



D.C. BAR'S ACAB

Service Powered by Volunteer Arbitrators

By John Murph

One day in December 2024, Maryam Hatcher and two other volunteer attorneys spent hours arbitrating a nearly \$100,000 fee dispute between a client and a law firm.

Working without pay to comb through the parties' filings and hear their arguments, they demonstrated the kind of commitment that volunteer arbitrators bring to the D.C. Bar's Attorney/Client Arbitration Board (ACAB), a confidential, cost-effective adjudication service available to Bar members and their clients for faster resolution of disputes over legal fees.

Many of these disputes involve complex issues, prehearing motions, and multiple parties, occasionally resulting in multiday hearings. "In addition to addressing the issues at hand, arbitrators often have to manage high emotions in these types of matters," says Hatcher, senior counsel for corporate sustainability at Mars, Inc.

ACCESSIBLE FORUM

Voluntary fee arbitration with the D.C. Bar was conceived in 1982. With the adoption of Rule XIII of the Rules Governing the District of Columbia Bar on January 1, 1995, fee arbitration through ACAB became mandatory for Bar members if requested by a current or former client. The establishment of mandatory fee arbitration was born out of a recommendation from the D.C. Bar's Disciplinary System Review Committee after studying the ABA's "McKay Commission Report," which made "specific recommendations for improvement in lawyer discipline in the United States and . . . to include a more comprehensive system for resolving disputes and problems arising from the lawyer-client relationship."

"We are in a minority of jurisdictions that have mandatory fee arbitration. When Rule XIII was adopted, it was a critical step in client protection, but it also put the D.C. Bar ahead of most bars in the quality and availability of fee arbitration options for our members," says Kathleen Lewis, associ-



ACAB volunteer arbitrators Maryam Hatcher and Andrew Marks.

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ate director of the Bar's Attorney/Client Relations Program. "We have professional staff, we have mechanisms to compel both lawyers and clients to arbitrate fee disputes, and our arbitration decisions are final and binding."

"Additionally, the program is accessible not only in terms of cost but [also] in the reduced formality, which allows parties to present their issues without strict adherence to the rules of evidence. The arbitrators are generally more focused on the substance of the dispute rather than the technicalities of how evidence is presented," Lewis adds.

ACAB's lawyer and nonlawyer arbitrators are keenly aware that they are resolving disputes that arise from the unique relationship between a lawyer and a client. "I am deeply grateful for the dedicated service and commitment of the arbitrators who generously volunteer their time and expertise. Their impartiality, professionalism, and tireless efforts help ensure fairness and access to justice for all involved," Lewis says. "Through their invaluable contributions, they play a vital role in maintaining the integrity and efficacy of the legal system."

SUPERIOR SOLUTION

Private arbitration forums can be cost-prohibitive, even for lawyers, Lewis says, but with ACAB, typically a party is only paying \$25 to \$100 to file a dispute. "And that's their total cost; we don't have other charges along the way," Lewis says.

The key to this is ACAB's use of volunteer arbitrators. ACAB's volunteer pool consists of 87 arbitrators, a number of whom have been volunteering for decades. Among them is Andrew H. Marks, managing director of

the Law Offices of Andrew Marks PLLC and former D.C. Bar president (1998–99). Marks has been serving on ACAB for more than 40 years, starting when he first launched his legal career as a litigator in the early 1980s.

Marks says ACAB presented a great opportunity to practice something that he believes in. “Many lawyers, from [those in] very big firms to solo practitioners, want to have the ability to require a client to arbitrate a fee dispute instead of going to court,” which could be both more time-consuming and expensive, he says.

Another longtime volunteer was Harold Kessler who, until September last year, spent 31 years on ACAB as a nonlawyer member. Kessler brought to ACAB his decades-long work experience in federal agencies that administer labor and employee relations programs, including the U.S. Department of Labor and the Federal Labor Relations Authority.

Kessler’s expertise as a field examiner with the National Labor Relations Board investigating unfair labor practices also proved invaluable to ACAB. “A field examiner goes out and finds relevant witnesses to events,

[and] then asks them questions,” says Kessler, who also served as volunteer arbitrator for the Better Business Bureau and the Montgomery County (Maryland) Merit Systems Protection Board. “I’m someone who can process facts regarding fee agreements without falling into some bias.”

“I came to believe in the power of parties reconciling their own beliefs,” says Kessler of his motivation in joining ACAB. “Arbitration is superior to [having] long, extensive court trials with high legal fees.”

During his time on ACAB, Kessler served as either an arbitrator or

mediator on approximately 60 cases. “He is a skilled neutral who easily devoted hundreds of hours in volunteer service to the D.C. Bar and community,” Lewis says.

Kessler attributes his long service with ACAB, in part, to the D.C. Bar’s staff. “The staff has always been great,” he says. “They’re just people you wanted to work with and people you wanted to be helpful with.”

OPPORTUNITY TO DELIVER JUSTICE

Those who are unfamiliar with alternative dispute resolution might assume that most arbitration rulings will be favorable toward attorneys, but this is not the case, says Marks. In fact, arbitrators can be tougher on lawyers than on clients.

“It’s because the lawyers understand what lawyers should do,” Marks says. “When they see a lawyer who has not done as good a job as they might have done in terms of keeping their time, recording their time, and communicating with the client, the lawyers on the panel are actually tougher on the lawyer.”

“Should you have billed for that? How much time did you bill for that?” are some of the questions that Marks has posed to attorneys in arbitration proceedings. “Having that background experience [about the billing process] is helpful because an arbitrator will be hearing the back and forth between a lawyer and a client about what the client expected and what the lawyer expected,” he says.

Conversely, nonlawyer arbitrators tend to be harder on clients, says Marks. “You should have asked that question. Why did you not ask that question? Why did you wait until the end?” [These] are some of the things that a layperson arbitrator will often ask,” he says.

The rules of evidence are also much more flexible in arbitration proceedings than in court, Marks points out. “An arbitrator will be more open to hearing evidence that might not be allowed in a court of law — hearsay, for example, or documents that may not be authenticated as well. The arbitrator, therefore, must be able to parse what is reliable and what is not, what is persuasive and what is not. A lot of times, it comes down to a credibility issue,” he adds.

Nonlawyer arbitrators bring a lot of value into these proceedings, according to Hatcher. “I think nonlawyers probably don’t have to think about taking off the advocate hat,” Hatcher says. “I really think the non-lawyer arbitrators bring as much to the table as the lawyer arbitrators.”

Expert listening skills, patience, and diligence are crucial for good arbitrators. “Also, a real awareness of what the role of an ACAB arbitrator is and the scope of the issue being resolved,” says Hatcher, ACAB chair since July 2024. “It’s keeping in mind the reasonableness of the attorney’s fees and controlling the hearing in such a way that all the information — the testimonies solicited from witnesses and parties — [helps get] to the heart of that issue.”

The decades-long service of some of ACAB’s arbitrators is a testament to the rewards of volunteering on the board. Real-time training in dispute resolution can benefit any lawyer, Marks says, especially one looking to sharpen their litigation skills.

Marks says his experience with ACAB also has provided him a better understanding of how clients view their relationships with lawyers and the whole billing process. “As a lawyer, it helped me understand the importance of really keeping the client informed, sending out bills timely, and not waiting until the end of a matter. Send it out timely because, that way, if the client has a question, they can raise it,” he says. “Also, it taught me to be proactive with clients to make sure they understand the attorney–client relationship. And if there is an issue, deal with it early. Don’t let it linger.”

Hatcher began volunteering with ACAB in April 2019, inspired by a desire to lend her legal expertise in a pro bono capacity but also to gain experience for joining the bench one day. “I thought this would also be good practical training for potential service as a judge,” Hatcher says.

Serving on ACAB has also taught Hatcher how much clients entrust lawyers to resolve their issues. “The conflicts that I see in arbitrations remind me of the important role that lawyers play in society,” she says. “They play the literal role of advocating for their clients, but they also serve a symbolic role by representing the opportunity for justice.”

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HAROLD KESSLER
Former ACAB Volunteer