

LOUISIANA STATE BAR ASSOCIATION
LAWYER DISPUTE RESOLUTION PROGRAM
RULES

(Prev. Rev. 10/06/00)
Effective May 1, 2010

Preamble

The purpose of the Lawyer Dispute Resolution Program is to give timely, reasonable, and final resolution of disputes over fee issues between clients and their lawyers as well as disputes between lawyers with their fellow attorneys outside of the civil court system through the use of arbitration.

1. Agreement of Parties

The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by the Louisiana State Bar Association Lawyer Dispute Resolution Program (the Program), or by the Louisiana State Bar Association (LSBA). These rules and any amendment of them shall apply in the form obtaining at the time the demand for arbitration or submission agreement is received by the LSBA. The parties, by written agreement, may vary the procedures set forth in these rules.

2. Submission to the Program is Voluntary

Agreement to participate in the LSBA Lawyer Dispute Resolution Program is voluntary, but once the parties have agreed to submit the matter, participation is mandatory and parties may not withdraw without voluntary dismissal by both parties. Arbitration under these rules is available when the parties have so provided, in advance of the existence of a dispute, a written contract and when the parties sign a written agreement to submit an existing dispute to arbitration hereunder. Under Louisiana Arbitration Law, which shall govern these Lawyer Dispute Resolution Program Rules, an agreement in writing between two or more persons to submit to arbitration any controversy existing between them at the time of the agreement to submit, shall be valid, irrevocable, and enforceable, save upon such grounds at law or in equity for the revocation of any contract. In the event that a party, indispensable to the arbitration, has not agreed to arbitrate the dispute, the arbitrator may dismiss the matter without prejudice and reserve to individual participants the right to pursue recourse through all other available remedies. Arbitration through the LSBA Lawyer Fee Dispute Resolution Program is binding.

3. Administrator and Delegation of Duties

When parties agree to arbitrate under these rules, or when they provide for arbitration by the LSBA and arbitration is initiated under these rules, they thereby authorize the LSBA to administer the arbitration. The authority and duties of the LSBA are prescribed in the agreement

of the parties and in these rules, and may be carried out through such of the LSBA's representatives as it may direct. LSBA has the right to refuse any application for arbitration without assigning any reason therefore. The LSBA Administrator may consolidate related matters. A decision to consolidate may be objected to by motion to the arbitrator.

4. Relationship to Local Bar Programs

This program is not intended to supplant similar programs sponsored by local bar associations. The LSBA will encourage use of a local bar association program whenever available. The choice of forum is vested in the participants.

5. Administration

The Dispute Resolution Program is administered by the LSBA from the Bar Center in New Orleans. Subject to Rule 10, to the extent deemed practicable by the LSBA, the arbitration will take place within the parish in which the parties reside. Subject to Rule 11, to the extent deemed practicable by the LSBA, LSBA shall appoint as arbitrators persons residing or having a principal place of business in the parish in which the parties reside or the locale of the arbitration.

6. Initiation under an Arbitration Provision in a Contract

Arbitration under an arbitration provision in a contract shall be initiated in the following manner:

(a) The initiating party (hereinafter claimant) shall, within the time period, if any, specified in the contract(s), give written notice to the other party (hereinafter respondent) of its intention to arbitrate (Demand), which notice shall contain a statement setting forth the nature of the dispute, the amount involved, if any, the remedy sought, and the hearing locale requested, and

(b) The initiating party shall file with the LSBA at the Bar Center three copies of the notice and three copies of the arbitration provisions of the contract, together with the appropriate administrative fee as provided in the Administrative Fee Schedule.

The LSBA shall give notice of the filing to the respondent or respondents. A respondent may file an answering statement in duplicate with the LSBA within ten days after notice from the LSBA, in which event the respondent shall at the same time send a copy of the answering statement to the claimant. If a counterclaim is asserted, it shall contain a statement setting forth the nature of the counterclaim, the amount involved, if any, and the remedy sought. If a counterclaim is made in the answering statement, the appropriate fee provided in the Administrative Fee Schedule shall be forwarded to the LSBA with the answering statement. If no answering statement is filed within the stated time, it will be treated as a denial of the claim. Failure to file an answering statement shall not operate to delay the arbitration.

7. Initiation under a Submission

Parties to any existing dispute may commence an arbitration under these rules by filing with the LSBA at the Bar Center three copies of a written submission to arbitrate under these rules, signed by the parties. It shall contain a statement of the matter in dispute, the amount of money involved, if any, the remedy sought, and the hearing locale requested, together with the appropriate administrative fee as provided in the Administrative Fee Schedule.

8. Changes of Claim

After filing of a claim, if either party desires to make any new or different claim or counterclaim, same shall be made in writing and filed with the LSBA, and a copy shall be mailed to the other party, who shall have a period of ten days from the date of such mailing within which to file an answer with the LSBA. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent, whose consent shall be solicited only through the LSBA in strict conformity to Rule 27.

9. Administrative Conference, Preliminary Hearing.

At the request of any party or at the discretion of the LSBA, and administrative conference with the LSBA and the parties and/or their representatives will be scheduled in appropriate cases to expedite the arbitration proceedings.

In large or complex cases, at the request of any party or at the discretion of the arbitrator or the LSBA, a preliminary hearing with the parties and/or their representatives and the arbitrator may be scheduled by the arbitrator to specify the issues to be resolved, stipulate to uncontested facts, and to consider any other matters that will expedite the arbitration proceedings. Consistent with the expedited nature of arbitration, the arbitrator may, at the preliminary hearing, establish (i) the extent of and schedule for the production of relevant documents and other information, (ii) the identification of any witnesses to be called, and (iii) a schedule for further hearings to resolve the dispute.

10. Fixing the Locale by Consent

The parties may mutually agree on the locale where the arbitration is to be held. If any party requests that the hearing be held in a specific locale and the other party files no objection thereto within ten days after Notice of Request for Arbitration has been mailed by the LSBA, the locale shall be the one requested. If a party objects to the locale requested by the other party, the LSBA shall have the power to determine the locale and its decision shall be final and binding. In cases where one of the parties is incarcerated, the hearing shall be conducted by telephonic conference call unless the Arbitrator instructs otherwise.

11. Qualifications of an Arbitrator

Any neutral arbitrator appointed pursuant to Rules 13, 14, or 15, or selected by mutual choice of the parties or their appointees, shall be subject to disqualification for the reasons specified in Rule 17. If the parties specifically so agree in writing, the arbitrator shall not be

subject to disqualifications for said reasons.

Unless the parties agree otherwise, an arbitrator selected unilaterally by one party is a party-appointed arbitrator and is not subject to disqualification pursuant to Rule 17.

The term "arbitrator" in these rules refers to the arbitration panel, whether composed of one or more arbitrators and whether the arbitrators are neutral or party-appointed.

12. Appointment from Panel

LSBA shall maintain a panel of lawyers and laypersons who have agreed to serve as arbitrators when so appointed. LSBA may add to the panel at any time and may seek out arbitrators for a specific case.

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 or Submission, the LSBA shall submit simultaneously to each party to the dispute an identical list of names of persons chosen from the panel of arbitrators.

Each party to the dispute shall have ten days from the mailing date in which to cross off any names objected to, number the remaining names in order of preference, and return the list to the LSBA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the LSBA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the LSBA shall have the power to make the appointment from among other members of the panel without the submission of additional lists.

13. Direct Appointment by a Party

If the agreement of the parties names an arbitrator or specifies a method of appointing an arbitrator, that designation or method shall be followed. The notice of appointment, with the name and address of the arbitrator, shall be filed with the LSBA by that party. Upon the request of any appointing party, the LSBA shall submit a list of members of its panel from which the party may, if it so desires, make the appointment.

If the agreement specifies a period of time within which an arbitrator shall be appointed and any party fails to make the appointment within that period, the LSBA shall make the appointment.

If no period of time is specified in the agreement, the LSBA shall notify the party to make the appointment. If within ten days thereafter an arbitrator has not been appointed by a party, the LSBA shall make the appointment.

14. Appointment of Neutral Arbitrator by Party-Appointed Arbitrators

If the parties have selected party-appointed arbitrators, or if such arbitrators have been appointed as provided in Rule 13, and the parties have authorized them to appoint a neutral arbitrator within a specified time and no appointment is made within that time or any agreed extension thereof, the LSBA may appoint the neutral arbitrator, who shall act as chairperson.

If no period of time is specified for appointment of the neutral arbitrator and the party-appointed arbitrators do not make the appointment within ten days from the date of the appointment of the last party-appointed arbitrator, the LSBA shall appoint the neutral arbitrator, who shall act as chairperson.

If the parties have agreed that their party-appointed arbitrators shall appoint the neutral arbitrator from the panel, the LSBA shall furnish to the party-appointed arbitrators, in the manner prescribed in Rule 12, a list selected from the panel, and the appointment of the neutral arbitrator shall be made as prescribed in that rule.

15. Number of Arbitrators

If the arbitration agreement does not specify the number of arbitrators, the dispute shall be heard and determined by one arbitrator, unless the LSBA in its discretion, directed that a greater number of arbitrators be appointed. In disputes under \$25,000, only one arbitrator shall be appointed. In disputes involving greater sums a panel of three arbitrators shall be appointed, and if a client is a party, at least one of the arbitrators shall be a non-lawyer.

16. Notice to Arbitrator of Appointment

Notice of the appointment of the neutral arbitrator, whether mutually appointed by the parties or by the LSBA shall be mailed to the arbitrator by the LSBA, together with a copy of these rules, and the signed acceptance of the arbitrator shall be filed with the LSBA prior to the opening of the first hearing.

17. Disclosure and Challenge Procedure

Any person appointed as neutral arbitrator shall disclose to the LSBA any circumstances likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. Upon receipt of such information from the arbitrator or another source, the LSBA shall communicate the information to the parties, and if it deems it appropriate to do so, to the arbitrator and others. Upon objection of a party to the continued service of a neutral arbitrator, the LSBA shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

18. Vacancies

If for any reason an arbitrator should be unable to perform the duties of the office, the LSBA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules.

In the event of a vacancy in a panel of neutral arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.

19. Date, Time and Place of Hearing

The arbitrator shall set the date, time, and place for each hearing. The LSBA shall mail to each party notice thereof at least ten days in advance, unless the parties by mutual agreement waive such notice or modify the terms thereof.

20. Representation

Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and the LSBA of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, such notice is deemed to have been given.

21. 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. In the absence of agreement, the cost of the transcript shall not be taxable.

22. Discovery

Discovery is discouraged and will be ordered only (1) upon agreement by the parties, or (2) as the arbitrator in his discretion shall order to prevent manifest injustice.

23. Attendance at Hearings

The arbitrator shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. All persons involved

with the proceedings shall be instructed to keep and maintain confidential all things concerning the arbitration and shall not reveal any of them to a non-party. This shall not affect the right of a party to seek judicial enforcement of an award.

24. Postponements

The arbitrator, for good cause shown, may postpone any hearing upon the motion of a party or upon the arbitrator's own initiative, and shall also grant such postponement when all of the parties agree thereto. Any request for the postponement of a hearing by a party shall be by motion setting forth, in detail, the reasons for the request and shall be accompanied by a non-refundable Postponement Fee of \$250.00. All communications with the arbitrator(s) shall be made only in strict conformity with Rule 27.

25. Oaths

Before proceeding with the first hearing, each arbitrator shall take an oath of office. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

26. Majority Decision

All decisions of the arbitrators must be made by a majority. The award must also be made by a majority unless the concurrence of all is expressly required by the arbitration agreement or by law.

27. Order of Proceedings and Communication with Arbitrator

A hearing shall be opened by the filing of the oath of the arbitrator; by the recording of the date, time and place of the hearing, and the presence of the arbitrator, the parties, and their representatives, if any; and by the receipt by the arbitrator of the statement of the claim and the answering statement, if any.

The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved. In some cases, part or all of the above will have been accomplished at the preliminary hearing conducted by the arbitrator pursuant to Rule 9.

The complaining party shall then present evidence to support its claim. The defending party shall then present evidence supporting its defense. Witnesses for each party shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence.

Exhibits, when offered by either party, shall be received in evidence by the arbitrator.

The names and addresses of all witnesses and a description of the exhibits in the order received shall be made part of the record.

There shall be no direct communication between the parties and a neutral arbitrator other than at oral hearings. Any oral or written communication from the parties to a neutral arbitrator shall be directed to the LSBA for transmittal to the arbitrator.

28. Arbitration in the Absence of a Party or Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

29. Evidence

The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

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 serving arbitrators who will render a decision and all of the parties, except where any of the parties is absent in default or has waived the right to be present, except as provided in Rule 18.

30. Evidence by Affidavit and Post-Hearing Filing of Documents or Other Evidence

The arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence shall be filed with the LSBA for transmittal to the arbitrator. All parties shall be afforded an opportunity to examine such documents or other evidence.

31. Inspection or Investigation

An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall direct the LSBA to so advise the parties. The arbitrator shall set the date and time and the LSBA shall notify the parties. Any party who so desires may be present at such an inspection or investigation. In the event that one or all parties are not present at the inspection or investigation, the arbitrator shall make a verbal or written report to the parties and afford them an opportunity to comment.

32. Interim Measures

The arbitrator may issue such orders for interim relief as may be deemed necessary to safeguard the property that is the subject matter of the arbitration without prejudice to the rights of the parties or to the final determination of the dispute.

33. Closing of Hearing

The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or is satisfied that the record is complete, the arbitrator shall declare the hearing closed. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided for in Rule 32, and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearing.

34. Reopening of Hearing

The hearing may be reopened on the arbitrator's initiative, or upon application of a party, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed on by the parties in the contract(s) out of which the controversy has arisen, the matter may not be reopened unless the parties agree on an extension of time. When one specific date is fixed in the contract, the arbitrator may reopen the hearing and shall have thirty days from the closing of the reopened hearing within which to make an award.

35. Waiver of Oral Hearing

The parties may provide, by written agreement, for the waiver of oral hearings in any case. If the parties are unable to agree as to the procedure, the LSBA shall specify a fair and equitable procedure.

36. 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 an objection thereto in writing, shall be deemed to have waived the right to object.

37. Extensions of Time

The parties may modify any period of time by mutual agreement. The LSBA or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The LSBA shall notify the parties of any extension.

38. Serving of Notice

Each party shall be deemed to have consented that any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under these rules, for any court action in connection therewith, for setting of the arbitration hearing, or for the entry of judgment on any award made under these rules may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held with regard thereto has been granted to the party.

The LSBA and the parties may also use facsimile transmission, telex, email, telegram or other written forms of electronic communication to give the notices required by these rules.

It is the responsibility of the parties and their representatives to keep their addresses and phone numbers updated with the LSBA. In instances where the party is a lawyer, notice is also deemed proper at their or their representative's Rule XIX primary registration address. Notice transmitted to the address on file or provided by a party shall be conclusively deemed correct.

39. Time of Award

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than thirty days from the date of closing the hearing or, if oral hearings have been waived, from the date of LSBA's transmittal of the final statements and proofs to the arbitrator.

40. Form of Award

The award shall be in writing and shall be signed by a majority of the arbitrators. It shall be executed in the manner required by law.

41. Scope of Award

The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract. The arbitrator shall, in the award, assess arbitration fees, expenses and compensation as provided in Rules 46, 47 and 48 in favor of any party and, in the event that any administrative fees or expenses are due the LSBA, in favor of the LSBA.

42. Award upon Settlement

If the parties settle their dispute during the course of the arbitration, the arbitrator may set forth terms of the agreed settlement in an award. Such an award is referred to as a consent award.

43. 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 addressed to a party or its representative at the last known address, personal service of the award, or the filing of the award in any other manner that is permitted by law. All awards shall be final upon delivery and shall be binding upon the parties. Enforcement or modification of awards shall be governed by La. R.S. 9:4209, et seq. However, failure of an attorney participant to pay an award within a reasonable amount of time may be considered independent misconduct and may be reported to the Office of Disciplinary Conduct under Rule of Professional Conduct 8.3(a).

44. Release of Documents for Judicial Proceedings

The LSBA shall, upon the written request of a party, furnish to the party, at its expense, certified copies of any papers in the LSBA's possession that may be required in judicial proceedings relating to the arbitration. The LSBA's file and information concerning these proceedings are confidential to encourage the use of the program. However, the LSBA can disclose any information required for the efficient and proper administration of the program, or as required by law, court order, or subpoena from the Office of Disciplinary Counsel. The LSBA shall not be liable to any party for any act or omission in connection with any arbitration conducted under these rules including the provisions of this Rule 44 concerning confidentiality.

45. Applications to Court and Exclusion of Liability

(a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

(b) Neither the LSBA nor any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration.

(c) Parties to these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(d) Neither the LSBA nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

46. Administrative Fee

As a not-for-profit organization, the LSBA shall prescribe an Administrative Fee Schedule to compensate it for the cost of providing administrative services. The schedule in effect at the time the demand for arbitration or submission agreement is received shall be applicable.

Any administrative fee advanced by any party or parties is subject to final apportionment by the arbitrator in the award.

The LSBA may, in the event of extreme hardship on the part of any party, waive, defer or reduce the administrative fee.

The administrative fee schedule shall be as follows:

- 1) Disputes under \$10,000 shall require \$50 per party.
- 2) Disputes from \$10,000 or more shall require \$100 per party.
- 3) Disputes between attorneys shall have an administrative fee of \$100 per lawyer party regardless of the amount in dispute.

47. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All expenses of the arbitration, including required travel and other expenses of the arbitrator, LSBA, representatives, and any witness and the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the arbitrator in the award assesses such expenses or any part thereof against any specified party or parties.

48. Arbitrators' Fees

The compensation of party-appointed arbitrators shall be negotiated and paid by the appointing party. The compensation of all other arbitrators shall be fixed by the LSBA. In lawyer-client disputes, arbitrators shall serve pro bono; in other disputes arbitrators shall be entitled to reasonable compensation, and all panel members shall receive compensation at an identical rate.

49. Deposits

The LSBA may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to defray the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.

50. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these rules, it shall be decided by a majority vote. If that is unobtainable, either an arbitrator or a party may refer the question to the LSBA for final decision. All other rules shall be interpreted and applied by the LSBA.

51. Abandonment

Should either party abandon their fee arbitration claim by failing to participate in the process, failing to update their address as required under these rules, failing to communicate with the LSBA, or failing to take necessary steps ordered by the Arbitrator, the Arbitrator may proceed with the arbitration process, conduct the hearing and make an Award pursuant to Rule 28. Should both parties fail to participate with their claim, the matter can be held in abeyance for up to one year in the discretion of the LSBA claims Administrator. Thereafter, the Arbitrator in their discretion can dismiss the matter without prejudice or the LSBA can administratively close the matter in its entirety.