

## **DAYTON BAR ASSOCIATION RULES AND REGULATIONS FOR BINDING ARBITRATION OF CLIENT- ATTORNEY FEE DISPUTES**

**1. Committee.** The Fee Arbitration Committee of the Dayton Bar Association consists of a Chair and Vice-Chair as determined and appointed by the President, and volunteer members of the Dayton Bar Association appointed by the President in consultation with the Chair.

**2. Filing and Notice.** Upon notice from the Grievance Committee, the Grievance Screening Committee, Bar Counsel, or other appropriate source that a dispute regarding legal fees exists, a letter of notification will be sent to the parties that such a complaint has been filed. The client will be requested to sign a "Consent and Agreement" form agreeing to binding arbitration, with no right of appeal. No obligation exists on the client to consent. Fee arbitration is mandatory for an attorney whose client consents. Failure of an attorney to cooperate in a fee arbitration proceeding may be considered a violation of Gov. Bar R. V(4)(G).

**3. Pending Litigation.** DBA fee arbitration will not be mandatory if litigation between the parties is pending before the fee dispute first comes to the attention of the DBA, or if fee arbitration is required by another forum, e.g. Workers Compensation. A lawyer may not file a suit after receiving notice of a referral for fee arbitration. Litigation started after a fee dispute has been presented to the DBA may be stayed pending arbitration.

**4. Hearing Scheduling.** When a signed Consent and Agreement form is received from the client, the Bar Counsel will attempt to determine the amount in dispute and forward the matter to the chair person for assignment to a single arbitrator or a panel of three arbitrators. Single arbitrator or panel chair has thirty days in which to contact parties so a hearing date can be set. The hearing date shall be set within 60 days of assignment. Continuances may be granted for cause.

**5. Rules for Conduct of the Hearing.** Each party and witness to the arbitration hearing shall testify under oath or affirmation to tell the truth.

The arbitration panel or single arbitrator shall have sole discretion to determine the order of presentation of the evidence at the arbitration hearing. Generally, the attorney shall first offer evidence. At the conclusion of that evidence, the client shall offer evidence. There shall be an opportunity for each party to offer evidence by way of rebuttal or surrebuttal. The panel shall not be bound by the usual common law or statutory rules of evidence.

The panel will follow Disciplinary Rule 2-106 of the Code of Professional Responsibility (a copy of which is attached hereto) and all other standards applicable to the dispute.

No record of the testimony and the evidence shall be made at the hearing unless requested by either party. In the event of a request for a record by either party, the same shall be kept by mechanical means, and the DBA shall not be held responsible for the quality of the mechanical recording. Any cost to transcribe the recording shall be borne by the party requesting the transcript. A party may, but shall not be required to retain a stenographer.

Other than to effect an appeal, pursuant to Chapter 2711 of the Ohio Revised Code, all proceedings shall be confidential unless all parties to the arbitration agree to waive the restriction of confidentiality. In the event that the matter in controversy generates substantive and procedural issues which do not appear to be directly governed by these Rules, the LCDR Rules of the Dayton Bar Association shall apply.

**6. Powers of the Arbitrators.** Pursuant to the provisions of Chapter 2711 of the Ohio Revised Code, and Montgomery County Common Pleas Court Local Rule 2.35, the arbitration panel may administer oaths or affirmations, fix the time and place of hearings, or adjourn hearings from day to day or for a longer time and also from place to place, and may subpoena any persons to attend as a witness and, in

a proper case, compel the witness to produce any document or object which is deemed material as evidence in the case.

The fees levied for attendance by any witness subpoenaed by the panel shall be the same as fees for witnesses in the Montgomery County Court of Common Pleas. Any such subpoena shall issue in the name of an arbitrator, and shall be signed by the arbitrator and, the arbitrator may choose means appropriate to obtain service thereof.

Any arbitrator(s) may petition the Court of Common Pleas in the county in which the attendance of a witness is being compelled to punish any person failing to appear for contempt in the same manner provided for securing the attendance of witnesses or their punishment for neglect or refusal to attend in that court.

The parties may take depositions to be used as evidence in the same manner and for the same reasons as provided by law for the taking of depositions in suits or proceedings in the Montgomery County Common Pleas Court.

The arbitration panel shall have the power to determine the admissibility of evidence, to permit testimony to be offered by deposition, to decide the law and facts, and to maintain order and direct the order of the presentation of evidence and/or witnesses.

**7. Costs for compelling attendance of the witnesses/subpoenas, Service of Subpoenas/Depositions.** The single arbitrator and/or arbitration panel chairperson shall be responsible to identify any costs, and to require a reasonable security deposit for costs in connection with compelling the attendance of witnesses, including the issuance and service of subpoenas, and the handling of depositions and other discovery procedures.

**8. Settlements.** Negotiated settlements and compromises are encouraged, and the parties may agree to settle their dispute at any time prior to the conclusion of the hearing.

**9. Hearings.** At the hearing, the parties may introduce any testimony, including that of witnesses, documents, or other evidence supporting their positions. The panel members may ask questions to gain a full and complete understanding of the nature and extent of the dispute. No cross-examination by one party of the other party or the other party's witnesses is allowed. The parties are asked to limit their presentation to thirty minutes.

**10. Counsel.** Parties may have their own attorneys present at the hearing to assist them in presenting their positions, but it is not necessary and in fact not encouraged.

**11. Evidence.** There are no formal rules of evidence. The panel will consider all relevant information to give the panel a complete understanding of the nature of the dispute as it relates to fees charged.

**12. Decision.** Following the hearing, the panel meets immediately to reach a decision based upon a majority agreement of the panel. A written decision is then prepared and signed by the Chair of the panel, signed by at least two members of the panel, and distributed to the parties by mail within ten days. Copies are sent to the Chair of the Committee and to Bar Counsel. There is no right to appeal the decision.

**13. Small Disputes.** If the Chair or Bar Counsel determines that the amount of a fee dispute is less than Twenty Five Hundred Dollars (\$2500.00), the Chair may order that the matter be heard and determined by a single member of the Committee, acting as a sole arbitrator. If the amount of the dispute is over \$2500, the Chair will order that a panel of three arbitrator hear the case. The Committee will not generally hear disputes under \$100.00.

**14. Effect.** The decision has the legal effect of an account stated. This means that the decision can be admitted in a court of law as a final determination by binding arbitration as to the amount owed by one party to the other. Thereafter, a court normally would make no further inquiry into the background of the dispute. By signing the consent and agreement form the client is consenting to such a result.

**15. Collection.** The Committee has no control over when or how the fee or refund is to be collected by the party to whom it is owed.

**16. Authority.** Fee Arbitration is part of an Alternative Dispute Resolution program adopted by the Dayton Bar Association under Gov. Bar Rule V(3)(c) and regulations thereunder. The authority of the Fee Arbitration Committee is limited to determining the amount of the fee or refund. The hearing panel may consider the quality of the services rendered and anything else that impacts on the fee. The Committee does not make any decisions regarding possible legal malpractice. If, during the course of the hearing, a possibility of unethical behavior by the attorney arises, the fee arbitration will cease and the matter will be referred to the Dayton Bar Association Certified Grievance Committee.

**DAYTON BAR ASSOCIATION  
ATTORNEY FEE DISPUTE**

This form is only a guide. You may file any document that is **legible** and provides the information requested below.

**Please type or print legibly.**

Name of the attorney you are complaining about: \_\_\_\_\_

Your name: \_\_\_\_\_

Your address: \_\_\_\_\_  
*Street* *City* *State* *Zip*

Your phone number: (\_\_\_\_\_)\_\_\_\_\_

Type of case involved (e.g. domestic, criminal, traffic, personal injury, etc.): \_\_\_\_\_

Did you have a written agreement concerning attorney fees? \_\_\_\_\_  
(If so, please attach a copy.)

What was your understanding of how fees would be determined?  
(e.g. hourly, flat fee for a specific service, contingent) \_\_\_\_\_

Are you claiming that a refund is due? \_\_\_\_\_ If so, how much? \$ \_\_\_\_\_

Is the attorney claiming you owe him or her money? \_\_\_\_\_ If so, how much? \$ \_\_\_\_\_  
(Please attach a bill, if you have one.)

If you agree that you owe the lawyer something, but dispute the amount, how much do you feel you owe? \$ \_\_\_\_\_

How much do you dispute? \$ \_\_\_\_\_

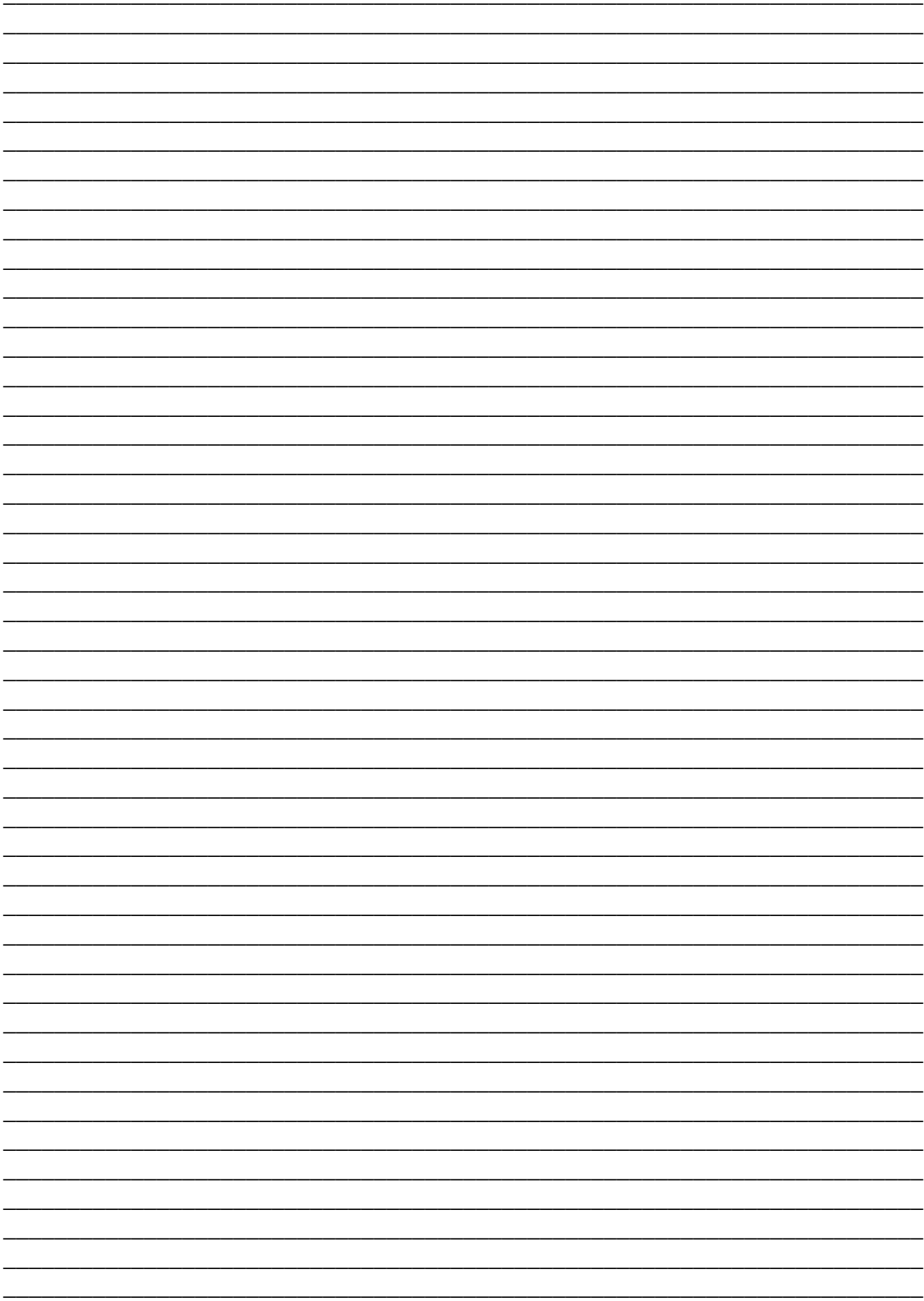
How much did you pay the lawyer altogether on this case? \$ \_\_\_\_\_

On the reverse of this form, or on a separate sheet, please state briefly but specifically why you feel you don't owe the bill or are entitled to a refund.

**Return to:**  
**The Dayton Bar Association**  
**Fee Arbitration Committee**  
**109 N. Main St., Ste. 600**  
**Dayton, OH 45402-1129**  
**Fax: 937-222-1308**

\_\_\_\_\_  
**Signature**

DBA File No. \_\_\_\_\_  
(DBA office use only)



**AGREEMENT TO ARBITRATE LEGAL FEE DISPUTE**

The undersigned, \_\_\_\_\_, client has a dispute with respect to legal fees charged to the client by \_\_\_\_\_, attorney for legal services.

The undersigned acknowledges receipt of a copy of the DAYTON BAR ASSOCIATION RULES AND REGULATIONS FOR BINDING ARBITRATION OF CLIENT- ATTORNEY FEE DISPUTES, and hereby agree that the dispute shall be arbitrated in accordance with these Rules and Regulations and that an award shall be made in Montgomery County, Ohio.

This Agreement shall become effective 21 days after the attorney has been notified that the client in the legal fee dispute has signed and delivered to the Dayton Bar Association this Agreement. Thereafter, the dispute shall be arbitrated by members of the Dayton Bar Association Committee for Resolution of Fee Disputes and Law Firm Dissolutions and Withdrawals.

Any party to this legal fee dispute arbitration may be represented by counsel, if the party so chooses.

It is further agreed that, with the exception of the award itself, all records, documents, files, proceedings, and hearings pertaining to the matter at issue shall not be open to the public or any person not involved in the dispute and that the entire proceeding shall be treated as confidential, unless otherwise agreed in writing by all parties, and that the arbitrator(s) and the Dayton Bar Association shall have the same common-law immunity from civil suit or claim in connection with the arbitration proceeding as a judicial officer or body would enjoy in a court proceeding.

The undersigned agrees to cooperate fully in good faith to exchange information and comply with the aforementioned Rules and Regulations, which are incorporated as material conditions of this Agreement; and the undersigned understands and agrees that the arbitration award made pursuant to this Agreement shall be binding, and that each party shall comply with such award within ten (10) days after service of a copy, and that such award shall be enforceable pursuant to the provisions of Chapter 2711 of the Ohio Revised Code.

UNDERSTOOD AND AGREED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Client