

OFFICIAL RULES FOR THE ARBITRATION OF DISPUTES
OF THE
POLK COUNTY BAR ASSOCIATION
ATTORNEY FEE ARBITRATION COMMITTEE

I. SUBJECT MATTER JURISDICTION.

1.01 The Polk County Bar Association Attorney Fee Arbitration Committee ("Committee") acts as a board of arbitration for Polk County Bar Association ("Association") member attorneys and their clients or former clients in disputes concerning attorney fees and billing practices.

1.02 Other disputes involving attorney fees and billing practices may be accepted by the Committee upon submission and consent by all concerned parties on an ad hoc, case-by-case basis as the Committee may, in its sole discretion, deem prudent and appropriate. In such event, these rules shall apply as though the dispute involved an Association member attorney and the member's client or former client.

1.03 All complaints must be filed within the time limits applicable to comparable civil actions; i.e., those based upon a written contract or fee agreement must be filed within ten (10) years and those based upon an oral agreement must be filed within five (5) years. Timelines shall be measured from the date of a written contract or when services commenced pursuant to an oral agreement.

II. PERSONAL JURISDICTION OF THE COMMITTEE.

2.01 The jurisdiction of the Committee will be invoked by the filing of a written complaint ("Complaint") with the Chairperson of the Committee by the client of a member attorney of the Association.

For the purpose of having standing to file a complaint with the Committee, clients or former clients are defined as those individuals or entities with whom the attorney contracted, verbally or in writing, to provide legal services and by whom payment to the attorney was made or to whom legal services were billed.

2.02 The client is requested to include as attachments to the Complaint all pertinent correspondence, billing materials, affidavits, or other documentation related to the dispute. In addition, TEN COPIES of the Complaint with attachments shall be simultaneously filed with the Chairperson by the client. The Chairperson shall then furnish the attorney with a copy of the Complaint and any attachments.

2.03 The attorney is requested to file with the Chairperson within thirty days of receipt of the Complaint an original and ten copies of a written response and all additional attachments related to the dispute. The attorney shall simultaneously provide a copy of the response and attachments to the client by regular mail.

2.04 Should either the client or the attorney supplement their filings to the Committee with additional information or documents, the person so supplementing the record shall provide ten copies to the Chairperson and a copy to all other involved parties.

2.05 The Committee shall have no jurisdiction where the client does not also sign a stipulation agreeing to the submission of the dispute to arbitration by the Committee. The terms of this stipulation ("Stipulation") shall expressly incorporate these rules by reference and shall be in the following general form:

Stipulation and Agreement to Submit to Arbitration

The undersigned agree that there is a dispute between them concerning attorney fees and billing practices and that this dispute has been referred to the Polk County Bar Association Attorney Fee Arbitration Committee in accordance with the Official Rules for the Arbitration of Disputes thereof, copies of which have been provided the parties hereto, and which Rules are by this reference incorporated herein as though set forth in full.

2.06 When the Stipulation for submission of the fee dispute to arbitration is signed by the client and returned to the Chairperson, it shall be forwarded to the attorney who shall return the Stipulation within thirty days to the Committee's Chairperson, either with the attorney's signature or with a written statement that the attorney refuses to submit to binding arbitration before the Committee.

2.07 The attorney is encouraged to contact the client within thirty days of receipt of the Stipulation to attempt to resolve the dispute as between the parties. Any settlement between the parties should be communicated in writing to the Chairperson by the attorney with a copy to the client.

2.08 No dispute shall be subject to binding arbitration unless and until both parties sign the Stipulation agreeing in writing that the decision of the Committee will be final, binding, and enforceable as an arbitration award.

2.09 Refusal by an attorney to agree to binding arbitration shall be reported by the Committee to the appropriate officers of the Association for such action or further referral as may be deemed appropriate.

2.10 Refusal by a member attorney to agree to binding arbitration does not deprive the Arbitration Committee of jurisdiction to render a non-binding decision on the merits of a given case.

2.11 The Committee shall have no jurisdiction where it determines there is already a pending court action, or a court has ruled, on the issue of fees in dispute.

2.12 Complaints may be subject to dismissal, upon motion by the attorney, for failure to meet the timeline requirements of Section 1.03, the standing requirements of Section 2.01, compliance with the rules of the Committee or mootness. Motions to dismiss shall be decided by three (3) members of the Committee, pursuant to Section 3.11, and may be heard orally, telephonically or on written argument, as determined by the chairperson.

III. ARBITRATION HEARINGS.

3.01 Arbitration Hearings shall ordinarily be scheduled within 90 days of receipt by the Committee of the Stipulation signed by the client and the member attorney. Clients and affected attorneys shall be notified by regular mail not less than ten days before their hearing of the place, date and time for their hearing.

3.02 Presentations to the Committee will be informal, and the client shall, ordinarily, first relate the client's version of the

dispute, followed by the attorney's version of the dispute. Both the client and the attorney should expect to be questioned by the members of the Committee. The hearing shall be conducted by the Committee in whatever manner the committee deems will most expeditiously permit full presentation of the evidence and arguments of the parties. The Committee shall not be bound by rules of evidence or procedure but shall apply rules of applicable substantive law in reaching its decision. The Committee shall be the sole judge of the relevance and materiality of the evidence offered. The Committee shall, when appropriate, make factual determinations on the basis of the preponderance of competent evidence. The Committee may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the Committee deems it may be entitled. The client is requested to include any documentation related to the dispute with the client's Complaint and the attorney is requested to do likewise with the attorney's response; any party desiring to submit supplemental documentation at the time of hearing should bring ten copies of same for distribution to the other party and the panel of arbitrators. All documents to be considered by the Committee shall be filed at the hearing. There shall be no posthearing briefs.

3.03 Clients and affected attorneys are encouraged to attend their hearing and present their case, and may, but need not, be represented by counsel.

3.04 The Committee may hear and determine a dispute upon the material evidence produced and of record, even where a party or parties duly notified may fail to appear.

3.05 The Committee will normally limit the time of presentation by both the client and the attorney to fifteen (15) minutes each. The Committee, as circumstances warrant, will grant additional time for presentation in extraordinary circumstances if request is received prior to the mailing of notice setting the hearing. The Committee may adjourn any hearing as deemed necessary and may, either at the request of a party for good cause shown or upon the Committee's own motion, postpone the hearing.

3.06 In reaching its decision, the Committee shall not attempt to compromise the positions of the opposing parties but shall determine what is the proper fee in the particular case.

3.07 If the Committee finds that there is a valid and reasonable fee contract, this shall govern; otherwise, the Committee shall determine what is a reasonable fee under all the circumstances presented. The Committee shall have the ability to modify a fee contract if it is found to be unreasonable, inequitable or if the evidence at the hearing establishes that the client was not fully informed, was coerced, or otherwise treated improperly in entering into a fee contract.

3.08 Prehearing procedures shall be as informal as possible, and the discovery provisions of the Iowa Rules of Civil Procedure do not generally apply. The Committee may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence, and may administer oaths. Subpoenas shall be served, and upon application to the district court by a party or the Committee, enforced in the manner provided by law for

the service and enforcement of subpoenas in a civil action. On application of a party and for use as evidence, the Committee may permit a deposition to be taken, in the manner and upon the terms designated by the Committee, of a witness who cannot be subpoenaed or is unable to attend the hearing. All provisions of the law compelling a person under subpoena to testify are applicable. Unless otherwise agreed, fees for attendance as a witness shall be the same as for a witness in the district court.

3.09 If a party desires to have a stenographic record of the hearing's proceedings, the party must arrange to have in attendance a certified shorthand reporter and must arrange for payment of same.

3.10 The Committee will endeavor to keep the matters before the Committee confidential except to the extent it is required to disclose such information. Any person having a direct interest in the arbitration is entitled to attend a hearing. The Committee shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. The Committee shall have sole discretion to determine whether any other person may attend a hearing.

3.11 Hearings shall be presided over by the chairperson of the Polk County Bar Association Attorney Fee Arbitration Committee, or the designee of the chairperson, who shall also be a member of the committee. Hearings will normally be heard by at least five (5) members of the committee. However, when circumstances warrant,

hearings may be held before as few as three (3) members of the committee, and at such time and place as is mutually convenient to the client, the attorney, and the assigned members of the committee.

IV. BINDING EFFECT OF DECISIONS.

4.01 The written decision of the Committee shall be made as soon as practicable by the Committee and shall be signed by the arbitrators joining in the award.

4.02 The decision of the Committee shall be final, binding and enforceable as an arbitration award upon its service on the parties by regular mail to the parties' last known address. A vacation of the Committee's award shall not be made on the grounds that substantial evidence on the record as a whole does not support the award.

4.03 The Stipulation executed by the parties and the written decision rendered by the Committee constitute a contract between the parties and a breach thereof may be remedied by appropriate legal proceedings.

4.04 The presence of any five members of the Committee shall constitute a quorum sufficient for convening a hearing for the arbitration of disputes. If, however, during the course of a hearing any arbitrator for any reason ceases to act, the remaining arbitrator(s) may continue with the hearing and determination of the dispute. The written decision of a majority of participating members shall be considered a valid decision of the Committee.

4.05 No member of the Committee shall act in any dispute involving themselves, a relative, a member of their firm, or a

current client of their firm. Committee members may also recuse themselves, or offer to recuse themselves, if they perceive any other possible conflict.

4.06 The decision of the Committee may be published in whole or in part by the Committee, for the instruction of Association members or otherwise, but in such instances the initials of the parties, witnesses, or others as appropriate shall be used to protect the parties' privacy.

V. COMMITTEE COMPOSITION AND OPERATION.

5.01 The Committee shall consist of such members of the Association as shall have been appointed to the Committee's membership from time to time by the President of the Association.

5.02 The Committee's Chairperson shall be designated by the President of the Association. In the absence of the Chairperson, any other Committee member may be selected by the members of the Committee present at any meeting to act as Chairperson pro tem.

5.03 Meetings of the Committee, the scheduling of hearings, or the designation of Committee members to serve on arbitration panels, shall be at the call and discretion of the Chairperson, or upon the written request of not less than a majority of the Committee's members, and shall be set for a place, date and time certain to take up such matters as may be properly before the Committee.

5.04 A majority of the members of the Committee shall constitute a quorum for the purpose of conducting business and arriving at policy decisions of the Committee such as the amendment

of forms or the adoption or amendment of these rules. The decision of a majority of a quorum shall be considered the decision of the Committee as to such policy decisions.

Adopted the 11th day of November, 1993, and revised the 9th day of April, 1997, and the 6th day of April, 2000.