Idaho Bar Commission Rules

Governing Admission to Practice and Membership in the Idaho State Bar

As promulgated by the Board of Commissioners of the Idaho State Bar
and adopted by Order of the Supreme Court of the State of Idaho.

SECTION VII
Fee Arbitration

RULE 700. Definitions. As used in these Rules, the following terms have the following meanings, unless expressly otherwise provided, or as may result from necessary implications.

(a) **Board.** "Board" means the duly elected governing body of the Idaho State Bar.
(b) **Idaho State Bar**. "Idaho State Bar" means those employees or officers of the Idaho State Bar designated by the Executive Director to coordinate the fee arbitration program.
(c) **Panel**. "Panel" means the members of a fee arbitration panel in the judicial district where the dispute arose who have jurisdiction to resolve a fee dispute as provided in these Rules.
(d) **Party.** "Party" means each individual or entity who has executed a consent to a binding fee arbitration.
(e) **Petitioner.** "Petitioner" means a person or firm which files a request for binding fee arbitration.
(f) **Rules** or **These Rules**. "Rules" or "These Rules" means Rules 700 through 708 of the Bar Commission Rules.
(g) **State**. "State" means the State of Idaho.
(h) **Mediator.** "Mediator" means a person who attempts to resolve a fee dispute between a client and lawyer when the client has filed a petition for fee arbitration, through non-binding mediation.

RULE 701. Purpose; Effective Date

(a) **Purpose**. The purpose of these Rules is to provide an alternative means for the speedy, efficient, and fair resolution of fee disputes between attorneys maintaining offices in Idaho and their clients.
(b) **Effective Date.** These rules shall become effective on July 1, 1986. Any fee dispute submitted to a panel for determination prior to the effective date of these Rules shall be concluded under the procedure existing prior to the effective date of these Rules.

RULE 702. Arbitration Panels

(a) **Jurisdiction**. Each panel shall have jurisdiction over any disagreement concerning the fee paid, charged or claimed for legal services rendered by an attorney licensed to practice in this state, and where the matter has been submitted to the panel by the Idaho State Bar.
  (1) The panel shall not have jurisdiction over:
    (A) Disputes over which, in the first instance, a court has jurisdiction to fix the fee;
    (B) Disputes over matters which, as a matter of law, are beyond the applicable statute of limitations;
    (C) Disciplinary complaints.
(b) **Establishment and Membership of Panels.** Where required, each panel shall consist of three (3) members, two (2) of whom shall be members of the Idaho State Bar in good standing, and one (1) of whom shall be an adult Idaho citizen of good moral character and reputation who is not a lawyer. (Section (b) amended 3-1-88)
(c) **Officers**. The Idaho State Bar shall designate one (1) member of the panel as Chairman, who shall preside at the hearing provided in Rule 704.
(d) **Powers and Duties**. Each arbitration panel and each sole arbitrator shall have the following powers and duties:
  (1) To exercise all powers relating to the conduct of the hearing, including ruling upon the admissibility or exclusion of evidence and procedural questions.
  (2) To encourage the amicable resolution of fee disputes falling within its jurisdiction.
  (3) To arbitrate and finally determine fee disputes in the event the parties have not amicably resolved the dispute.
(e) **Compensation and Expenses.** The mediators and members of the arbitration panels shall receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties under these Rules.
(f) **Conflict**. It shall be the obligation of any member so designated to serve as arbitrator to disclose to the panel chairman any reasons why he or she cannot ethically or conscientiously serve. In the event that a member declines or is unable to serve, the Idaho State Bar shall appoint another eligible person to the panel.

RULE 703. Processing Requests for Arbitration

(a) Proceedings before the panel shall be initiated by a written petition and an arbitration agreement, on a form approved by the Idaho State Bar, signed by the petitioner and filed with the Office of the Idaho State Bar, P. O. Box 895, Boise, ID 83701.
(b) Upon receipt of the petition and arbitration agreement, signed by the petitioner, the Idaho State Bar shall send a copy of the petitioner's allegations to all other parties to the attorney-client fee agreement, together with a request for their consent to binding arbitration. If a client refuses or fails to consent to arbitration within twenty-one (21) days of his or her receipt of an arbitration request, the matter will be deemed closed due to lack of agreement and both parties shall be notified. In all cases in which a client has filed a fee arbitration petition, even those

where an attorney refuses or fails to be bound by arbitration within twenty-one (21) days of his or her receipt of an arbitration request, a mediator shall be appointed by the Idaho State Bar who shall be a member of the Idaho State Bar in good standing to attempt to resolve the fee dispute through non-binding mediation.

(c) In cases where the attorney refuses or fails to be bound by arbitration, and mediation is unsuccessful, no further action shall be taken by the Idaho State Bar and the client and attorney shall be left to their respective civil remedies.

RULE 704. Arbitration

(a) The matter shall be assigned to a hearing panel composed of one (1) member if the amount in dispute is $2,500 or less and to a three-member panel for amounts in dispute over $2,500.

(b) The chairman of the panel, or the single arbitrator, assigned, as the case may be, shall fix a time and place for the hearing and shall cause written notice thereof to be served personally or by registered or certified mail on the parties to the arbitration, on the other panel members and the Idaho State Bar not less than seven (7) days before the hearing. A party's appearance at a scheduled hearing shall constitute a waiver on his or her part of any deficiency in respect to the giving of notice of the hearing.

(c) The single arbitrator or panel assigned shall hold a hearing within thirty (30) days after the receipt of the assignment, and shall render their award within fifteen (15) days after the close of the hearing. The award of the panel shall be made by a majority of the panel where heard by three members, or by the one (1) member of the panel who was designated as sole arbitrator, as provided herein.

(d) All parties shall have an absolute right to attend all hearings. The exclusion of other persons or witnesses waiting to be heard shall rest in the discretion of the arbitrators.

(e) The parties to the arbitration are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing. Any party to an arbitration has the right to be represented by an attorney at the hearing or at any stage of the arbitration. Any party may also have a hearing before a panel reported by a certified shorthand reporter, at his or her expense, by written request presented to the Idaho State Bar at least three (3) days prior to the date of the hearing. In the event of such request, any other party to the arbitration shall be entitled to acquire, at his or her own expense, a copy of the reporter's transcript of the testimony by arrangements made directly with the reporter. When no party to the arbitration requests that the hearing be reported, and the panel or sole arbitrator deems it necessary to have a hearing reported, the panel or sole arbitrator may employ a certified shorthand reporter for such purpose if authorized to do so by the Idaho State Bar. The written notice of the hearing sent to the parties shall advise them of these rights.

(f) Any or all portions of the fee arbitration hearing may be held by teleconference, in the discretion of the panel chairman.

(g) The arbitrators may request opening statements and may prescribe the order of proof. In any event, all parties shall be afforded full and equal opportunity for the presentation of any material evidence.

(h) The testimony of witnesses shall be given under oath or affirmation. Where so requested, the chairman of the panel shall administer oaths to witnesses testifying at the hearing.

(i) If either party to an arbitration, who has been duly notified, fails to appear at the hearing, the panel may hear and determine the controversy upon the evidence produced, not withstanding such failure to appear, and enter a decision.

(j) If all the parties to a controversy so agree, they may waive oral hearings and may submit their dispute in writing by providing the panel or sole arbitrator verified statements of position, together with exhibits, upon which a determination of the controversy may be rendered. However, the arbitrators may nevertheless, if they deem it desirable, require oral testimony of any party or witness, after due notice to all parties.

(k) Adjourned dates for the continuation of any hearings which cannot be completed on the first day shall be fixed for such times and places as the arbitrators may select with due regard to the circumstances of all the parties and the desirability of a speedy determination. Upon request of a party to the arbitration for good cause, or upon its own determination, the panel may postpone the hearing from time to time.

(l) If any member of a three (3) member panel dies or becomes unable to continue to act after the taking of testimony has begun, and before a decision has been made, the proceedings to that point shall be declared null and void and the matter assigned to a new panel for rehearing unless the parties, with the consent of the panel chairman, consent to proceed with the hearing with the remaining members of the panel.

(m) Before closing the hearing, the arbitrators shall specifically inquire of all participating parties whether they have further evidence to submit in whatever form. If the answer is negative, the hearing shall be closed and a motion to that effect made by the arbitrators as well as the date for submission of memoranda or briefs, if requested by the arbitrators.

(n) The hearing may be reopened by the arbitrators on their own motion or on application of a party at any time before the decision is signed and filed.

(o) In the event of the death or incompetency of a party to the arbitration proceeding, prior to the close of the hearing, the proceeding shall be abated without prejudice to either party to proceed in a court of proper jurisdiction to seek such relief as may be warranted. In the event of death or incompetency of a party after the close of the hearing but prior to a decision, the decision rendered shall be binding upon the heirs, administrators or executors of the deceased and on the estate or guardian of the incompetent.

RULE 705. The Decision

(a) The decision of the arbitrators shall be expressed in a written opinion signed by all of them; if there is a dissent, it shall be signed separately. Unless the submission or contract provides otherwise, the arbitrators may grant any remedy or relief they deem proper, including a direction for specific performance. A decision may also be entered on consent of all the parties. Once the decision is signed and filed, the hearing may not be reopened except upon consent of all parties.

(b) While it is not required that the decision be in any particular form, it should, in general, consist of a preliminary statement reciting the jurisdictional facts (i.e. that the hearing was held upon notice pursuant to a written agreement to arbitrate, that the parties were given an opportunity to testify and to cross-examine, etc.), a brief statement of the dispute; the findings; and the terms of payment, if applicable. It shall include a determination of all the questions submitted to the arbitrators, the decision of which is necessary in order to determine the controversy.

(c) The arbitrators may include in the decision a direction for payment of other expenses related to the proceedings but not for fees to the arbitrators or counsel.

(d) The original and two (2) copies of the decision shall be signed by the members of the panel concurring therein. The chairman of the district panel shall forward said decision, together with the entire file, to the Idaho State Bar, which shall thereupon, for and on behalf of said panel, serve a signed copy of the decision on each party to the arbitration, personally or by registered or certified mail, and notify the chairman of the Panel that the matter has been concluded.

RULE 706. Effect of the Decision.

(a) In any case in which all parties have agreed to be bound by the arbitration, any decision rendered shall be binding upon both parties to the extent provided by *Idaho Code* Sec. 7-901 et *seq.* and may be enforced by any court of competent jurisdiction.

(b) If the decision holds that the participating attorney or attorneys who consented to binding arbitration are not entitled to any portion of the disputed fee, service of a copy of such award on said attorney or attorneys shall:

  (1) Terminate all claim and interest of the participating attorney or attorneys against the participating client or clients in respect to the subject matter of the arbitration;

  (2) Terminate all right of such attorney or attorneys to retain possession of any documents, records or other properties of such client or clients pertaining to the subject matter of the arbitration then held under claim of attorney's lien or for other reasons.

(c) If the subject matter of an award in favor of an attorney or attorneys who have consented to binding arbitration involves pending litigation and a client or clients, for good reason, shall be unable to promptly pay in the full amount of any award rendered against him or her or them, application may be made to the court having jurisdiction for a determination of means deemed to adequately secure payment. If such a determination shall be made and the terms thereof be promptly fulfilled by the client or clients, such compliance shall entitle the client to the relief specified in subsection (b) of these Rules.

RULE 707. Confidentiality. With the exception of the decision itself, all records, documents, files, proceedings and hearings pertaining to arbitrations of any fee dispute under these rules shall not be opened to the public or any person not involved in the dispute except Bar Counsel or the Professional Conduct Board.

RULE 708. Additional Rules of Procedure.

(a) **Time Requirements**. Except as is otherwise provided in the Rules, the time in which any act or any thing is to be done or performed is not jurisdictional.

(b) **Disqualification**. Each party may challenge, without cause, and thereby disqualify, not more than one (1) member of the panel or challenge any member of the panel for cause within fourteen (14) days after notification of the assignment of the panel. Such challenges for cause shall be made upon the same grounds as provided in a civil action and must be made in writing.

(c) **Evidence**. The rules of evidence applicable in proceedings before the district courts of this state shall not be required in these proceedings.