Colorado Bar Association

LEGAL FEE ARBITRATION AND MEDIATION COMMITTEE RULES

**Article I**

1. The Legal Fee Arbitration and Mediation Committee (hereinafter “Committee”) have members who are lawyers serving as arbitrators and mediators. The person to whom a matter is referred, whether it is a mediation or an arbitration, shall be hereafter referred to as the “neutral.” The Committee may have members who are not lawyers. Those members cannot serve as neutrals but are free to contribute to the Committee by offering their analysis and comments on arbitration awards and mediated settlement agreements, or to provide any other function which the Chairperson(s) of the Committee may from time to time assign to them. The President of the Colorado Bar Association shall appoint the Chairperson(s) of the Committee. Such Chairperson(s) shall be a lawyer chosen from among the members of the Committee. A Chairperson shall serve a three-year term, which is limited to two terms as consistent with recent bylaws changes.
2. The Committee shall meet at such times and places as it shall determine or upon call of the Chairperson(s) of the Committee. Three members of the Committee constitute a quorum and the majority present at any meeting shall rule.

# Article II

The object and the purpose of the Committee shall be to determine disputes involving attorney’s fees, expert fees advanced by an attorney, and costs, incurred and billed prior to the neutral’s hearing pursuant to applicable arbitration and mediation law. Attorney fees, expert fees, and costs incurred in preparation for, or participation in, the hearing are not included and shall be waived. Services of the Committee shall be available to all persons, firms and corporations who are or have been represented by an attorney practicing in Colorado in the matter leading to such dispute, whether or not such attorneys are licensed in Colorado or are members of the Colorado Bar Association or Denver Bar Association.

# Article III

1. All fee disputes by either an attorney or other party properly requested, and incurred before the requests for arbitration were made to the Colorado Bar Association, which either the attorney or other party desires to be placed before the Committee, shall be submitted to the Colorado Bar Association. The Colorado Bar Association shall forthwith notify both the complaining party and the party being complained against of the receipt of such complaint and further notify both that the matter may be resolved preliminarily by a mediation rather than immediately commencing arbitration. Should both the attorney and the other party elect to first seek mediation, the matter shall be assigned to a member of the Committee for mediation. Otherwise, the matter shall be handled by the Committee as an arbitration.
2. No matter shall be referred to the Committee unless the referral to the Committee is agreed to in writing by both the complainant and the party being complained against. In the case of an agreed mediation, each party shall agree to mediate in good faith, and will be informed that if mediation fails to reach agreement, the matter shall proceed immediately to arbitration, with a different neutral. Each party shall agree that the determination and final decision of the neutral appointed by the Committee to arbitrate the case shall be binding and conclusive on both parties relating to the fees and costs covered by these Rules.

# Article IV

1. The Chairperson(s) of the Committee shall, as soon as practical upon receipt by the Committee of a complaint, refer the entire mediation to a mediator, or the entire matter to an arbitrator, whichever is appropriate.
2. Upon receipt of the assigned case, the appointed neutral shall determine if they have a known, direct, and material interest in the outcome of the proceeding, or a known, existing, and substantial relationship with a party, their counsel or representative, a witness, or any other relationship which might impact his or her service as a neutral. Any neutral with such an interest or relationship shall not serve as a neutral. In such cases, the Chairperson(s) of the Committee shall appoint another neutral.
3. A party to the fee dispute may object to the appointment of a neutral if the neutral discloses or a reasonable person would believe that the neutral’s impartiality would be affected by:
   1. a financial or personal interest;
   2. a current or previous relationship with any of the parties to the agreement or the proceeding, their counsel or representatives, a witness; or
   3. other cause that a reasonable person would believe affects the impartiality of the neutral.
4. The neutral who is subject to an objection by a party to the appointment, shall determine if there a reasonable probability that the neutral’s impartiality would be affected. If the neutral determines that the impartiality would be affected, the neutral shall decline the appointment and ask the chairperson(s) to appoint another neutral.
5. The neutral, upon submission of a mediation matter to them by the Chairperson(s) of the Committee, shall conduct the mediation, in as many sessions as the neutral and the parties jointly believe may lead to an agreement, and if the matter does result in an agreement, the neutral shall prepare the written settlement agreement and have the parties execute the same. The neutral shall deliver to each of the parties an original signed settlement agreement, which may be signed in counterpart. The neutral shall then prepare a short, written report of the proceedings and send such to the Chairperson(s).
6. The neutral, upon submission of an arbitration matter to them by the Chairperson(s) of the Committee, shall hear the matter and for such purpose may subpoena, call in and examine witnesses, including the complainant and the person being complained against and take such other action as they deem necessary and appropriate, pursuant to the arbitration contract signed by the parties and applicable Colorado arbitration law. The neutral shall reduce to writing award amounts.
7. The Committee shall provide the neutral who has served as an arbitrator the opportunity to discuss the award during the next Committee meeting. At the Committee meeting during which the proposed resolution to the dispute is discussed, the arbitrator will present the case to the members of the Committee in attendance at that meeting. The members of the Committee will then have the opportunity to offer suggested modifications to the recommended resolution, and will work in collaboration with the arbitrator to fashion the best resolution. The Committee will then vote on the award. A majority of the Committee’s members in attendance at that meeting voting in favor of the award will constitute approval of that award. The final award will then be the award of the Committee as a whole, and not that of the arbitrator, nor of any individual on the Committee. The Committee shall provide the neutral who has served as a mediator the opportunity to report upon and to discuss the mediation during the next Committee meeting. However, the Committee has no authority to modify the parties’ mediated settlement agreement.
8. The written final award of the Committee in an arbitration shall be signed by the arbitrator and (on behalf of the Committed as a whole) by the Committee chair or one co-chair and submitted to the Colorado Bar Association and copies of the same shall be forwarded to the complainant and the party being complained against and shall be binding on both parties. A copy also shall be forwarded to the arbitrator.
9. The Chairperson(s) of the Committee may decline to accept jurisdiction of any complaint or dispute, or may surrender such jurisdiction, if in the Chairperson(s) opinion, it becomes apparent that there is no ground for the complaint or dispute, that the matter is moot, or if for any reason the case is deemed inadequate or unwarranted, or inapplicable to the Committee Rules.

# Article V

In matters referred as an arbitration, the neutral may make findings and reach decisions, and may consider applicable laws, Rules of Professional Conduct, ethical considerations, comparable fees for similar services and other pertinent factors.

# Article VI

Unless otherwise ordered by a court or subject to a court action, insofar as is reasonably possible, all matters in connection with any dispute or complaint shall be held in confidence by all persons having any knowledge thereof.