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 court 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 Program. The Committee shall be composed of four members of The Missouri Bar and three residents of Missouri who are not members of The Missouri Bar.

The Board of Governors shall appoint the members of the Committee and may remove any member for cause. The Board of Governors will fill a vacancy by appointing a member for the duration of an unexpired term. No member of the Committee shall serve more than two terms of four years and any portion of an unexpired term to which the member has been appointed. The president of The Missouri Bar shall appoint two members to serve as chair and vice-chair on an annual basis.

The program administrator shall be a member of the professional staff of The Missouri Bar, designated by the executive director of The Missouri Bar, who shall assign the duties of the program administrator.

IV. CONFIDENTIAL PROCEEDINGS

To create an atmosphere that encourages the 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 from the client petitioner and the lawyer respondent 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. If a party in the Fee Dispute Resolution Program is represented by counsel, a written entry of appearance shall be required. If a client petitioner breaches confidentiality, then participation in the Fee Dispute Resolution Program is prohibited for five years.

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 shall establish procedures to maintain the confidentiality of files assigned to facilitators, mediators, and arbitrators. The Committee shall maintain a paper file of all Fee Dispute Resolution Program matters until the paper file is fully converted to an electronic format. The Committee shall retain the electronic file for ten 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 a binding arbitration award issued in the matter. No other documents from a closed file will be provided to a party.

The Fee Dispute Resolution Committee along with 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 a 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 be admitted to practice law in the state of Missouri - currently and at the time the lawyer-client relationship was formed. (If the lawyer died, become mentally incapacitated, been disbarred or been Suspended by Court Order the matter shall be referred to The Missouri Bar's Client Security Fund Committee.)
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 shall accept cases up to two years from the last date that the lawyer provided legal services related to the matter.
7. The Missouri Bar Fee Dispute Resolution Program shall accept cases from 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, whereupon the matter shall immediately be closed, and the court shall assume jurisdiction.
- Where a court or an administrative agency has the authority to determine or has already determined the fee (including guardian ad litem fees and defendant ad litem fees) set by the court.
- When the fee is set or approved by state or federal statute or rule.
- If the lawyer has filed a lien for fees owed by the client in the matter that gave rise to the dispute and that lien has been approved by the court.

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 shall be reviewed by the program administrator and the committee chair or the chair's designee in order to determine jurisdiction.
2. If accepted, the client petitioner shall be 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 thirty days. If the amount in dispute is $1,000.00 or less, the matter shall 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 shall be forwarded to the lawyer respondent who shall be asked to file a written response to the complaint and give written consent to participate in mediation or binding arbitration within thirty days. If the amount in dispute is less than $1,000.00, the lawyer respondent shall receive a copy of the petition and shall 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 shall send a copy of that response to all the client petitioner(s) and schedule a mediation session or binding arbitration hearing.
5. The program administrator shall distribute to all other parties a copy of correspondence or written information received from a party.

Throughout the fee dispute resolution process, the parties shall notify the program administrator of any changes of address or contact information. 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, the program administrator will 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 shall be a lawyer volunteer from the panel of approved mediators and arbitrators who will contact the client petitioner and the lawyer respondent. The facilitator shall have the authority to attempt to informally resolve the complaint. If the parties are unable to informally resolve the complaint, the facilitator shall attempt to have the parties give written consent to mediation or binding arbitration. The facilitator shall file a report with the program administrator thirty days after receipt, noting whether:

- The matter has been informally resolved;
- The parties have given written consent to mediation or binding arbitration; or
- 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 from The Missouri Bar for their reasonable and necessary expenses.

The volunteers shall complete a training and orientation before serving within the program to ensure that they are well trained and experienced in handling these types of disputes. The Missouri Bar pays volunteer training expenses.

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

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

IX. LOCATION OF MEDIATION AND ARBITRATION HEARINGS

The program administrator shall schedule mediation meetings and binding arbitration hearings, which shall be held virtually or in person at a neutral location convenient to the client petitioner, lawyer respondent, and the volunteer(s).

X. MEDIATION

WHAT IS MEDIATION?

Mediation is a process where trained neutral volunteer attempts to assist the parties in settlement discussions concerning 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 shall release confidential information only to the extent 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 program administrator has received signed consent forms, the program administrator shall schedule the mediation session as soon as practicable.
2. The program administrator shall 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 shall be contacted concerning scheduling the mediation. Following this contact, the program administrator shall mail the parties a written notice confirming the date and time.
4. The parties may bring any necessary documents to the mediation that they believe may be of assistance in the matter.
5. All documents submitted to the program administrator for distribution to the mediator and other party must be received by the program administrator 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. If the mediator(s) believe it to be necessary, they may ask to speak with the parties alone in a private caucus.
3. If the parties are able to reach a resolution, the mediator(s) shall 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 shall 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 all parties give their written consent to binding arbitration, 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 before the arbitration panel to present their positions. The parties may also choose to present their positions in writing for the arbitration panel to consider, rather than appearing before the arbitration panel.
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 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 arbitrators consisting of at least one lawyer volunteer and one non-lawyer volunteer shall be assembled. One member of the panel shall serve as the arbitration panel chair. The chair of the arbitration panel shall preside at the hearing and decide how the hearing shall be conducted. A binding arbitration hearing may go forward with a single arbitrator or a panel consisting of three arbitrators, as determined by the program administrator.
3. The program administrator shall contact the parties to schedule the binding arbitration hearing. Following this contact, the program administrator shall mail the parties in advance a written notice confirming the date and time and the names of the arbitrator(s). If either party attends the arbitration hearing, but claims to not have received notice, the notice requirement shall be waived, and the hearing will proceed.
4. The parties may strike or disqualify an arbitration panel member for good cause only by giving notice ten business days prior to the scheduled binding arbitration hearing.
5. The parties may bring any necessary documents to the binding arbitration hearing that they believe may be of assistance in the matter.

6. All documents submitted to the program administrator for distribution to the arbitrator(s) and other party must be received by the program administrator prior to the hearing.
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 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 shall give their statements under oath or affirmation, administered by the chair of the arbitration panel.
3. Before closing the arbitration hearing, the arbitrator(s) shall ask all of the parties if they have anything further to consider. If not, the arbitration panel chair shall note the time and close the hearing. The arbitration panel chair may only reopen the hearing for good cause, provided that the panel has not yet reached a decision.
4. If the single arbitrator or any member of the three-member panel dies or becomes unable to continue to act before an award has been made, the proceedings to that point shall be cancelled, and the matter shall 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 shall be final.

XVI. THE ARBITRATION DECISION

The arbitration panel shall file its decision with the program administrator within thirty 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, a different arbitration panel shall rehear the matter.

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); and
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 shall 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 shall send the decision, together with the entire file, to the program administrator who shall 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

The Board of Governors may amend this Rule at any time, either upon recommendation of the Committee or at the discretion of the Board of Governors.