



FEE DISPUTE COMMITTEE

FEE DISPUTE COMMITTEE RULES & PROCEDURES

1. At the beginning of each year, the Fee Dispute Committee Chair (hereinafter “Chair”) shall divide the Committee into panels of three members each, to hear the individual cases. Each panel shall have its own chair.
2. When a fee dispute complaint is filed with the ECBA, the Chair shall transmit a copy of the Complaint and an *Agreement to Proceed to Mediation*, which the client will have signed, to the attorney with a request that the attorney agree to mediation.
3. The attorney shall have thirty (30) days from the date of transmission to respond to the request for mediation.
4. If the attorney agrees to mediation, he or she shall sign and return to the Chair the *Agreement*, and may file an answer to the complaint.
5. If the attorney fails to respond within 30 days or does not agree to mediation, the Committee shall have no further jurisdiction over the dispute.
6. Upon agreement of the Client and the attorney to submit to mediation, the chair shall appoint a mediator, who is a member of the Fee Dispute Committee. The mediator shall be chosen from a list of individual members who have volunteered their services free of charge to the parties, and who shall have been certified by the ECBA as a trained mediator. If the dispute is not resolved by the mediation process and proceeds to arbitration, that mediator shall not participate in any arbitration of the dispute, thereafter.
7. The mediator shall have an initial consultation with the parties within 15 days after being appointed. After consultation with the parties, the mediator shall determine the length and format of the mediation and shall notify the Fee Dispute Chair of the date, place and time of all mediations. If either of the parties fails to attend the mediation, the mediator may terminate the mediation. The mediation shall be conducted in accordance with the Erie County Bar Association’s Mediation Program, its guidelines, procedures and rules as determined and promulgated by the Alternate Dispute Resolution Committee, except that fees typically charged are waived. At the conclusion of the mediation, the mediator shall promptly send a letter to the Chair stating whether or not the dispute was resolved. If the dispute was not resolved, the mediator shall present to the parties the *Agreement to Submit to Binding Arbitration* before a panel of the Committee. If either of the parties fails or refuses to sign the *Agreement to Submit to Binding Arbitration*, upon notification from the mediator, the Chair shall close the case, and the Committee shall have no further jurisdiction over the matter.

8. The mediator shall maintain the confidentiality of the mediation process. In connection therewith, except as required by law, and subject to subparagraph (e) below, neither of the parties, nor any other person or entity shall:
 - (a) file or serve any pleading, petition, motion, subpoena, discovery request, or any other legal paper that would disclose, or seek disclosure of, any information, any communication or any document produced or disclosed in connection with the mediation;
 - (b) call upon or subpoena the parties or any of their respective lawyers or representatives to testify in any action or proceeding regarding any information, any communication or any document produced or disclosed during or in connection with the mediation;
 - (c) call upon or subpoena the mediator to testify in any action or proceeding regarding any information, any communication or any document produced or disclosed in connection with the mediation;
 - (d) divulge any information, any communication or any document disclosed in connection with the mediation. Nothing communicated in connection with the mediation shall be introduced as evidence, disclosed to any other party, person or entity (including any court or any arbitrator), be construed for any purpose as an admission against interest, or be used for any reason whatsoever (including impeachment) in any action or proceeding.
 - (e) information, communications or documents previously produced or disclosed to a Party, or information, communication or documents which are otherwise discoverable shall not be rendered confidential, inadmissible or non-discoverable because such information, communication or document was produced or disclosed in connection with the mediation.
9. Upon receipt of a signed *Agreement to Submit to Binding Arbitration* by both the client and attorney, the Chair shall assign the dispute to one of the panels of the Committee to hear the case. The Chair of the panel will then be responsible for scheduling and the conducting of the hearing. Both the client and the attorney shall be notified of the identity of the panel members within seven (7) days of receipt of the assignment by the chair of the panel. If either party objects to having any panel member hear the case, the Chair shall assign a substitute member of the Committee, acceptable to both parties to sit on the panel.
10. The procedure for the arbitration hearing shall be informal, and the formal Rules of Evidence shall not apply. The parties shall be entitled to be heard, to present evidence and to cross – examine parties and witnesses. The panel shall judge the relevance and materiality of the evidence. The parties may be represented by counsel, although that is not a prerequisite. The chair of the panel shall decide what evidence is material and relevant and also decide which evidence the panel shall receive. Each party shall be entitled to testify, call witnesses, present

evidence, and cross-examine witnesses. Each party or witness shall testify under oath or affirmation. The length of any hearing shall be at the sole discretion of the Panel Chair, but in no event shall exceed three (3) hours. The arbitration process must be completed within thirty (30) days of the first arbitration date.

11. The Panel Chair shall report the panel's decision (which need not be unanimous) to the parties, to the Chair of the Fee Dispute Committee and to the ECBA office within 10 days of the final hearing. The Report of the panel shall include a summary of the issues raised, the evidence presented, resolution of the issues, and the Decision/Award rendered. If there is no judgment entered on the Award, the Decision/Award shall be confidential, as to the parties, the arbitration panel, the Committee, and the Association. (See the *Agreement to Submit to Binding Arbitration* for procedure to be followed for entry of judgment)