program will accept cases in all areas of the state of Missouri.
8. The Committee may refuse to accept complaint petitions or discontinue services if abuse or misuse of the program is apparent.

When the fee dispute resolution committee does not have jurisdiction and cannot accept the matter for fee dispute resolution

- If a lawsuit is filed anytime during the fee dispute resolution process by either the client petitioner or the lawyer respondent, the Court assumes jurisdiction, and the matter will immediately be closed;
- Where the Court or an administrative agency has the authority to determine or has already determined the fee;
- When the fee is set by state statute

The Committee may accept or reject any matter outside these parameters for good cause shown as determined by the Committee.

VI. PROCESSING COMPLAINTS

Following receipt of the Petition for Fee Dispute Resolution:

1. The petition is reviewed by the program administrator and the committee chair or his/her designee to determine jurisdiction.
2. If accepted, the client petitioner is notified a file has been opened. If the amount in dispute is over \$1,000.00, the client petitioner(s) are asked to give written consent to mediation or binding arbitration within 30 days. If the amount in dispute is \$1,000.00 or less, the matter will be referred to a facilitator to attempt an informal resolution before mediation or binding arbitration is offered.
3. At the same time as #2 above, if the amount in dispute is over \$1,000.00, a copy of the petition is forwarded to the lawyer respondent who is asked to file a written response to the complaint and give written consent to participate in mediation or binding arbitration within 30 days. If the amount in dispute is less than \$1,000.00, the lawyer respondent will receive a copy of the petition and will be asked to respond directly to the assigned facilitator.
4. Following receipt of the consent forms and lawyer respondent's response to the complaint, the program administrator sends a copy of that response to all the client petitioner(s) and schedules a mediation session or binding arbitration hearing.
5. Except as it relates solely to scheduling a facilitation, mediation session, or binding arbitration hearing, the program administrator will distribute to all other parties a copy of correspondence or written information received from a party.

The parties must keep the program administrator advised concerning any changes of address or contact information throughout the process. If the program administrator is unable to contact a party or a party fails to reply to the Program Administrator's written request for information within the time provided in the written request, the matter may be closed.

VII. APPROPRIATE FOLLOW-UP AND FACILITATION

If the lawyer respondent does not respond after notice is given, appropriate follow-up and/or intervention may be implemented as the Committee believes is appropriate.

In matters involving \$1,000.00 or less, the Committee may assign a facilitator to the matter. The facilitator will be a lawyer volunteer from the panel of approved mediators and arbitrators who will contact the client petitioner and the lawyer respondent. The facilitator will have the authority to attempt to informally resolve the complaint. If the parties are unable to informally resolve the complaint, the facilitator will attempt to have the parties give written consent to mediation or binding arbitration. The facilitator will file a report with the program administrator 30 days after receipt noting if the matter has been informally resolved, or if the parties have given written consent to mediation or binding arbitration, or if either of the parties have failed to participate in the process.

If the client petitioner fails to respond to the facilitator, the committee may close the file.

VIII. PROGRAM VOLUNTEERS – MEDIATORS, ARBITRATORS, FACILITATORS

The mediators, arbitrators, and facilitators are lawyers and non-lawyer professional persons who volunteer their services to this program as a public service. Although the facilitators, mediators and arbitrators are not paid for their services, they do receive reimbursement for their reasonable and necessary expenses by The Missouri Bar.

The volunteers are required to complete a training and orientation before serving within the program. The volunteers are well trained and experienced in handling these types of disputes. Volunteer training expenses are paid by The Missouri Bar.

Careful attention is given to assign mediators and arbitrators who will perform their duties impartially. When called to serve, the volunteers are required to notify the program administrator of any reasons why they could not remain neutral or about any conflicts of interest.

As determined by the program administrator or the Committee, for good reason the parties to a dispute may disqualify a mediator or arbitrator one time by notifying the program administrator within 10 (ten) business days before the scheduled mediation session or binding arbitration hearing. Mediators may not serve as arbitrators on the same matter.

IX. LOCATION OF MEDIATION AND ARBITRATION HEARINGS

Mediation and binding arbitration hearings are scheduled in neutral locations by the program administrator or committee chair usually in the county in which the lawyer respondent maintains an office, or at another location convenient to the client petitioner or the volunteer mediators or arbitrators.

Although person-to-person mediation and arbitration is preferable, if it would cause a hardship for one or more of the clients to attend in person, the mediation or binding arbitration hearing may be held by telephone conference. The program administrator has the authority to make that determination. The costs of the telephone call may be paid by The Missouri Bar; however, The Missouri Bar, in its discretion, may access the costs to one or both of the parties in certain circumstances.

X. MEDIATION

WHAT IS MEDIATION?

Mediation is a process where a trained neutral facilitates the settlement discussions of the parties in a dispute. Mediators do not decide the matter. Mediation is a confidential process.

Lawyer-volunteers serving as facilitators, mediators and arbitrators within this program have an obligation to comply with Rule 4-8.3(a): “A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate professional authority.”

Lawyer-volunteers may release only the confidential information that is required to comply with Rule 4-8.3(a).

XI. PREPARING FOR MEDIATION

1. The client petitioner and the lawyer respondent must give their written consent to participate in mediation on the form provided by the Fee Dispute Resolution Program. The parties should reconsider their decision to consent to mediation if they are not prepared for the possibility of making some sort of reasonable compromise during the mediation session. After the signed consent forms are received by the program administrator, the mediation session will be scheduled as soon as possible.
2. The program administrator or the committee chair will assign one or more trained and experienced mediators from the panel of lawyer and non-lawyer volunteers. A lawyer and non-lawyer volunteer may be assigned to work together as co-mediators.
3. The parties to the dispute will be contacted concerning scheduling the mediation followed by written notice confirming the date, time, and location to be sent by mail.
4. The parties may bring any necessary documents to the mediation, which they believe may be of assistance in the matter.
5. All documents submitted to the program administrator’s office for distribution to the mediator and other party must be received by the program administrator’s office at least seven (7) calendar days prior to the meeting.
6. The parties may bring any witnesses or a support person to the mediation session. Persons attending in a support role must agree to keep the proceedings confidential, and they may be asked to refrain from speaking during the mediation. The parties also have the right to have a lawyer accompany them to the mediation; however, they will be responsible for paying the lawyer to represent them.

XII. THE MEDIATION SESSION

1. At the mediation session, the mediator(s) are in charge of the proceedings and set reasonable ground rules.
2. The mediator(s) will ask the parties to present their positions without interruption from the other party. They will hear from the witnesses, if any, and then begin to assist the parties in moving toward a resolution. The mediator(s) may ask to speak with the parties alone in a private caucus, if they believe that to be necessary.
3. If the parties are able to reach a resolution, the mediator(s) will put the agreement in writing and ask both parties to sign it. The parties may have their lawyers review the agreement before it is signed. Both parties will receive a copy of the signed agreement.
4. In accordance with Supreme Court Rule 4-1.8(h): "A lawyer shall not: (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or (2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith."
5. As addressed in Missouri Supreme Court Advisory Committee Formal Opinion 122, any agreement reached by the parties shall not include a settlement term that requires withdrawing, refraining from filing, or declining to cooperate regarding, a complaint under Supreme Court Rule 5.

XIII. ARBITRATION

WHAT IS BINDING ARBITRATION?

Provided that both parties give their written consent to binding arbitration in advance of the hearing, the arbitrator(s) will decide how the dispute is to be resolved and will render a written award that is binding on both parties.

XIV. PREPARING FOR A BINDING ARBITRATION HEARING

1. The client petitioner and the lawyer respondent must give their written consent on the form provided by the Fee Dispute Resolution Program to participate in a binding arbitration hearing, and agree to abide by the arbitrator's decision whether or not it is in their favor. The parties may choose to appear in person to present their positions to the arbitrator(s), or by telephone, if it would cause a hardship to travel to meet with the arbitration panel. The parties may also choose not to appear in person before the arbitration panel, but rather to present their positions in writing for the arbitration panel to consider.
2. After the client petitioner and the lawyer respondent have given written consent to participate in a binding arbitration hearing, in most situations, if the amount in dispute is less than \$10,000.00, one (1) volunteer from the panel of mediators and arbitrators will be assigned to hear the matter. If the amount in dispute is \$10,000.00 or more a panel of three (3) arbitrators consisting of at least one (1) lawyer volunteer and one (1) non-lawyer volunteer will be assembled. One member of the panel will serve as the arbitration panel chair. The chair of the arbitration panel presides at the hearing, and decides how the hearing is conducted. A binding arbitration hearing may go forward with a single arbitrator or a panel consisting of three (3) arbitrators, as determined by the Committee.
3. The program administrator will contact the parties to schedule the binding arbitration hearing followed by a written notice, which will be mailed to the parties in advance giving the date, time, location, and the names of the arbitrator(s). If either party attends the arbitration hearing, but claims to not have received notice, the notice requirement is waived, and the hearing will proceed.
4. The parties may strike or disqualify an arbitration panel member for good cause only by giving notice 10 (ten) business days prior to the scheduled binding arbitration hearing.
5. The parties may bring any necessary documents to the binding arbitration hearing, which they believe may be of assistance in the matter.
6. All documents submitted to the program administrator's office for distribution to the arbitrator(s) and other party must be received by the program administrator's office at least seven (7) calendar days prior to the meeting.
7. The parties may bring any witnesses or a support person to the binding arbitration hearing. Upon the request of a party, the arbitrator(s) may exclude witnesses from the hearing room except to testify. A support person who is also a witness may, upon request of a party, be excluded from the hearing except to testify. The parties have the right to have a lawyer represent them at the hearing; however, they will be responsible for paying the lawyer. The parties have a right to seek subpoenas for the attendance of witnesses and subpoenas duces tecum (for records, documents, and things).

XV. THE ARBITRATION HEARING

1. Under the Uniform Arbitration Act as set out in 435.012, RSMo, et seq., the parties have the right (1) to be represented by an attorney at their own expense; (2) to seek subpoenas for the attendance of witnesses and subpoenas duces tecum (for records, documents, and things); (3) to be heard, to present evidence and cross-examine witnesses; (4) to adjournment for good cause.
2. The parties and all witnesses will give their statements under oath or affirmation by the chair of the arbitration panel.
3. Before closing the arbitration hearing, the arbitrator(s) will ask all of the parties if they have anything further to consider. If not, the arbitration panel chair will note the time and close the hearing. The hearing may only be reopened for good cause by the arbitration panel chair provided that the panel has not yet reached a decision.
4. If the single arbitrator or any member of the three (3) member panel dies or becomes unable to continue to act before an award has been made, the proceedings to that point will be cancelled, and the matter will be assigned to a new panel for rehearing, unless the parties agree that the matter may proceed with the two remaining arbitrators.
5. Unless good cause is given, if either party does not appear at the hearing after receiving notice, the arbitration panel may proceed and enter a binding decision.
6. The decision or award of an arbitration panel is final.

XVI. THE ARBITRATION DECISION

The arbitration panel will file their decision with the program administrator within thirty (30) days after the close of the hearing or as soon thereafter as possible. A majority of the three-member panel must agree in order to have a binding decision. If a majority of the arbitrators cannot agree, the matter will be reheard by a different arbitration panel.

The written decision of the arbitrator(s) need not be in any particular form, but it should generally consist of:

1. a preliminary statement outlining jurisdiction;
2. that the parties agreed in advance of the hearing to abide by the arbitrator's decision;
3. that the parties received notice of the binding arbitration hearing;
4. that the parties were given an opportunity to testify and to cross-examine (ask questions of the other);
5. a brief statement of the dispute;
6. the findings of the arbitrator(s);
7. the decision of the arbitrator(s).

Once the written decision is filed with the program administrator, the hearing may not be reopened unless all parties agree.

The original award will be signed by the members of the panel who agree. An arbitrator may electronically sign the award. The original may consist of multiple copies of the panel members' signature page individually signed. The chair of the panel will send the decision, together with the entire file, to the program administrator who will send a copy of the decision to each party by mail.

XVII. ENFORCEMENT OF THE DECISION

The Fee Dispute Resolution Committee has no authority to enforce a settlement agreement or binding arbitration award. In any case in which both the client petitioner and the lawyer respondent signed the consent to binding arbitration form, the decision of the arbitration panel may be enforced by a court of competent jurisdiction according to Chapter 435, RSMo.

XVIII. MISCELLANEOUS

This Rule may be amended at any time upon recommendation of the Committee with the approval of the Board of Governors or by the Board of Governors on their own.