# Lawyer-To-Lawyer Dispute Resolution Program

Connecticut Bar Association

# Lawyer-To-Lawyer Dispute Resolution

## What

This is a confidential dispute resolution program for attorneys only. The program is designed to help attorneys resolve disputes including, but not limited to, law firm dissolutions, departures of one or more attorneys from a law firm, and the allocation of fees between lawyers in different firms.

## Administrator

The Connecticut Bar Association shall be the administrator of this program.

## Program Sponsor

Lawyer-To-Lawyer Dispute Resolution
Program Committee

Atty. Dale P. Faulkner, *Chair*
*Faulkner & Boyce PC*

## Eligibility

Any attorney admitted to the bar and practicing law in the State of Connecticut.

## Services

Mediation only, arbitration only, or both mediation and arbitration.

## Fees

A nominal administrative fee is to be paid to the CBA by each party. Mediators and Arbitrators will be compensated. The parties shall escrow the fees, in equal amounts, at the initiation of mediation. (See last page for Fee Schedule.)

## To Begin

Complete and return to the CBA: (1) "Agreement to Mediate/Agreement to Arbitrate" form, and (2) the requisite administrative fee.

## For Further Information Contact

Public Service Department
Connecticut Bar Association, (860)223-4400

## Program Rules

### A. Rules for Mediation and Arbitration

**A.1. Purpose.** The arbitration/mediation procedure as established by these rules provides a mechanism for resolving economic disputes between lawyers. The procedure is speedy, private and cost effective and benefits the judicial system, the public and the profession by preventing additional burdens on an already over-burdened court system. The Connecticut Bar Association ("CBA") shall use its best efforts to hold all communications confidential.

**A.2. Program administrator.** The CBA shall be the administrator of this program. The duties of the administrator may be carried out through such organizations, individuals or committees as the CBA may direct.

**A.3. Disputes eligible for mediation and arbitration.** Disputes by and between attorneys including, but not limited to, law firm dissolutions, departures of one or more attorneys from a law firm and the allocation of fees between lawyers in different firms shall be eligible for nonbinding mediation and binding arbitration under this program. The administrator shall have the right to decline, to assume or to continue 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.4. 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 CBA. These rules, and any amendments thereof, shall apply in the form existing at the time the mediation or arbitration is initiated.

**A.5. Services offered.** Parties requesting the services of this program may initially request mediation only, arbitration only, or both mediation and arbitration. Where mediation only is requested, the parties may agree, at the conclusion of mediation, to submit unre-

solved issues to arbitration, with no additional administrative fee. Where mediation and arbitration is requested, the parties must complete at least one mediation session before proceeding to arbitration.

**A.6. Administrative fee.** An administrative fee of $100 per party, where at least one member of the party is a CBA member, or $200 per party, where no members of the party are CBA 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.7. Mediator and arbitrator distinct.** Mediators and arbitrators shall be appointed from panels established by the CBA. 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. The mediator may, however, obtain written stipulations at the conclusion of mediation in order to certify unresolved issues for arbitration.

**A.8. Compensation of mediators and arbitrators.** Mediators and arbitrators shall be compensated on a fee structure set by the administrator.

**(a)** Ordinarily each mediator and arbitrator will be compensated at equal rates, with such expenses as approved by the administrator; 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 mediator or arbitrator.

**(b)** All bills and charges are subject to approval or rejection by the administrator, and all compensation is to be distributed by the administrator.

**(c)** The parties shall be required to escrow fees and expenses in an amount estimated by the administrator at the initiation of the process and at subsequent stages as determined by the

administrator. 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.

**A.9. Waiver of liability.** Neither the CBA, 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 CBA, 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 CBA, 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 proceedings.

## B. Mediation Rules

**B.1. Initiation of mediation.** Mediation under these rules may be initiated by any party making a request to the administrator for mediation, which request is acceded to by all parties filing with the CBA of an Agreement to Mediate/Agreement to Arbitrate, and paying the requisite administrative fees.

**B.2. Assignment of Mediator.** The mediator shall be appointed in the following manner: Immediately after the filing of the Agreement to Mediate/Agreement to Arbitrate, the administrator shall submit simultaneously to each party an identical list of five (5) persons chosen from the panel of mediators.

Each party shall have ten (10) 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 a mediator 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 submit

simultaneously to each party another identical list of five (5) persons chosen from the panel of mediators and the same procedure as above shall be followed by the parties.

**B.3. Disqualification of Mediator.** The prospective mediator shall disclose any circumstance likely to create a presumption of bias or that the mediator believes disqualifies him or her as an impartial mediator. Upon receipt of such information, the administrator shall fill the vacancy by submitting simultaneously to each party an identical list of five (5) new persons chosen from the panel of mediators unless the parties agree as to a mediator within the former list of five (5) persons submitted to the parties.

**B.4. Substitution of Mediator.** If any mediator 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 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 unless the parties agree otherwise.

**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, courthouses and the offices of state and county bar associations may be considered, without limitation, neutral sites for this purpose.

**B.7. Supporting Statements.** All parties shall provide to the administrator a brief written statement setting forth the nature of the dispute, their position, and support for their position. Upon receipt, the administrator shall send copies of the same to the mediator and hold the originals in confidence.

**B.8. 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. For each additional session, the mediator may request a fee, which will be collected by the administrator and escrowed 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 be allowed to attend the mediation sessions at the discretion of the mediator.

**B.10. Format.** The mediation shall be conducted in accordance with the mediation guidelines approved of by the Lawyer-To-Lawyer Dispute Resolution Program Committee.

**B.11. Caucusing.** 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.12. 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 proceedings. No record shall be made of the mediation sessions.

**B.13. 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.14. 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.15. 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 CBA 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. Initiation of arbitration.** Arbitration under these rules may be initiated by any party making a request to the administrator for arbitration, which request is acceded to by all parties filing with the CBA of an Agreement to Mediate/Agreement to Arbitrate, and paying the requisite administrative fees. If a mediation precedes an arbitration, no new or different claim may be submitted to the arbitrator's jurisdiction without the consent of all parties.

**C.2. Fixing of locale.** The Arbitration shall take place at a site mutually agreed upon by the parties and the arbitrator. If the parties are unable to agree upon a site, the arbitrator shall designate a neutral site for

the arbitration. At least seven (7) days prior thereto, confirmation of the time and place of hearing shall be mailed to each party.

**C.3. Appointment from panel.** The arbitrator shall be appointed in the following manner: After the filing of the Agreement to Mediate/Agreement to Arbitrate, the administrator shall submit simultaneously to each party an identical list of five (5) persons chosen from the panel of arbitrators.

Each party shall have ten (10) 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 submit simultaneously to each party another identical list of five (5) persons chosen from the panel of arbitrators and the same procedure as above shall be followed by the parties.

**C.4. Number of arbitrators.** The dispute shall be heard and determined by one arbitrator, unless all parties otherwise agree.

**C.5. Disqualification of Arbitrator.** The prospective arbitrator shall disclose any circumstance likely to create a presumption of bias or that the arbitrator believes disqualifies him or her as an impartial arbitrator. Upon receipt of such information, the administrator shall fill the vacancy by submitting simultaneously to each party an identical list of five (5) new persons chosen from the panel of arbitrators unless the parties agree as to an arbitrator within the former list of five (5) persons submitted to the parties.

**C.6. Substitution of Arbitrator.** 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.7. Supporting Statements.** All parties shall provide to the administrator a brief written statement setting forth the nature of the dispute, their position, and support for their position. Upon receipt, the administrator shall send copies of the same to all other parties in the dispute, as well as to the arbitrator.

**C.8. Representation by counsel.** Any party may be represented at the hearing by counsel.

**C.9. Stenographic Record.** Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other party of these arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties to be, or determined by the arbitrator to be, the official record of the proceeding, it must be made available to the arbitrator and to the other parties for inspection, at a date, time, and place determined by the arbitrator.

**C.10. Attendance at 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. The arbitrator shall determine the propriety of the attendance of any other person.

**C.11. 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.

**C.12. Oaths.** The arbitrator shall require witnesses to testify under oath or affirmation administered by the arbitrator or by any duly qualified person.

**C.13. 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.14. Order of proceedings.**

**(a)** 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.

**(b)** Exhibits may, when offered by any party, be received in evidence by the arbitrator.

**(c)** 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.15. 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.16. 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. 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.

**C.17. Evidence by affidavit.** 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.

**C.18. Termination of Hearings.** 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.19. 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.20. Waiver of hearings.** Upon written consent of all parties, the hearing may be waived and the matter submitted by stipulations and/or written submissions, subject to approval of the arbitrator's right to require further evidence.

**C.21. Communication with arbitrator.** There shall be no ex parté communication between any party or other person participating in the process and the arbitrator.

**C.22. Applicable law.** Chapter 909, Arbitration Proceedings of the Connecticut General Statutes is applicable to arbitration hereunder with the exception of Sections 52-413, 52-415, 52-416, 52-422 and 52-424.

**C.23. 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.24. 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.25. 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.26. Form of award.** The award shall be in writing and shall be signed either by the arbitrator or by a concurring majority if there be more than one arbitrator. The arbitrator shall not comment on the award following its Issuance.

**C.27. 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.28. 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 of the party, its attorney or by personal service.

**C.29. 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.30. Expenses.** The expenses of witnesses for either side shall be paid by the party producing such witnesses.

### 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 Connecticut Bar Association Lawyer-To-Lawyer 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 Connecticut Bar Association.

## Program Fee Schedule

### Administrative fee

*(to be paid by each party, as defined in Rule A.6)*

CBA member .....$100.00
Non-CBA member .....$200.00

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

$600.00 per one-half day for each mediator or arbitrator. The CBA 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 mediator or arbitrator.

The parties shall be required to escrow fees and expenses in an amount estimated by the CBA at the initiation of mediation and arbitration and at any point during mediation or arbitration. Each party shall escrow fees in equal amounts.


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