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PENNSYLVANIA BAR ASSOCIATION
LAWYER DISPUTE RESOLUTION PROGRAM RULES

(as amended May, 1996)

A. RULES FOR MEDIATION AND ARBITRATION

- A 1. Program administrator. The Pennsylvania Bar Association ("PBA") shall be the administrator of this program. The duties of the administrator may be carried out through such organizations, individuals or committees as the PBA may direct.
- A 2. Disputes eligible for mediation and arbitration. Disputes involving law firm dissolutions or departures of one or more attorneys from a law firm, internal disputes within law firms and disputes involving the allocation of fees between lawyers in different firms shall be eligible for mediation and arbitration under this program. The administrator shall have the right to decline assuming or continuing jurisdiction over any dispute when, in the opinion of the administrator, mediator or arbitrator, the dispute involves (a) a non-attorney party or (b) a probable violation of law or Rules of Professional Conduct.
- A 3. Agreement of parties. The parties shall be deemed to have incorporated these rules into their arbitration or mediation agreement whenever they have provided for arbitration and/or mediation by the PBA. These rules, and any amendments thereof, shall apply in the form existing at the time the mediation or arbitration is initiated.
- A 4. Services offered. Parties requesting the services of this program may initially request mediation only, or both mediation and arbitration. Where mediation only is requested, the parties may agree, at the conclusion of mediation, to submit unresolved issues to arbitration, with no additional administrative fee. Where mediation and arbitration are requested, the parties must complete at least one mediation session before proceeding to arbitration.
- A 5. Administrative fee. An administrative fee of \$50 per party, where at least one member of the party is a PBA member, or \$125 per party, where no members of the party are PBA members, shall be paid at the time of initiation of the mediation or arbitration process. For this and similar

purposes , a "party" is an individual or group of individuals with a distinct interest, such as one or more associates leaving a firm to form a new firm, or lawyers remaining in a firm after others have left.

- A. 6. Mediator and arbitrator distinct. Mediators and arbitrators shall be appointed from separate panels established by the PBA. The mediator who served on a case may not serve as an arbitrator on that case. The mediator and the arbitrator are prohibited from communicating with each other about the case during the pendency of a case. The mediator may, however, obtain written stipulations at the conclusion of mediation in order to certify unresolved issues for arbitration.
- A. 7. Geographic regions. Unless the parties stipulate otherwise, disputes will be mediated or arbitrated by neutrals from outside the parties' geographic region(s). For this purpose, the mediator or arbitrator may neither reside nor maintain an office in any county in which any of the parties practice or reside, nor in any county immediately adjacent to a county in which any of the parties practice or reside, unless the parties stipulate otherwise.
- A. 8. Compensation of mediators and arbitrators. Mediators and arbitrators shall be compensated on a fee structure set by the administrator.

Ordinarily each mediator and arbitrator will be compensated at the same per diem rate; however, the administrator shall have the discretion to charge a rate higher or lower than the standard rate where the complexity of the issues or the financial circumstances of the parties indicate that the standard rate would work a hardship upon the parties or the neutral.

Travel expenses of mediators and arbitrators will be reimbursed by the parties. Travel time for mediators and arbitrators traveling from outside the geographic region in which a mediation session or arbitration hearing is held shall be compensated at one-half the per diem rate for each mediation session or arbitration hearing attended. Travel time for mediators and arbitrators traveling from inside the

geographic region in which the mediation session or arbitration hearing is held will not be compensated. If it becomes necessary to rent a site for mediation sessions or arbitration hearings, any rental costs shall be borne by the parties.

- (c) All bills and charges are subject to approval or rejection by the administrator, and all compensation is to be distributed by the administrator.
- (d) The parties shall be required to escrow fees and expenses in an amount estimated by the administrator at the initiation of the process. Each party shall escrow fees in equal amounts, subject to reallocation by the arbitrator in the award should the dispute proceed to arbitration. The administrative fee shall not be subject to such reallocation.

Fees of one-half day shall be billed in the event of cancellation or postponement within one week of any scheduled mediation session or arbitration hearing.

- A. 9. Waiver of liability. Neither the PBA, its agents and employees, nor any mediator or arbitrator shall be liable to any party for any act or omission in connection with any mediation or arbitration conducted under these rules. Neither the PBA, its agents and employees, nor any mediator or arbitrator is a proper party in judicial proceedings relating to any mediation or arbitration performed under this program. The PBA, its agents and employees, and all mediators and arbitrators are immune from suit and service of process and shall not appear as witnesses in any subsequent proceeding.

B. MEDIATION RULES

- B. 1. Initiation of mediation. Mediation under these rules may be initiated in the following manner:

by making a request to the administrator for mediation under these rules, which request is acceded to by execution and filing with the PBA of an Agreement to Mediate by all parties; or

- (b) filing with the PBA an Agreement to Mediate executed by all parties.
- B. 2. Assignment of mediator. If all parties have agreed to mediation, the administrator will assign a mediator from the panel established for this purpose. Unless the parties agree otherwise, only one mediator shall be assigned for each dispute.
- B. 3. Disqualification of mediator. Immediately after initial assignment of a mediator, the administrator shall inquire, through the mediator and the parties, as to whether the mediator should be disqualified due to a conflict of interest or potential bias. The administrator shall have sole discretion with regard to disqualification of a mediator.
- B. 4. Substitution of mediator. If a mediator assigned to a dispute is unable to serve due to either (a) time constraints, (b) conflict of interest or potential bias, or (c) death or disability, the administrator shall assign another mediator.
- B. 5. Scheduling of mediation sessions. Mediation sessions shall be scheduled at the earliest date practicable. If a prospective mediator is unable to appear at a mediation session within one month after initially contacted, another mediator shall be assigned.
- B. 6. Locale. Mediation sessions shall take place at a site mutually agreed upon by the parties and the mediator. If the parties are unable to agree upon a site, the mediator shall designate a neutral site for the mediation. Mediators' offices, court houses and the offices of state and county bar associations may be considered, without limitation, neutral sites for this purpose.
- B. 7. Number and duration of mediation sessions. There shall be no limitation on the duration or number of mediation sessions. After the first mediation session, additional sessions may be scheduled by mutual agreement of the parties and the mediator.
- B. 8. Failure to appear. If any party fails to appear at a mediation session, the remaining parties may agree to proceed with the session, if they feel that progress can be made in the absence of a party. Notwithstanding the foregoing, any party

who has failed to appear at a mediation session with less than one week's notice by that party shall be assessed the entire half-day fee for the mediator.

- B. 9. Participants in mediation sessions. Parties to mediation shall be entitled to legal representation. Parties shall be responsible for arranging and paying for their own legal representation. Additional persons may also be allowed to attend the mediation sessions; however the mediator shall have the discretion to exclude from a mediation session any person whom he/she considers counterproductive to the mediation process, and to limit the number of legal representatives who may speak for each side. A member of the PBA mediation or arbitration panel, or any other lawyer in such panel member's law firm, may represent parties in mediation proceedings in which such panel member is not acting as mediator. It shall be grounds for disqualification of a mediator if any lawyer in such mediator's law firm is serving as counsel to any party to the mediation.
- B. 10. Opening statements. Each party to the mediation shall have the opportunity to present an uninterrupted opening statement. Time shall also be provided for a frank exchange of views between the parties.
- B. 11. Evidence. Evidence may be presented in the form of witnesses, documentary evidence or narrative by the parties. The rules of evidence shall not apply. As there are to be no legal or factual rulings, the purpose of evidence shall be to enlighten all those present as to the facts and to persuade the opposing party.
- B. 12. Caucuses. At the request of either party or the mediator, the mediator may caucus individually with one party at a time. All statements made during the caucus shall be kept confidential between the mediator and the caucusing party, except insofar as the caucusing party permits the mediator to disclose such statements to the other party or parties, or where the mediator has a duty to disclose under the Rules of Professional Conduct.
- B. 13. Confidentiality. All statements made during

mediation (including, without limitation, admissions, offers of settlement and statements of fact) shall be considered confidential and shall be inadmissible in any subsequent proceeding, except where the mediator has a duty to disclose under the Rules of Professional Conduct. Mediation sessions hereunder shall be deemed settlement negotiations in the spirit of compromise and without prejudice. The mediator may not be called upon to testify by any of the parties at any subsequent proceeding. No record shall be made of the mediation sessions.

- B 14 Legal advice. The mediator shall not give legal advice to any party, nor shall the mediator be considered legal counsel for any party to mediation. The mediator may, however, identify legal issues as they arise during the course of discussions. In particular, the mediator shall try to alert the parties to requirements of the Rules of Professional Conduct and other applicable ethical codes, and shall not knowingly participate in the formation of an agreement in violation of any such codes.

- B. 15 Conclusion of mediation. At the conclusion of mediation, the mediator and the parties shall reduce to writing any agreement arrived at by the parties. A memorandum of agreement drafted at the conclusion of mediation may provide for its replacement by a more permanent agreement drafted by the mediator, the parties or their counsel.

- B 16 Certification of unresolved issues. If any unresolved issues remain at the conclusion of mediation, and the parties have not previously agreed to arbitration, the parties may still submit such unresolved issues to arbitration by executing a PBA Agreement to Arbitrate. In such a case, or if the parties have previously agreed to arbitration, the parties, with the assistance of the mediator, shall reduce any unresolved issues to writing, and the mediator shall certify these issues for arbitration. If the parties are unable to agree as to identification of unresolved issues, arbitration shall proceed through demand and answer.

C. ARBITRATION RULES

- C. 1. Panel of arbitrators. The PBA shall establish and maintain a panel of arbitrators and shall appoint

arbitrators therefrom, as hereinafter provided.

- C. 2. Initiation of arbitration. Arbitration under these rules may be initiated by any party in the following manner:
- (a) By giving written notice to the other parties of intention to arbitrate (Demand), which notice shall contain a short statement setting forth the nature of the dispute and the remedy sought, and by filing at the office of the PBA three (3) copies of said notice, together with a copy of any agreement upon which the arbitration is based, including the arbitration provisions; or
 - (b) By filing with PBA two (2) copies of a written Agreement to Arbitrate (Submission) under PBA administration, signed by all parties and setting forth the nature of the dispute and the remedy sought; or
 - (c) Certification by the PBA mediator of unresolved issues for arbitration.

Following the conclusion of the mandatory mediation process, no new or different claim may be submitted to the arbitrator's jurisdiction without the consent of all parties.

- C 3. Answer. The parties upon whom the Demand for arbitration is made may file answering statements with the administrator within seven (7) days after receipt of the Demand, simultaneously sending a copy to the other parties. If no Answer is filed within the stated time, it will be assumed that all claims are denied. Failure to file an Answer shall not operate to delay the arbitration or prejudice any party.
- C. 4. Requirement of mediation. All parties must participate in at least one mediation session conducted under the administration of the PBA Lawyer Dispute Resolution Program before availing themselves of arbitration under these rules and PBA administration.
- C. 5. Fixing of locale. The parties may mutually agree upon the locale where the arbitration is to be held. Unless all parties agree otherwise, the arbitrator shall fix the time and place for each hearing in the county of the principal place of

business of the law firm that is the subject of the dispute. If the parties to the dispute have their principal places of business in different counties, the arbitrator, in his/her discretion, shall determine the locale. At least seven (7) days prior thereto, notice of the time and place of hearing shall be mailed to each party, unless the parties waive written notice.

- C 6 Appointment from panel. If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed in the following manner: Immediately after the filing of the Demand, Submission or Certification, the administrator shall submit simultaneously to each party an identical list of names of persons chosen from the panel of arbitrators. The size of the panel shall be the number of parties plus the number of arbitrators to be appointed. The list may be enlarged at the administrator's discretion. Each party shall have seven (7) days from the mailing date to number the names to indicate the order of preference, and return the list to the administrator. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. In accordance with the designated order of mutual preference, the administrator shall invite the acceptance of an arbitrator to serve. If those named decline or are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the administrator shall have the authority to make the appointment from among other members of the PBA panel without the submission of any additional list to the parties.
- C. 7 Number of Arbitrators. The dispute shall be heard and determined by one arbitrator, unless all parties otherwise agree.
- C 8. Qualifications of an arbitrator. No person shall serve as an impartial arbitrator in any arbitration in which he or she has any financial or personal interest in the result of the arbitration, unless all parties, in writing, waive such disqualification.
- C 9 Disclosure by arbitrator of disqualification. Prior to accepting the appointment, the prospective arbitrator shall disclose any circumstance likely to create a presumption of

bias or that the arbitrator believes might disqualify him or her as an impartial arbitrator. Upon receipt of such information, the administrator shall immediately disclose it to the parties. If any party wishes to disqualify the arbitrator, the administrator shall rule on the party's motion to disqualify, and any vacancy thus created shall be filled in accordance with the applicable provisions of these rules.

- C. 10. Vacancies. If any arbitrator should resign, die, withdraw, refuse or be unable or disqualified to perform the duties of office, the administrator shall, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in the same manner as that governing the making of the original appointment, and the matter shall be reheard de novo by the new arbitrator.
- C. 11. Representation by counsel. Any party may be represented at the hearing by counsel. A member of the PBA mediation or arbitration panel, or any other lawyer in such panel member's law firm, may represent parties in arbitration proceedings in which such panel member is not acting as arbitrator. It shall be grounds for disqualification of an arbitrator if any lawyer in such arbitrator's law firm is serving as counsel to any party to the arbitration.
- C. 12. Record. A transcript is not required. However, a transcript may be produced, in the arbitrator's discretion, with apportionment to the parties of the cost of any transcript within the discretion of the arbitrator. The parties shall not be permitted to make any recordings, videotapes, audiotapes or films of the hearing. The arbitrator may make his/her own audiotape or other recording of the hearing. The arbitrator need not make available to any party notes or tape recordings of any oral hearing.
- C. 13. Attendance at hearings. Persons having a direct interest in the arbitration are entitled to attend hearings. The arbitrator shall have the power to require the sequestration of any witness or witnesses during the testimony of other witnesses. A witness who is a party shall not be sequestered. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

- C. 14. Continuances; adjournments. The arbitrator for good cause shown may adjourn the hearing upon the request of a party or upon his or her own initiative, and shall adjourn when all of the parties agree to a continuance.
- C 15 Oaths. The arbitrator shall require witnesses to testify under oath administered by the arbitrator or by any duly qualified person.
- C 16. Majority decision. Whenever there is more than one arbitrator, all rulings of the board of arbitration shall be by majority vote. The award shall also be made by majority vote of all arbitrators, unless the concurrence of all is expressly required by the arbitration agreement.
- C. 17 Order of Proceedings.
- (d) A hearing shall be opened by the swearing of witnesses by oath or affirmation; by the notation of the place, time and date of the hearing and the presence of the arbitrator and the parties.
- (e) Exhibits may, when offered by any party, be received in evidence by the arbitrator.
- f The arbitrator may vary the normal procedure under which the initiating party first presents its claim, but in any case shall afford full and equal opportunity to all parties for the presentation of relevant proofs.
- C. 18. Burden of proof. The arbitrator shall determine what burden of proof, if any, shall be allocated to each party on each issue.
- C 19 Arbitration in the absence of a party. The arbitration may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain a continuance. An award shall not be made solely on the default of a party. The arbitrator shall require the other party to submit such evidence as may be deemed required for the making of an award.
- C. 20. Evidence. The parties may offer such evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute

An arbitrator is authorized by law to subpoena witnesses and documents and may do so independently, or upon the request of any party. The arbitrator shall be the judge of the relevance and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent with notice, or has waived the right to be present.

C 21 Evidence by affidavit; documents; inspection.

(g) The arbitrator may receive and consider the evidence of witnesses by affidavit, giving it only such weight as seems proper after consideration of any objection made to its admission.

h All documents that are arranged to be submitted at the hearing or subsequently by agreement of all parties, shall be filed with the arbitrator. All parties shall be afforded opportunity to examine such documents.

i Whenever the arbitrator deems it necessary, he or she may make an inspection in connection with the subject matter of the dispute.

C 22 Stipulations. Arbitrators must abide by any stipulation of the parties pertaining to substantive issues.

C. 23 Termination of hearings. The arbitrator shall inquire of all parties whether they have any further proof to offer or witnesses to be heard. Upon receiving negative replies, the arbitrator shall have the right to declare the hearings closed. If briefs or other documents are to be filed, the hearings shall be deemed closed as of the final date set by the arbitrator for filing. The time limit within which the arbitrator is required to make an award shall commence to run, in the absence of another agreement by all parties, upon the closing of the hearings.

C. 24 Reopening of hearings. The hearings may, for good cause shown, be reopened upon the motion of any party at any time before the award is issued but

not thereafter

- C. 25. Waiver of oral hearings. Upon written consent of all parties, the oral hearing may be waived and the matter submitted by stipulations.
- C. 26. Waiver of rules. Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with, and who fails to state timely objection thereto, shall be deemed to have waived the right to object.
- C. 27. Communication with arbitrator. There shall be no unilateral communication between any party or other person participating in the process and the arbitrator.
- C. 28. Applicable law. The Pennsylvania Uniform Arbitration Act, Subchapter A, 42 Pa. C.S.A. Sec. 7301-7320, is applicable to arbitration hereunder, with the exception of 42 Pa. C.S.A. Sec. 7314 and 7315 (pertaining to vacating and modifying awards). Common law rules regarding vacating and modifying awards shall apply.
- C. 29. Confidentiality. Since the process is private in nature, the confidentiality of the proceedings must be maintained unless disclosure is otherwise mandated by law or Rules of Professional Conduct.
- C. 30. Extensions of time. The parties may modify any period of time by mutual agreement. The arbitrator or administrator may, for good cause shown, extend any period of time established by these rules. The arbitrator or administrator shall notify the parties of any such extension.
- C. 31. Time of award. The award shall be rendered promptly by the arbitrator and, unless otherwise agreed by the parties, no later than thirty (30) days from the date of closing the hearings or from the date of transmitting the final statements and proofs to the arbitrator.
- C. 32. Form of award. The award shall be in writing and shall be signed either by the neutral arbitrator or by a concurring majority if there be more than one arbitrator. The arbitrator shall not accompany the award with an opinion, unless requested by any party in writing by the conclusion of the hearing. The arbitrator may

issue a bench decision. The arbitrator shall not otherwise comment on the award following its issuance.

- C. 33. Award upon settlement. If the parties settle their dispute during the course of the arbitration, the arbitrator shall, upon their request, set forth the terms of the agreed settlement in an award.
- C. 34. Service of notice. Each party shall be deemed to have consented that any notice necessary for the processing of the arbitration may be served by mail to the last known address or by personal service.
- C. 35. Delivery of award to parties. Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the arbitrator or the administrator, addressed to each party at its last known address or to its attorney; personal service of the award; or the filing of the award in any other manner that may be prescribed by law.
- C. 36. Entry and recording of judgement. On application of a party, made more than thirty days after an award is delivered pursuant to these rules, the Court of Common Pleas shall enter an order confirming the award and shall direct the entry of a judgement in conformity with the award. If real estate is involved, the order of the Court, in addition to being recorded as a judgement in the Prothonotary's Office, shall be recorded in the Office of the Recorder of Deeds in the county where the real estate is located. The order shall specifically identify the interest(s) being conveyed and who are the grantor(s) and grantee(s). Recordation of the order shall constitute a conveyance and the order of the Court shall so direct. The order shall be appropriately indexed under the grantor and grantee names as per the arbitration award. If real estate is located in any county or counties other than the county of the Court entering the order, the judgement entered on such order shall be transferred to the county or counties where the real estate is located and entered as a judgement in the Office of the Prothonotary of such county or counties and also recorded in the Office of the

Recorder of Deeds of such counties, appropriately indexed in the grantor and grantee indices.

- C. 37. Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses.
- C. 38. Application of rules. The arbitrator's application of these rules in any particular case shall be deemed final for that case.

D AMENDMENT

- D. 1. Amendment. These rules may be amended from time to time by a two-thirds (2/3) vote of those members of the Pennsylvania Bar Association Dispute Resolution Committee who are present and voting after notice of the proposed amendment and subject to the approval of the Board of Governors of the Pennsylvania Bar Association.

PENNSYLVANIA BAR ASSOCIATION
LAWYER DISPUTE SETTLEMENT PROGRAM
FEE SCHEDULE

Administrative fee (to be paid by each party, as defined in Rule A.5):

PBA member:	\$ 50.00
Non-PBA member:	\$125.00

The administrative fee is charged to each party only once for each dispute, whether or not the dispute proceeds to arbitration.

Mediators' and arbitrators' fees:

\$500.00 per day for each mediator or arbitrator. PBA may adjust this rate upward or downward where the complexity of the issues or the financial circumstances of the parties indicate that the standard rate would work a hardship upon the parties or the neutral.

Travel expenses (including air, train or bus fare, tolls, mileage, parking, food and lodging) and travel time for mediators and arbitrators shall be paid for in accordance with Rule A.8.

The parties shall be required to escrow fees and expenses in an amount estimated by PBA at the initiation of mediation and arbitration. Each party shall escrow fees in equal amounts, subject to reallocation by the arbitrator should the dispute proceed to arbitration. The administrative fee shall not be subject to such reallocation.

A fee of one-half day shall be billed in the event of cancellation or postponement within one week of any scheduled mediation session or arbitration hearing.

PENNSYLVANIA BAR ASSOCIATION
LAWYER DISPUTE RESOLUTION PROGRAM
AGREEMENT TO MEDIATE/AGREEMENT TO ARBITRATE

Case No.

Date

1. The parties named below, intending to be legally bound by this agreement, hereby submit this dispute to the Pennsylvania Bar Association Lawyer Dispute Resolution Program (the "PBA Program") for purposes of:

mediation only;

mediation followed by binding arbitration of all issues not resolved through mediation.

2. Nature of dispute:

law firm dissolution;

withdrawal of partner/shareholder from law firm;

fee dispute between lawyers;

other (describe): _____

3. We agree that:

a. Mediation and arbitration (if requested) shall be conducted in accordance with the PBA Program Rules in effect on the date of this Agreement, and such Rules are incorporated into this Agreement as if fully set forth herein.

b. The parties shall pay all fees (including the administrative fee and the mediator's and arbitrator's compensation) and expenses as set forth on the Fee Schedule attached hereto as Exhibit A.

c. Neither the mediator nor arbitrator is serving as legal counsel for any party to this dispute. Neither the Pennsylvania Bar Association ("PBA"), its agents and employees, nor any mediator or arbitrator assigned to this dispute shall be liable for any act or omission in connection with mediation or arbitration conducted under this Agreement. The PBA, its agents and employees, and all mediators and arbitrators assigned to this dispute are immune from suit and service of process and shall not be called as witnesses in any subsequent proceeding.

d. All statements made during mediation (including, without limitation, admissions, offers of settlement and

statements of fact) shall be considered confidential and shall be inadmissible in any subsequent proceeding, except where the mediator has a duty to disclose under the Rules of Professional Conduct. Mediation sessions hereunder shall be deemed settlement negotiations in the spirit of compromise and without prejudice.

e. While the parties to mediation are not compelled to enter into any agreement, we will participate in mediation in good faith, with the goal of reaching an agreement with which all parties are satisfied.

f. If binding arbitration has been selected under paragraph 1 of this Agreement, the parties will abide by and perform any award rendered thereunder, and agree that a judgement may be entered upon the award.

4. We prefer that the mediator or arbitrator be appointed from:

outside our geographic region;

inside our geographic region,

as defined in Rule A.7.

Name of Party 1:

Name of Party 2

Address:

Address:

Telephone:

Telephone:

Signed by:

Signed by:

If represented by counsel:

Party 1's Attorney:

Party 2's Attorney:

Address:

Address:

Telephone:

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