It's a Win-Win: Avoid a Malpractice Countersuit and Resolve a Fee Dispute with the D.C. Bar's ACAB

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Continuing Legal Education

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About the Speakers
(Listed Alphabetically)

Maryam Hatcher, Senior Vice President and Public Affairs Counsel, with Chubb, is an active leader in the District of Columbia Bar, currently serving as a volunteer Attorney Arbitrator and Board Member for the Attorney-Client Arbitration Board. She also serves on the Rules of Professional Conduct Review Committee, and formerly served on the Board of Elections.

As Senior Vice President and Public Affairs Counsel with Chubb, she focuses on global Environmental, Social and Governance (ESG) strategy, response and external engagement. She previously worked as Senior Counsel and Diversity Advisory Committee Chair for American Petroleum Institute, and in nationally ranked environmental law practices at Kirkland & Ellis and Beveridge & Diamond. She has been recognized as a Rising Star by the Washington D.C. Super Lawyers and received the National Bar Association 40 Under 40 Nation's Best Advocate Award.

Maryam is a graduate of Howard University School of Law, where she served as Editor-in-Chief of the Howard Law Journal.

Charles A. McCullough II, the principal/founder of The Conglomerated McCullough Company LLCA, is a Washington metropolitan area resident for more than 40 years, McCullough is an attorney with a track record of leading community-based organizations and serving as the voice of inclusion for a host of local organizations. Most recently, he founded an organizational development consultancy, helping a variety of clients increase grant revenue, expand their community programs, and enhance their partnerships with local business and government. In addition to being the executive director of a local housing-solutions nonprofit, McCullough serves as chair and a lead arbitrator for the DC Bar's Attorney/Client Arbitration Board, mediator for the Multi-Door Dispute Resolution Division of the DC Superior Court, and is a member of the U.S. Postal Service Federal Credit Union Board of Directors.

McCullough received his undergraduate history degree from Pepperdine University, continuing his education at Boston College where he earned his master of higher education and doctor of jurisprudence degrees

Tina E. Patterson (Moderator), MDR, MCIArb, is an independent Arbitrator, Mediator, and Facilitator with Jade Solutions, LLC, an ADR services company in the Washington, D.C area that specializes in arbitration, mediation, facilitation, ombuds, conflict coaching, and consulting. She serves on the panels/rosters of the CPR, AAA, FINRA, and the DC Bar Attorney Client Arbitration Board (ACAB) where she currently serves as Chair of the ACAB's Training Committee. She is a member of the Chartered Institute of Arbitrators North America Branch (CIArb NAB), Arbitral Women, the International Association of Facilitators (IAF), Mid Atlantic Facilitators Network (MAFN), American Bar Association (ABA), and National Bar Association NBA) auxiliary member. Tina holds degrees from Brown University and Pepperdine University Caruso School of Law Straus Institute.

TAB ONE

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Agenda

I. Panel Introductions

II: **History and Background**
Maryam Hatcher

III: **Why & How to File a Fee Dispute with the ACAB**
Tina Patterson

IV: **ACAB Process & Best Practices**
Charles McCullough

V: Question and Answer

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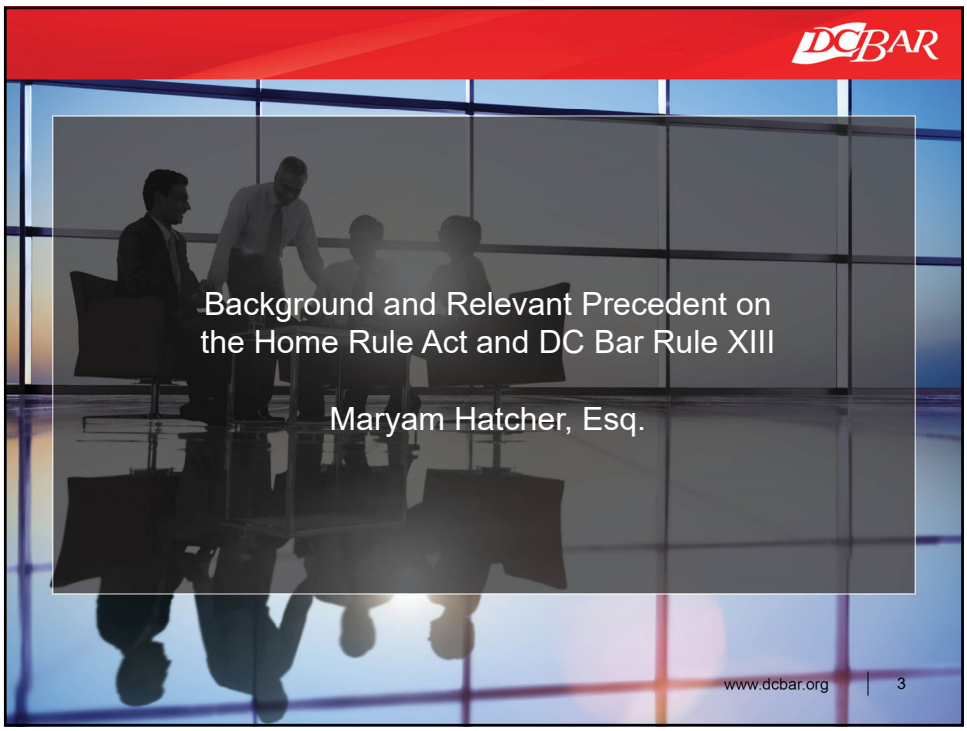

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The Home Rule Act

Passed in 1973,
the Home Rule Act devolves certain congressional powers of the District of Columbia to local government.

The Act expressly prohibits the D.C. Council from altering the jurisdiction of D.C. Courts.

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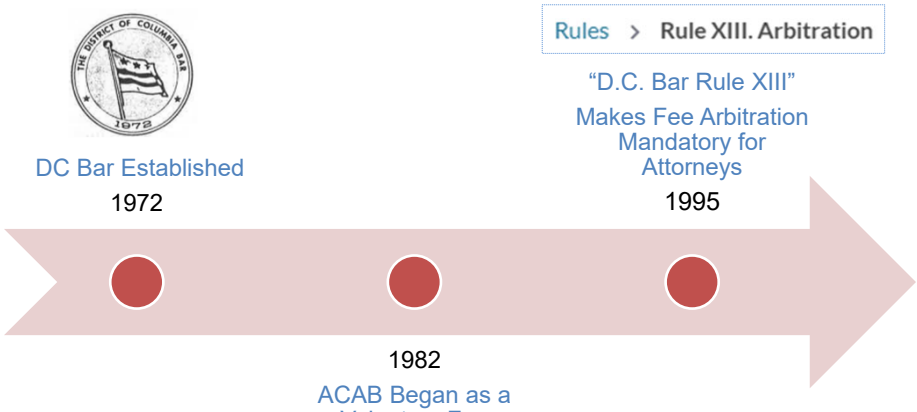
The History of ACAB and Rule XIII



ARBITRATION

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Relevant Precedent

Does Rule XIII violate the Home Rule Act by:
(1) Removing attorney-client fee disputes from the jurisdiction DC Courts;
(2) Vesting judicial authority in non-lawyer members of arbitration panels;
(3) Limiting the scope of judicial review of arbitration awards?

The D.C. Court of Appeals has consistently held that Rule XIII does not violate the Home Rule Act because:

- Mandatory arbitration under the rule does not modify the courts' jurisdiction, but instead creates an implied agreement between attorneys and their clients;
- Any quasi-judicial authority vested in ACAB is limited to fee disputes between attorneys and their clients who have voluntarily chosen to submit to ACAB's determination; and
- The rule does not need to provide for judicial review beyond what is typical following arbitration.

See BiotechPharma v. Ludwig & Robinson, 98 A.3d 986 (2014); Stuart v. Walker, 143 A.3d 761 (2016).

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Why File a Fee Dispute with the ACAB

Comment 15 to Rule 1.5 of the DC Rules of Professional Conduct states, "If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the Bar, the lawyer should conscientiously consider submitting to it."

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Benefit to using the ACAB

1) **Time -** Fee disputes filed with the ACAB can be resolved within as quickly as 120 days from filing to decision.

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Benefit to using the ACAB

2) **Cost -** The only hard cost in the ACAB forum is the filing fee, which is based on a sliding scale depending on the amount sought in relief.

- Typically, a filing fee ranges from $50-$150.

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Benefit to using the ACAB

Parties do not pay the arbitrators. They are **experienced volunteers** who are selected and trained by the ACAB Committee.

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Benefit: Filing Fee Schedule

Petition: The nonrefundable fee to file a petition with the Attorney/Client Arbitration Board is:

- For claims up to $5000: **$25**
- For claims from $5,001 to $49,999: **$50**
- For claims from $50,000 to $149,999: **$100**
- For claims from $150,000 to $499,999: **$250**
- For claims from $500,000 to $999,999: **$500**
- For claims from $1,000,000 & above: **$1,000**

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Benefit to using the ACAB

3) **Finality** – The ACAB decisions are final and binding. Unlike with litigation, there is no right to appeal. Limited criteria for vacating an arbitration award is listed in RUAA. §16-4423 of the DC Code.

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Benefit to using the ACAB

4) **Confidentiality** - ACAB proceedings are confidential, as are the hearings. The ACAB safeguards against inadvertent disclosures and mitigates these risks by providing a confidential forum.

Note: ***The arbitration award is not confidential****, but it also does not include a written opinion or rationale; it states who owes how much, to whom and when that payment is due.*

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Benefit to using the ACAB

5) **Less Formal -** The arbitration process fosters a more amicable interaction between the parties and is less contentious. It provides opportunities for settlement at all steps of the process. Mediation is also a voluntary option offered to parties.

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Benefit to using the ACAB

6) **Limited Jurisdiction -** The ACAB's jurisdiction is limited to fees claimed, charged or paid for legal services. This means that a countersuit for malpractice cannot be filed.

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How to Compel a Client to Arbitrate

Rule 1.5(b) of the Rules of Professional Conduct states "When the lawyer has not regularly represented the client, the basis or rate of the fee, the scope of the lawyer's representation, and the expenses for which the client will be responsible shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation."

Lawyers may want to consider an **arbitration clause in their retainer agreements**.

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Arbitration Clauses

Rule 8(b)(iii) of the ACAB Rules of Procedure states "The ACAB will enforce an attorney/client agreement to arbitrate a fee dispute if the agreement: **(1)** is valid and enforceable, **(2)** is signed by all parties to the dispute, and **(3)** encompasses fee disputes in the scope of disputes to be arbitrated."

"Further, the client must have been adequately informed of the scope and effect of a mandatory arbitration provision, consistent with **D.C. Bar Legal Ethics Committee Opinion 376.** In this instance, the ACAB can compel a client to arbitrate a fee dispute filed by a lawyer."

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Legal Ethics Opinion 376

- Fee arbitration provisions are *ordinary fee arrangements.*
- The use of arbitration clauses in fee agreements has grown considerably.
- The increase in mandatory arbitration provisions in fee agreements reflects the overall trend towards greater reliance on arbitration to resolve commercial and other disputes.

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Legal Ethics Opinion 376

Requires that the Client Be "Fully Informed" of the scope and effect of the agreement.

Although the phrase "**fully informed**" is not defined elsewhere in the comments to Rule 1.8, the definition of the term "Informed Consent" in Rule 1.0(e) is instructive. "'**Informed Consent**' denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated "**adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct**."

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Legal Ethics Opinion 376

For a client to appreciate the "**scope and effect**" of a mandatory arbitration provision, the lawyer must provide a client with sufficient information about the differences between litigation in the courts and arbitration proceedings.

As a general matter, a discussion regarding at least the following differences between the two methods of dispute resolution is prudent:

(1) the fees incurred;

(2) the available discovery;

(3) the right to a jury; and

(4) the right to an appeal.

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Arbitration Clause – Practical Guidance

If you include an arbitration clause in your retainer agreement you **must**:

1. Have your client sign the retainer agreement;
2. Include fees as a dispute to be resolved by arbitration;
3. Adequately inform your client of the effect of mandatory arbitration, which should include information about the differences between litigation and arbitration.

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Arbitration Clause – Example

If a dispute arises between Attorney and Client regarding legal fees under this agreement, the parties agree to arbitrate the dispute before the arbitration/mediation board of the bar association of the state where the attorney's services were performed. For matters handled in the District of Columbia, the parties agree to resolve any fee dispute regarding this agreement before the D.C. Bar Attorney/Client Arbitration Board.

Client understands that by agreeing to arbitrate, they waive certain rights presumed in civil litigation such as a right to a jury trial, the right to discovery, and the right to appeal. By signing this agreement, Client confirms that Attorney discussed this mandatory arbitration clause and Client understood the scope and effect of such an agreement.

****This example is being offered for illustrative purposes only, and does not constitute legal advice***.

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Filing a Fee Dispute

Requirements

- Agreement to Arbitrate
- Request for Arbitration
- Filing Fee
- Statement of Claim
- Supporting Documents (typically retainer agreement, invoices, correspondence, etc.)

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ACAB FEE ARBITRATION PROCESS OVERVIEW

1. Petitioner has a concern regarding the amount charged for legal services OR the lack of payment for legal services rendered.
2. Petitioner attempts to resolve the concern by talking with Respondent.
3. If the concern is unresolved, Petitioner submits a completed fee arbitration petition and filing fee to the ACAB.
4. The ACAB reviews the petition for jurisdiction and the case file is docketed if it conforms with ACAB rules.
5. An opening letter is sent to Respondent, who has 20 days to respond.
6. The response is received and a copy is sent to Petitioner who has 20 days to reply.
7. The reply is received and sent to Respondent.

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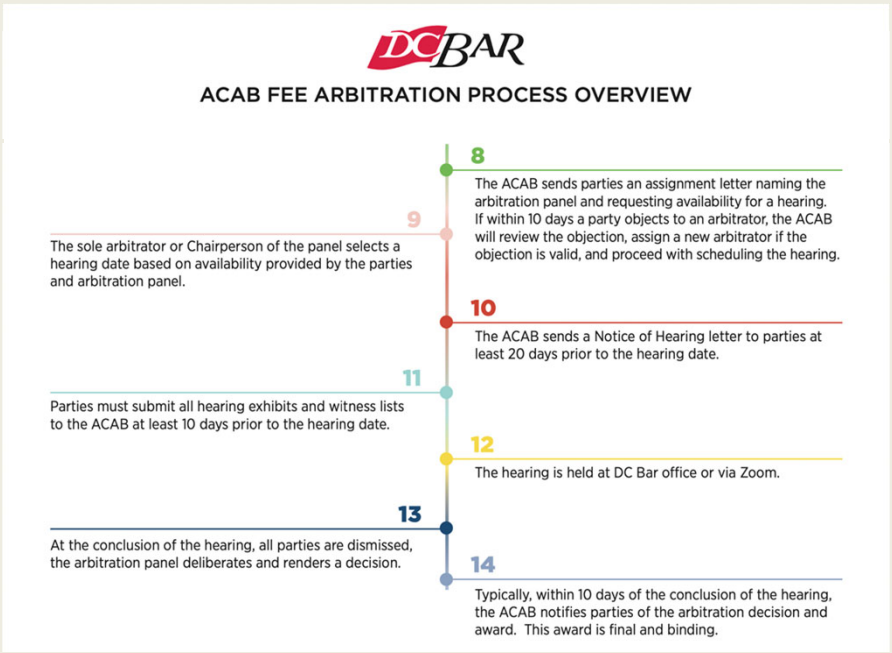

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Rules & Standards

Rule 19(f) of the ACAB Fee Arbitration Service Rules of Procedure:

The lawyer shall have the burden of proving the reasonableness of the fee by a preponderance of the evidence. *See* PRC 1.5

Factors to address:

- **Timing and labor required**, the novelty and difficulty of the questions, involved, and the skill required to perform the legal service properly;
- The likelihood, if apparent to the client, that the acceptance of the particular employment will **preclude other employment** by the lawyer;
- The **fee customarily charged** in the District of Columbia for similar services.

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Rules & Standards

The lawyer shall have the burden of proving the reasonableness of the fee by a preponderance of the evidence. *See* PRC 1.5

Factors to address (continued):

- The **amount involved and the result** obtained;
- The **time limitations imposed** by the client or by the circumstances;
- The nature and length of the professional **relationship with the client**;
- Whether the fee is **fixed or contingent**;
- The experience, reputation, and **ability of the lawyer or lawyers** performing the services.

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Best Practices

- Provide your client with **regular invoices**. For example, set aside a specific day each month to review and send out bills.
- Don't allow a client to get **too far behind** in payments.

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Best Practices

- Use a **reliable billing system** and method of tracking time spent on each client.
- Provide **sufficiently detailed invoices** to client.

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Best Practices

- **Recognize behaviors** that suggest payment may have become difficult.
- **Be conscious** of the benefit of the services to the client vs the cost of legal services performed.

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Best Practices

- **Communicate regularly** with your client about the status of the case.
- **Communicate regularly** with your client about the status of the billings.

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Question & Answer

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TAB TWO

I. Challenges to Rule XIII under the Home Rule Act

a. DC Bar established in 1972
b. Home Rule Act: The District of Columbia Home Rule Act is a United States federal law passed on December 24, 1973, which devolved certain congressional powers of the District of Columbia to local government, furthering District of Columbia home rule
c. ACAB began in 1982 as a voluntary fee arbitration program
d. In 1995, the fee arbitration program became mandatory for lawyers with the adoption of Rule XIII by the District of Columbia Court of Appeals: (a) An attorney subject to the disciplinary jurisdiction of this Court shall be deemed to have agreed to arbitrate disputes over fees for legal services and disbursements related thereto when such arbitration is requested by a present or former client, if such client was a resident of the District of Columbia when the services of the attorney were engaged, or if a substantial portion of the services were performed by the attorney in the District of Columbia, or if the services included representation before a District of Columbia court or a District of Columbia government agency. (b) The arbitration provided under this rule shall be final and binding on the parties according to applicable law, and shall be enforceable in the Superior Court and in any other court having jurisdiction. Unless the attorney and client agree otherwise, the arbitration shall be before the Attorney-Client Arbitration Board of the District of Columbia Bar, and shall be pursuant to such reasonable rules and regulations (including those relating to fees for arbitration services) as may be promulgated from time to time by the District of Columbia Bar and the Attorney-Client Arbitration Board.
e. Stuart v. Walker [ACAB amicus brief has good information]
f. BioTech Pharma v. Ludwig & Robinson 98 A.3d 986 (D.C. 2014)

II. Benefits of Using the ACAB to Resolve a Fee Dispute and How to Compel a client to arbitrate

a. Legal Ethics Opinion 376
    i. The ACAB will enforce an attorney/client agreement to arbitrate a fee dispute if the agreement: (1) is valid and enforceable, (2) is signed by all parties to the dispute, and (3) encompasses fee disputes in the scope of disputes to be arbitrated. Further, the client must have been adequately informed of the scope and effect of a mandatory arbitration provision, consistent with D.C. Bar Legal Ethics Committee Opinion 376. In this instance, the ACAB can compel a client to arbitrate a fee dispute filed by a lawyer.
b. Confidentiality of the ACAB dispute/Hearings
    i. The arbitration award is not confidential but it also does not include a written opinion or rationale; it states who owes how much, to whom and when that payment is due.
c. Finality in the Arbitration Decision
    i. Arbitration decisions are final and binding
    ii. Enforceable in the Civil Actions Branch of the DC Superior Court
    iii. The RUAA [DC Code §16-4423] includes the reasons that a party may seek to vacate an arbitration award. **(a)** Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if: **(1)** The award was procured by corruption, fraud, or other undue means; **(2)** There was: **(A)** Evident partiality

by an arbitrator appointed as a neutral arbitrator; **(B)** Corruption by an arbitrator; or **(C)** Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding; **(3)** An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to § 16-4415, so as to prejudice substantially the rights of a party to the arbitration proceeding; **(4)** An arbitrator exceeded the arbitrator's powers; **(5)** There was no agreement to arbitrate; or **(6)** The arbitration was conducted without proper notice of the initiation of an arbitration as required in § 16-4409 so as to prejudice substantially the rights of a party to the arbitration proceeding. **(b)** The court may vacate an award made in the arbitration proceeding on other reasonable ground. **(c)** A motion under this section shall be filed within 90 days after the movant receives notice of the award pursuant to § 16-4419 or within 90 days after the movant receives notice of a modified or corrected award pursuant to § 16-4420, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion shall be made within 90 days after the ground is known or by the exercise of reasonable care would have been known by the movant. **(d)** If the court vacates an award on a ground other than that set forth in subsection (a)(5) of this section, it may order a rehearing. If the award is vacated on a ground stated in subsection (a)(1) or (2) of this section, the rehearing shall be before a new arbitrator. If the award is vacated on a ground stated in subsection (a)(3), (4), or (6) of this section, the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator shall render the decision in the rehearing within the same time as that provided in § 16-4419(b) for an award.

d. Low cost (filing fee is only cost)
    i. Typical filing fee is $50-$150, depending on the monetary amount sought in relief.
    ii. Parties do not pay the arbitrators. They are skilled volunteers selected and certified by the ACAB Committee.
e. ACAB only has jurisdiction over disputes between a lawyer and client about fees paid, charged or claimed for legal services
    i. No counterclaim for malpractice dispute permitted
    ii. Relevant evidence may include evidence relating to claims of alleged malpractice or alleged negligence, but only to the extent that those claims bear upon the fees, costs or related expenses to which the lawyer is entitled.

III. ACAB Process and Best Practices

a. Refer to the ACAB Process Infographic
b. Include the filing requirements, including the Request for Arbitration, the Agreement to Arbitrate, the Statement of Claim requirements, and suggested supporting documents.
c. ACAB Fee Arbitration Service Rules of Procedure [very high level]
d. Refer to opening statement narrative for lawyers
e. The arbitration hearing are typically held on Zoom and begin at 10 am and conclude by 5 pm.

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 13-CV-546

BIOTECHPHARMA, LLC, *et al.*, APPELLANTS,

v.

LUDWIG & ROBINSON, PLLC, APPELLEE.

Appeal from the Superior Court
of the District of Columbia
(CAB-884-13)

(Hon. Brian F. Holeman, Trial Judge)

(Argued October 31, 2013 Decided September 4, 2014)

Albert Wilson, Jr., for appellants.

Robert W. Ludwig, with whom *Salvatore Scanio*, *James E. Tompert*, and *W. Clifton Holmes* were on the brief, for appellee.

Irvin B. Nathan, Attorney General for the District of Columbia, *Todd S. Kim*, Solicitor General, *Donna M. Murasky*, Deputy Solicitor General, and *James C. McKay, Jr.*, Senior Assistant Attorney General, filed a brief for the District of Columbia, *amicus curiae*, in support of this court's jurisdiction over the present appeal.

Before FISHER and BLACKBURNE-RIGSBY, *Associate Judges*, and KING, *Senior Judge*.

FISHER, *Associate Judge*: Appellants—BiotechPharma, LLC; Converting Biophile Laboratories, Inc.; and Dr. Raouf Albert Guirguis (collectively "BTP")—

are former clients of appellee Ludwig & Robinson, PLLC ("L&R"), a law firm. L&R sued BTP to collect unpaid legal fees, and BTP moved to stay the litigation and compel arbitration. After the trial court denied the motion, BTP brought this interlocutory appeal, arguing mainly that District of Columbia Bar Rule XIII[1] obligates L&R to arbitrate the fee dispute. We agree with BTP, reverse the trial court's order, and remand the case with instructions to compel arbitration.

I. Procedural and Factual Background

BTP, a biotechnology firm, retained L&R as counsel in March 2011 to help resolve a trade secret dispute. The dispute was settled in May 2012, L&R having billed BTP on a monthly basis during the course of its representation. By June 2012 L&R claimed that BTP owed approximately $1.7 million in outstanding legal fees, disbursements, and expenses. In January 2013 L&R brought suit to collect its fees.

[1] Although popularly known as "D.C. Bar Rule XIII," this is actually a rule of this court, adopted "for the government of the Bar and the individual members thereof." Preamble, Rules of the District of Columbia Court of Appeals Governing the Bar of the District of Columbia.

Several weeks later, BTP responded to the complaint by filing a motion to stay the trial court proceedings and compel arbitration. In addition to claiming that L&R had expressly agreed to arbitrate the fee dispute, BTP argued that a binding agreement to arbitrate had been formed by operation of law. BTP cited Rule 8 of the D.C. Bar's Attorney/Client Arbitration Board ("ACAB"), which states that if a client files a petition to arbitrate a fee dispute with a lawyer, "the lawyer is deemed to have agreed to arbitrate." Although it was not mentioned in the trial court, D.C. Bar Rule XIII similarly provides that

> [a]n attorney subject to the disciplinary jurisdiction of [the District of Columbia Court of Appeals] shall be deemed to have agreed to arbitrate disputes over fees for legal services . . . when such arbitration is requested by a present or former client, . . . if a substantial portion of the services were performed by the attorney in the District of Columbia . . . .

L&R raised several arguments opposing BTP's motion to stay litigation and compel arbitration, although the firm had already acknowledged in its complaint that it "maintains its office and performed work related to this" matter in the District of Columbia. Ultimately, the trial court denied BTP's motion without clearly explaining why. BTP now appeals from that order.

II. Analysis

Before reaching the merits of BTP's appeal, we first address a jurisdictional issue raised by L&R. We then consider whether the parties to this case had an enforceable arbitration agreement, and we conclude that such an agreement existed pursuant to D.C. Bar Rule XIII. Finally, we treat (and reject) L&R's claims that Rule XIII is unconstitutional and that this court exceeded its authority by promulgating it.

A. Jurisdiction

L&R argues that we lack jurisdiction to hear this interlocutory appeal, despite a provision of the Revised Uniform Arbitration Act ("RUAA") that states: "An appeal may be taken from . . . [a]n order denying or granting a motion to compel arbitration." D.C. Code § 16-4427 (a) (2012 Repl.). According to L&R, the RUAA cannot serve as our jurisdictional predicate because it violates the Home Rule Act, which prohibits the Council of the District of Columbia from passing a law "with respect to any provision of Title 11 (relating to organization and jurisdiction of the District of Columbia courts)." D.C. Code § 1-206.02 (a)(4) (2012 Repl.). Among other things, Title 11 gives this court jurisdiction over

appeals from "final orders and judgments of the Superior Court" and interlocutory orders "refusing . . . injunctions." D.C. Code § 11-721 (a) (2012 Repl.). L&R argues that orders denying motions to compel arbitration are not orders "refusing . . . injunctions," nor do they qualify as appealable orders under any other provision of Title 11. Consequently, L&R asserts that the RUAA has impermissibly expanded this court's jurisdiction, thereby violating the Home Rule Act.

We disagree for two principal reasons. First, for more than twenty years, this court has routinely exercised jurisdiction over the type of appeal presented here. *See Giron v. Dodds*, 35 A.3d 433, 436-37 (D.C. 2012); *2200 M St. LLC v. Mackell*, 940 A.2d 143, 147 n.2 (D.C. 2007); *Nat'l Trade Prod. v. Info. Dev.*, 728 A.2d 106, 109 (D.C. 1999); *Benefits Commc'ns Corp. v. Klieforth*, 642 A.2d 1299, 1301 n.10 (D.C. 1994); *Friend v. Friend*, 609 A.2d 1137, 1139 n.5 (D.C. 1992); *Hercules & Co., Ltd. v. Beltway Carpet Serv., Inc.*, 592 A.2d 1069, 1071-72 (D.C. 1991). In doing so, we have regularly cited either the RUAA or its predecessor, the Uniform Arbitration Act ("UAA"),[2] as a proper basis for

[2] The UAA stated that "[f]or purposes of writing an appeal . . . [a]n order denying an application to compel arbitration" would "be deemed final." D.C. Code § 16-4317 (a) (2001). Unlike the RUAA, the UAA did not provide for appeals from orders *granting* motions to compel arbitration. *See id.*

jurisdiction. *See, e.g.*, *Friend*, 609 A.2d at 1139 n.5 (applying the UAA); *Giron*, 35 A.3d at 436-37 & n.1 (applying the RUAA). This history evinces our long-held premise that interlocutory appeals from orders denying motions to compel arbitration fit comfortably within our jurisdiction. That premise, which has become part of our jurisprudence, has neither threatened our independence nor otherwise proven unworkable, but L&R's position would require us to abandon it.[3]

Even if we set aside this extensive history (indeed, even if we set aside the RUAA and the UAA altogether), a second consideration supports our jurisdiction here. This court's 1981 decision in *Brandon v. Hines* involved an arbitration agreement not subject to the UAA, and we nevertheless concluded that "denials—but not grants—of stays of litigation pending arbitration are appealable interlocutory orders."[4] 439 A.2d 496, 507 (D.C. 1981). Several years later, in

[3] L&R's jurisdictional arguments implicate many of the issues raised in *Stuart v. Walker*, which this court recently heard *en banc*. 6 A.3d 1215 (D.C. 2010), *vacated*, 30 A.3d 783 (D.C. 2011) (en banc). However, *Stuart* dealt with an order granting (rather than denying) a motion to compel arbitration. 6 A.3d at 1215. The *en banc* court was evenly divided on the question of jurisdiction and failed to render an opinion. *See Stuart v. Walker*, No. 09-CV-900 (D.C. Feb. 16, 2012) (en banc) (unpublished judgment).

[4] In *Brandon*, a contractor appealed a trial court order that denied his motion to confirm an arbitration award, vacated the award, and directed the parties to trial. 439 A.2d at 497. In deciding that the order was immediately appealable under Title 11 as an order dissolving an injunction, the court found it necessary to first

(continued…)

Hercules & Co., Ltd. v. Shama Rest. Corp., this court reaffirmed *Brandon*'s rule and explained that it "will remain the law of the District of Columbia unless and until it is reconsidered *en banc* or modified by statute." 566 A.2d 31, 38 (D.C. 1989).

Applying *Brandon*'s rule to this case resolves the concern L&R raises regarding the Home Rule Act, for if we may exercise jurisdiction pursuant to the terms of Title 11, then the RUAA's provision for interlocutory appeals works no change to this court's jurisdiction (at least, that is, with respect to orders *denying* motions to compel arbitration). *See Bank of Am. v. District of Columbia*, 80 A.3d 650, 660-61 (D.C. 2013) (relying on *Brandon* and recognizing that "[t]his court has exercised jurisdiction of an appeal from an order denying a motion to compel arbitration, concluding that it is a final order, appealable pursuant to D.C. Code § 11-721 (a)(1)").

(…continued)
determine that orders denying motions to compel arbitration should be treated (for purposes of appeal) as orders refusing injunctions. *Id.* at 500-09.

L&R argues that *Brandon* was incorrect at the time it was decided because it overlooked binding precedent in *John Thompson Beacon Windows, Ltd. v. Ferro, Inc.*, 232 F.2d 366 (D.C. Cir. 1956). However, the *John Thompson* court dealt primarily with the finality of an order in an independent proceeding.[5] *Id.* at 366-69. By contrast, the *Brandon* court focused carefully on whether an order refusing to stay ongoing litigation pending arbitration is appealable as an interlocutory order refusing an injunction. 439 A.2d at 497, 500-09 (analyzing D.C. Code § 11-721). Consequently, *John Thompson* did not control *Brandon* and does not control here. *See Parker v. K & L Gates, LLP*, 76 A.3d 859, 864 n.3 (D.C. 2013) ("Because this case arises in the context of an independent proceeding, we have no occasion to consider the appealability of orders compelling arbitration in other contexts.").

[5] An independent proceeding is an action "in which a request to order arbitration is the sole issue before the court." *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 87 (2000). *John Thompson* involved an independent proceeding because a seller had filed suit for the sole purpose of seeking enforcement of an arbitration agreement. 232 F.2d at 366-67. The trial court denied the seller's initial motion to compel arbitration, and the seller appealed before the trial court could complete a statutorily prescribed process for summarily trying the issue. *Id.* at 367. On appeal, then, the jurisdictional question was whether the order appealed from represented the final resolution of the independent proceeding. *Id.* at 367-69. Although neither party argued the order at bar was injunctive, the court considered and rejected that possibility in cursory fashion. *Id.* at 369. In doing so, the court based its brief analysis on the federal jurisdictional statute, 28 U.S.C. § 1292 (1952). *Id.* Thus, *John Thompson* is distinguishable not only because it arose in a different procedural setting, but also because it dealt with a different jurisdictional statute than the one at issue here.

In summary, *Brandon* and *Hercules* remain binding authority and apply to this case. Moreover, the result *Brandon* commands here is consistent with the long line of cases in which we have exercised jurisdiction over appeals like this one. We have no reason (and, in fact, no discretion) to depart from our precedent. Having determined that we have jurisdiction to decide this appeal, we now turn to the merits of BTP's claim.

B. L&R's Agreement to Arbitrate

BTP argues that the trial court erred in denying its motion to stay litigation and compel arbitration. Because a trial court must grant such a motion where a valid arbitration agreement exists, *see* D.C. Code § 16-4407 (b) (2012 Repl.), the central question before us is whether L&R and BTP had such an agreement.[6] This

[6] Before reaching the question of whether there was an agreement to arbitrate, L&R would have us hold that there was not even a dispute to arbitrate. *See Reed Research, Inc. v. Schumer Co.*, 243 F.2d 602, 604-05 (D.C. Cir. 1957) (relying on theory of "an account stated" to hold that no genuine issue of material fact precluded summary judgment). However, BTP's first filing in this case avers that the company "disputes the amount of attorney's fees sought" by L&R. This statement is enough to establish the existence of a dispute. To compel arbitration, a party need not produce evidence of a dispute sufficient to survive a motion for summary judgment. *Friend v. Friend*, 609 A.2d 1137, 1139 (D.C. 1992).

is a question of law that we review *de novo*. *Giron*, 35 A.3d at 437. The relevant facts are not in dispute.

1. Was There an Express Agreement to Arbitrate?

BTP suggests that because arbitration agreements are "irrevocable" under the RUAA, emails from L&R communicating its willingness to arbitrate were immediately binding. We disagree. Mere offers to arbitrate are not irrevocable, and the record demonstrates that L&R's first offer to arbitrate was not accepted by BTP. L&R's second offer was conditioned on ACAB's acceptance of BTP's petition, and L&R revoked this conditional offer long before BTP filed such a petition. Consequently, no express agreement to arbitrate was ever formed between the parties.[7]

2. Was There an Implied Agreement to Arbitrate?

[7] By specifying that an attorney "shall be deemed to have agreed to arbitrate" when the client requests it, Bar Rule XIII empowers clients to unilaterally require arbitration, but the rule does not give lawyers the same prerogative. In fact, ACAB Rule 8 (b)(ii) specifically notes that for clients, the arbitration service offered by ACAB "is voluntary. If the client does not agree to arbitrate, the ACAB cannot compel the client to do so." Thus, L&R's two offers to arbitrate did not trigger mandatory arbitration.

BTP maintains, in the alternative, that an agreement was formed by operation of law when it (the client) requested arbitration.

a. Was This Claim Preserved?

When raising this claim before the trial court, BTP failed to cite D.C. Bar Rule XIII, relying solely on ACAB Rule 8. As we will soon explain, these rules have somewhat different terms. L&R therefore contends that BTP failed to preserve the claim on which it now relies. We disagree. *See Tindle v. United States*, 778 A.2d 1077, 1082 (D.C. 2001) (quoting *Salmon v. United States*, 719 A.2d 949, 953 (D.C. 1997) ("[A]lthough 'claims' not presented in the trial court will be forfeited . . . , 'parties on appeal are not limited to the precise arguments' they made in the trial court.").

When moving for a stay of litigation pending the completion of arbitration, BTP quoted ACAB Rule 8 (a) ("If the petition is filed by a client, the lawyer is deemed to have agreed to arbitrate . . . ."). It elaborated: "All counsels entering an appearance on behalf of Ludwig are members of the D.C. Bar; therefore, they are all required to proceed to arbitration under the ACAB." BTP thus identified the

principle underlying both rules. There is little risk that L&R, which had earlier proposed arbitration before ACAB, a service provided by the Bar, was misled by BTP's failure to cite Rule XIII.

b. Was There a Valid Request to Arbitrate?

Both ACAB Rule 8 and Bar Rule XIII give clients the power to require arbitration of fee disputes. However, the rules employ different terms for the triggering event. Under ACAB Rule 8, a "lawyer is deemed to have agreed to arbitrate" when a "petition is filed by a client." Under Bar Rule XIII, an attorney "shall be deemed to have agreed to arbitrate" when "such arbitration is requested by a present or former client."

L&R points out that BTP did not file a petition with ACAB until *after* the trial court had denied arbitration, asserting that BTP did not have a viable claim in the trial court that arbitration was required pursuant to ACAB Rule 8. It also argues that the only way a client may "request" arbitration under Rule XIII is by filing a formal petition with ACAB.[8]

[8] In support of this reading, L&R notes Rule XIII's statement that arbitration "shall be pursuant to such reasonable rules and regulations . . . as may be (continued…)

We conclude that a client need not file a formal petition with ACAB in order to request arbitration pursuant to Bar Rule XIII. A formal filing with ACAB certainly would be sufficient to effectuate such a request, but it is not an absolute prerequisite. Here, BTP's counsel informed the trial court that he actually "tried to" file a petition with ACAB. He also said that ACAB "will not accept the petition until [the] Court stays [the] case."[9] Thus, trying to comply with ACAB's requirements, BTP filed a motion in the trial court to stay litigation and compel arbitration.

(…continued)
promulgated from time to time by" the D.C. Bar and ACAB. But Bar Rule XIII specifically provides flexibility in attorney-client arbitration arrangements, stating that "arbitration shall be before" ACAB "[u]nless the attorney and client agree otherwise." Because ACAB is not the exclusive forum for arbitration, its rules do not necessarily limit the ways in which an arbitration agreement can be formed.

[9] ACAB Rule 4 states that "[i]f there is a pending lawsuit in a court about a fee dispute and the client files a petition involving the same fee dispute with the ACAB . . . , the ACAB will not retain jurisdiction nor will it proceed to adjudicate the fee dispute unless the lawsuit is dismissed or stayed." But there may have been some misunderstanding between ACAB personnel and counsel for BTP. In another case, ACAB explained its rule in plain terms, informing litigants that a "fee dispute [may] not continue in two parallel forums." *Louis Fireison & Assocs., P.A. v. Alkire*, 6 A.3d 945, 953 (Md. Ct. Spec. App. 2010).

Even if BTP's efforts to file a petition with ACAB were not enough to constitute a "request" to arbitrate, BTP formally and unequivocally signaled its desire for arbitration by filing a motion to stay litigation and compel arbitration. We hold that a client that files such a motion in court has "requested" arbitration under Bar Rule XIII.[10] Accordingly, L&R "shall be deemed to have agreed to arbitrate" this fee dispute.[11]

C. Validity of D.C. Bar Rule XIII

L&R challenges the validity of D.C. Bar Rule XIII on two grounds. First, it claims that this court lacked authority to promulgate the rule. Second, L&R challenges the rule's constitutionality. BTP maintains that we should not entertain either of these arguments, since L&R raises them for the first time on appeal. As a

[10] Perhaps other types of filings or communications will qualify as a request for arbitration under Bar Rule XIII. We do not decide this question.

[11] L&R argues that even if an arbitration agreement exists, this court should nevertheless affirm on the ground that BTP, through conduct, waived its right to arbitration. We do not consider this argument because our case law clearly states that questions of waiver are "decided by the arbitrator, not the court." *Menna v. Plymouth Rock Assur. Corp.*, 987 A.2d 458, 465 (D.C. 2010); *see Woodland Ltd. P'ship v. Wulff*, 868 A.2d 860, 865 (D.C. 2005). We likewise reject L&R's claim that an implied arbitration agreement necessarily fails for lack of mutuality. Because the agreement is formed by operation of law, it need not (and, indeed, cannot) exhibit all the hallmarks of an ordinary contract.

general rule, of course, we do not consider such belated arguments. *See, e.g.*, *District of Columbia v. Helen Dwight Reid Educ. Found.*, 766 A.2d 28, 34 n.3 (D.C. 2001). However,

> an appellate court has discretion, in the interests of justice, to consider an argument that is raised for the first time on appeal if the issue is purely one of law, particularly if the factual record is complete and a remand for further factual development would serve no purpose, the issue has been fully briefed, and no party will be unfairly prejudiced.

Plainly, the validity of Bar Rule XIII is a purely legal issue, and we think "the interests of justice" are best served if we address it here. L&R makes many of the same claims raised in *Stuart v. Walker*, and the merits of that case were never resolved because the court split evenly on the question of jurisdiction. *See supra* note 3. Thus, L&R raises issues "of continuing importance" and "of great public interest" that deserve our consideration. *See Anderson v. Elliott*, 555 A.2d 1042, 1045 (Me. 1989) (exercising discretion to reach and resolve questions about the validity of Maine's mandatory arbitration system for legal fee disputes). We note that "a remand for further factual development would serve no purpose," and that "no party will be unfairly prejudiced" by our decision to reach L&R's final arguments. *Helen Dwight Reid Educ. Found.*, 766 A.2d at 34 n.3.

1. Authority to Promulgate D.C. Bar Rule XIII

L&R contends that this court lacked authority to promulgate Bar Rule XIII. Quite to the contrary, this court possesses broad authority to regulate the practice of law, deriving much of this power from the District of Columbia Court Reorganization Act of 1970. A portion of that Act, passed by Congress, provides that "[t]he District of Columbia Court of Appeals shall make such rules as it deems proper respecting the examination, qualification, and admission of persons to membership in its bar, and their censure, suspension, and expulsion." D.C. Code § 11-2501 (a) (2012 Repl.). Beyond this broad statutory grant of authority, the court possesses significant inherent authority as well. In *Sitcov v. District of Columbia Bar*, we relied upon the "almost universally accepted" proposition "that the highest court in the jurisdiction is imbued with the inherent authority to define, regulate, and control the practice of law in that jurisdiction." 885 A.2d 289, 297 (D.C. 2005) (quoting *Brookens v. Comm. on Unauthorized Practice of Law*, 538 A.2d 1120, 1125 (D.C. 1988)).

Notably, the preamble to the rules we promulgated to govern the District of Columbia Bar cites both the inherent and statutory authority of this court. Taken

together, these two sources of authority allow the court to regulate virtually every aspect of legal practice in the District of Columbia, including the substance of fee agreements. *See* D.C. R. Prof. Cond. 1.5. We readily conclude that this power extends to the subject matter of Bar Rule XIII. *See In re LiVolsi*, 428 A.2d 1268, 1273 (N.J. 1981) (holding that if a court has "authority to control the substance of the [attorney-client] fee relationship, then a power of a lesser magnitude determining the procedure for resolving fee disputes must also be within [the court's] province").

L&R nevertheless asserts that the rule impermissibly alters the jurisdiction of the D.C. courts, since it requires lawyers to arbitrate fee disputes that they would otherwise litigate in civil actions. Additionally, L&R claims that this court violated the Home Rule Act by vesting judicial authority in the non-lawyer members of ACAB panels and by limiting the scope of judicial review. In making these claims, L&R cites several cases from other jurisdictions where courts have considered the type of judicial involvement or the scope of judicial review that must be afforded as part of a mandatory arbitration process.

Importantly, the formation of any arbitration agreement pursuant to Bar Rule XIII requires a manifestation of assent by both attorney and client. Clients

invoke the rule by requesting arbitration. Attorneys submit to the rule by practicing law in the District of Columbia. Provided that Rule XIII is valid, it does not affect the jurisdiction of the D.C. courts or violate the Home Rule Act any more than any other agreement to arbitrate would do.

The rule need not provide for judicial review beyond that which is ordinarily available following arbitration. *See* D.C. Code §§ 16-4423 to -4424 (2012 Repl.); *A1 Team USA Holdings, LLC v. Bingham McCutchen LLP*, 998 A.2d 320, 322 (D.C. 2010) (concluding that under the RUAA, "this court's review of an arbitration award is still extremely limited"); *Schwartz v. Chow*, 867 A.2d 230 (D.C. 2005) (upholding decision of the Superior Court confirming an arbitration award by ACAB). Whatever quasi-judicial authority may be vested in ACAB (if any), it is limited to fee disputes between members of this court's bar and clients who have voluntarily chosen to submit to the board's determination. Nothing in the Home Rule Act inhibits this court's ability to thus manage the affairs of its bar. This court did not exceed its authority in promulgating the rule.

2. Constitutionality of D.C. Bar Rule XIII

Separately, L&R challenges D.C. Bar Rule XIII on constitutional grounds, principally claiming that the rule denies lawyers their Seventh Amendment right to a jury trial. The Seventh Amendment's guarantee extends to "suits in which legal rights [are] to be ascertained and determined, in contradistinction to those where equitable rights alone [are] recognized." *Curtis v. Loether*, 415 U.S. 189, 193 (1974). In *Simler v. Conner* the Supreme Court concluded that the underlying "case was in its basic character a suit to determine and adjudicate the amount of fees owing to a lawyer by a client under a contingent fee retainer contract, a traditionally 'legal' action." 372 U.S. 221, 223 (1963). The Court therefore held that the Seventh Amendment guaranteed a jury trial. *Id.* Here, L&R's complaint alleges that BTP breached a retainer contract under which it owes attorneys' fees. Thus, L&R has initiated "a traditionally 'legal' action" to which, presumptively, a Seventh Amendment right attaches.[12] Consequently, we must address L&R's contention that Bar Rule XIII violates the Seventh Amendment.[13]

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[12] This determination is consistent with our holding in *Ginberg v. Tauber*, where an attorney sued his client under a *quantum meruit* theory, seeking the reasonable value of legal services the attorney had provided. 678 A.2d 543, 544-46 (D.C. 1996). There was no retainer agreement, but the client acknowledged that he owed the attorney a reasonable fee. *Id.* at 549. As a result, "the only issue [to be determined] . . . was what was a reasonable fee under the circumstances." *Id.* at 550. The court held "that where it is undisputed that the client owes the attorney some fee for his legal representation, but there is no agreement concerning how the amount will be determined . . . , the trial court, not the jury, determines the amount of fee to be paid." *Id.* at 548. In short, *Ginberg* concluded, "the amount of the fee,

(continued…)

Although other jurisdictions impose rules similar to D.C. Bar Rule XIII, no such rule has ever been struck down for denying an attorney's right to a jury trial. Rather, it has been held that attorneys give up that right by practicing law in a jurisdiction subject to the challenged rule. *See Kelley Drye & Warren v. Murray Indus., Inc.*, 623 F. Supp. 522, 527 (D.N.J. 1985) (holding that "the right to a jury trial can be given up, as parties do when they agree to arbitrate"); *Guralnick v. Supreme Court of N.J.*, 747 F. Supp. 1109, 1116 (D.N.J. 1990) (following *Kelley Drye*). This court has previously cited that analysis in taking care "to cast no doubt upon the validity of D.C. Bar R. XIII." *Ginberg*, 678 A.2d at 551 n.9 (citing *Kelley Drye*).

(…continued)
unless the amount is fixed by the contract, is . . . for the court to determine." *Id.* at 551 (emphasis added). Here, the parties executed fee agreements, and L&R asserts that its legal fees are, in fact, fixed by contract.

[13] Some state courts have held that their respective state constitutions do not guarantee a jury trial for attorneys litigating fee disputes. *See, e.g., Shimko v. Lobe*, 813 N.E.2d 669, 675, 678-81 (Ohio 2004); *Anderson v. Elliott*, 555 A.2d 1042, 1043, 1049-50 (Me. 1989). These cases do not address the Seventh Amendment question presented here since the "Amendment applies only to proceedings in courts of the United States, and does not in any manner whatever govern or regulate trials by jury in state courts." *Minneapolis & St. Louis R.R. Co. v. Bombolis*, 241 U.S. 211, 217 (1916). However, "like other provisions of the Bill of Rights," the Seventh Amendment is "fully applicable to courts established by Congress in the District of Columbia." *E.R.B. v. J.H.F.*, 496 A.2d 607, 610 n.6 (D.C. 1985) (citing *Pernell v. Southall Realty*, 416 U.S. 363, 370 (1974)).

Federal courts have taken a similar approach in analogous contexts. For example, in *Geldermann v. Commodity Futures Trading Comm'n*, members of a commodities exchange were required by law to submit "to customer-initiated arbitration." 836 F.2d 310, 311 (7th Cir. 1987). A member company challenged the rule—in part on Seventh Amendment grounds—claiming that "membership alone is not sufficient to constitute consent to arbitration and therefore cannot establish a waiver of its constitutional right to an Article III forum." *Id.* at 318. The Seventh Circuit disagreed, explaining that consent to observe all applicable rules and regulations was "a precondition of membership" in the exchange. *Id.* Accordingly, the court held that the company was "not entitled to an Article III forum" and that "the Seventh Amendment [was] not implicated." *Id.* at 324. *See also Patten Sec. Corp., Inc. v. Diamond Greyhound & Genetics, Inc.*, 819 F.2d 400, 402 (3d Cir. 1987) (holding that a member of the National Association of Securities Dealers was "bound by its rules . . . under which a customer may compel arbitration") (abrogation on other grounds recognized by *Delgrosso v. Spang & Co.*, 903 F.2d 234, 236 n.2 (3d Cir. 1990)); *Paine, Webber, Jackson & Curtis v. Chase Manhattan Bank*, 728 F.2d 577, 580 (2d Cir. 1984) (holding that the rules of a stock exchange were "sufficient in and of themselves" to compel a member to

submit to arbitration requested by a non-member "whether or not [the rules] are incorporated in a purchase and sale agreement").

Because an arbitration agreement necessarily embodies a waiver of the right to trial by jury, a determination that there is a valid arbitration agreement here would foreclose any claim L&R might have had to a jury trial. *See GTFM, LLC v. TKN Sales, Inc.*, 257 F.3d 235, 244 (2d Cir. 2001) (characterizing the factual premise of a Seventh Amendment claim as "purely hypothetical" where one party to a dispute had exercised its statutory right to compel arbitration); *Geldermann*, 836 F.2d at 323 (holding that where the parties have consented to arbitration, "the Seventh Amendment simply does not apply"); *Cremin v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 957 F. Supp. 1460, 1471 (N.D. Ill. 1997) (when "claims are properly before an arbitral forum pursuant to an arbitration agreement, the jury trial right vanishes"). A case-specific waiver of the right to a jury trial is not necessary.

Still, L&R contends that it cannot be deemed to have agreed to arbitrate because at least some of its attorneys joined the District of Columbia Bar before this court promulgated Bar Rule XIII in 1995. Lawyers are required to renew their bar membership every year, however, and those who have done so since 1995 cannot now claim immunity from the rule. In any event, the legal work at issue

here took place in 2011 and 2012, long after Rule XIII was promulgated. The attorneys' practice of law in this jurisdiction is enough to make them subject to Rule XIII with respect to any fee dispute arising from that practice.[14]

We now turn to whether this court, through Bar Rule XIII, may require such client-initiated arbitration without violating the Constitution. L&R obliquely suggests that the rule places an unconstitutional condition on the privilege of practicing law in the District of Columbia. Again, however, L&R fails to cite a case—and we are not aware of any—where a litigant has prevailed on that theory when challenging a mandatory arbitration system for attorney-client fee disputes. Courts that have considered the issue have held that "[n]o one has an absolute right to practice law," *Kelley Drye*, 623 F. Supp. at 527, and "[t]he State may impose reasonable conditions and limitations upon those who wish to exercise th[at]

[14] Moreover, BTP and L&R signed retainer agreements in 2011 and 2012. "[L]aws in effect at the time of the making of a contract form a part of the contract 'as fully as if they had been expressly referred to or incorporated in its terms.'" *Double H Hous. Corp. v. Big Wash, Inc.*, 799 A.2d 1195, 1199 (D.C. 2002) (quoting *Farmers & Merchs. Bank of Monroe v. Fed. Reserve Bank of Richmond*, 262 U.S. 649, 660 (1923)). Applying this principle of law in a case similar to this, the Maryland Court of Special Appeals held that D.C. Bar Rule XIII had been implicitly incorporated into a retainer contract and that the attorney who executed it had "agreed to arbitrate a fee dispute with [his client] upon her request." *Fireison*, 6 A.3d at 953-54.

privilege." *Anderson*, 555 A.2d at 1050 (Me. 1989) (quoting *Kelley Drye*, 623 F. Supp. at 527).

"The interest of the States in regulating lawyers is especially great," and they "have broad power to establish standards for . . . regulating the practice of professions." *Goldfarb v Virginia State Bar*, 421 U.S. 773, 792 (1975). This includes the right to establish and enforce rules governing the reasonableness of attorney fees. *See* D.C. R. Prof. Cond. 1.5. When promulgating Bar Rule XIII, this court sought to provide an informal and efficient means of resolving attorney-client fee disputes, which are one of the principal sources of public dissatisfaction with the legal system. *See Anderson*, 555 A.2d at 1049. Because clients are at a significant disadvantage in litigating those disputes, the rule protects their ability to present meritorious claims and defenses, and, we believe, thereby fosters public confidence in the bar. *See id*.; *see also In re LiVolsi*, 428 A.2d at 1272, 1280. Thus, regulation "in the area of fee disputes" is "critically important." *Nodvin v. State Bar of Ga.*, 544 S.E.2d 142, 145 (Ga. 2001) (quoting *In re LiVolsi*, 428 A.2d at 1272).

The scope of Bar Rule XIII is well-fitted to its ends. The rule does not, for instance, require lawyers to give up their right to a jury trial in civil cases not

involving fee disputes, and arbitration of fee disputes is required only if the client requests it. Moreover, the arbitration system itself provides an impartial tribunal and the other elements of due process. These considerations support our conclusion that requiring lawyers to submit to client-initiated arbitration "is an entirely reasonable exercise of the judicial power to superintend the bar." *Anderson*, 555 A.2d at 1049.[15]

In addition to its Seventh Amendment claim, L&R maintains that compulsory arbitration denies lawyers their right to due process. Similar claims have unvaryingly failed in the courts that have heard them. *See Guralnick*, 747 F. Supp. at 1113-14; *A. Fred Miller, Attorneys at Law, P.C. v. Purvis*, 921 P.2d 610, 617-18 (Alaska 1996); *Nodvin*, 544 S.E.2d at 145-46. We see no reason to part ways with this consistent body of persuasive precedent. "[D]ue process is not necessarily judicial process. . . . [N]either is the right of appeal essential to due

[15] On this score as well, our conclusion is consistent with analogous federal case law. In *Geldermann*—described above—the law compelling arbitration for members of the commodities exchange was upheld despite the claim that if a member company "was to continue in business, [it] had no choice but to accept the" rule. 836 F.2d at 317. *See also Koveleskie v. SBC Capital Mkts., Inc.*, 167 F.3d 361, 366, 368 (7th Cir. 1999) (holding that it was not unconstitutional for an employer to require an arbitration agreement as a "take-it-or-leave-it" condition of employment, in part because "[t]he right to an Article III forum is waivable").

process of law." *Guralnick*, 747 F. Supp. at 1113 (quoting *Reetz v. Michigan*, 188 U.S. 505, 507-08 (1903)). Rather, "[t]he crux of due process is an opportunity to be heard and the right to adequately represent one's interests." *A. Fred Miller, Attorneys at Law, P.C.*, 921 P.2d at 617-18. Arbitration procedures under ACAB rules "readily satisfy these minima." *Id.*[16]

III. Conclusion

There was a valid agreement to arbitrate pursuant to D.C. Bar Rule XIII and the trial court should have enforced it. Accordingly, we vacate the trial court's order denying BTP's motion to stay, and remand the case with instructions to enforce the arbitration agreement.

It is so ordered.

[16] L&R also raises an argument that it has styled as an equal protection claim. The firm asserts that Bar Rule XIII is "vastly overinclusive" because "it routes to arbitration oft-times complex matters." L&R does not explain how the complexity of some attorney-client fee disputes works any deprivation of equal protection under the law. In our view, the suggestion that this fee dispute is too complex for ACAB is simply another facet of L&R's due process claim, which we have already rejected.

DISTRICT OF COLUMBIA BAR
ATTORNEY/CLIENT ARBITRATION BOARD

Fee Arbitration Service Rules of Procedure

Last Amended April 12, 2022

THE DISTRICT OF COLUMBIA BAR
ATTORNEY/CLIENT ARBITRATION BOARD

FEE ARBITRATION SERVICE

RULES OF PROCEDURE

1. The Attorney/Client Arbitration Board (ACAB): The Attorney/Client Arbitration Board is usually referred to by its initials, as the "ACAB." The ACAB has 11 volunteer members: seven are lawyers and four are non-lawyers. These 11 members are selected by the District of Columbia Bar (the "D.C. Bar") and serve three-year terms; none serves more than two consecutive terms. The ACAB uses volunteer arbitrators, which it selects, and who serve three-year terms that may be renewed at the discretion of the ACAB. These arbitrators are lawyers and non-lawyers who have training and experience in arbitrating disputes. The ACAB uses either a single arbitrator ("sole arbitrator") or a three-member panel, depending upon the amount of money in dispute. The ACAB Assistant Director, who is a lawyer and employee of the D.C. Bar, handles the day-to-day operations of the ACAB.

2. The lawyer and the client: Disputes about legal fees arise out of the relationship between lawyer and client. When the term "lawyer" is used in these rules, it includes both individual lawyers and co-counsel or law firms, as the case may be. When the term "client" is used, it includesan individual, group of people, corporation or other business entity, as the case may be. The term "client" may be construed to include a party who is subrogated to the rights of a client. Where the ACAB is satisfied that the interests of the client, protected by the District of Columbia Court of Appeals Rule XIII, will not be harmed, "client" may also include a third-party payor who has a legal responsibility for the payment of legal fees on behalf of a client.

3. Fee disputes arbitrated by the ACAB: The services of the ACAB are available to arbitrate disputes about legal fees which meet five criteria:

(a) The dispute must be between a lawyer and a client.

(b) The dispute must be about a fee paid, charged or claimed for legal services. This includes disbursements, related expenses, or pre-award interest.

(c) The lawyer must have been subject to the disciplinary jurisdiction of the District of Columbia Court of Appeals when the legal services were provided to the client.

(d) The dispute must "arise" in the District of Columbia. A dispute arises in the District of Columbia if:

(i) The client is a resident of the District of Columbia, OR

(ii) A substantial part or all of the legal services were provided in the District of Columbia, OR

(iii) The services included representation before a District of Columbia court or District of Columbia government agency, OR

(iv) The parties voluntarily agreed to arbitrate and part of the legal services were provided in the District of Columbia and the lawyer maintains a law office in the District of Columbia or its surrounding counties and cities (Montgomery and Prince George's in Maryland; Alexandria, Arlington, and Fairfax in Virginia).

(e) The dispute must be brought to the ACAB within the statute of limitations for contract disputes as defined by District of Columbia law (D.C. Code Sec. 12-301). In general, a petition involving a fee dispute must be filed with the ACAB within three years of the date the basis for the claim was known or should have been known to the party making it.

4. Coordination with other dispute-resolving agencies: The ACAB has the discretion to decide not to arbitrate a dispute over legal fees if such arbitration would interfere with proceedings before other dispute-resolving bodies. For instance:

(a) If there is a pending lawsuit in a court about a fee dispute and the client files a petition involving the same fee dispute with the ACAB or the lawyer files such a petition accompanied by a valid agreement with the client to arbitrate fee disputes, the ACAB will not retain jurisdiction nor will it proceed to adjudicate the fee dispute unless the lawsuit is dismissed or stayed (pending resolution by the ACAB) by the presiding judge in the lawsuit.

(b) The ACAB will not arbitrate disputes where entitlement to and the amount of fees and/or costs charged by or paid to a lawyer by the client, or on a client's behalf, have previously been determined by a court order, rule or decision.

(c) The ACAB will not arbitrate disputes if the legal services underlying the fees and/or costs at issue are alleged to constitute a crime.

(d) If the dispute involves a violation of the District of Columbia Rules of Professional Conduct by the lawyer, the dispute may be handled first by the District of Columbia Office of Disciplinary Counsel ("Disciplinary Counsel"). In such instance, the ACAB will not arbitrate the dispute if it is shown that prejudice will occur if both proceedings go forward simultaneously. Nothing in these rules of procedure prevents a client from filing a complaint with Disciplinary Counsel.

5. Confidentiality: Proceedings before the ACAB are confidential, including but not limited to all records, documents, and testimony received by the ACAB, subject to the following:

(a) The parties to an arbitration dispute are not required by the ACAB's rules of procedure to maintain confidentiality about any aspect of the proceeding unless they both agree in writing or the arbitrator(s) issue a confidentiality order for good cause shown at the request of a party after considering any objections by the other party. These rules of procedure do not affect any confidentiality requirements imposed on members of the D.C. Bar by the District of Columbia Rules of Professional Conduct.

(b) An award is not confidential.

(c) A client or lawyer who participates in an ACAB proceeding may make available to any other person any information or document that was in the possession of the client or the lawyer before the beginning of any ACAB proceeding.

(d) An ACAB member or arbitrator will respond to a request for information or records made by the Board on Professional Responsibility. No ACAB member or arbitrator will initiate any communication with the Board on Professional Responsibility or Disciplinary Counsel.

6. Filing a petition: A case before the ACAB is initiated by filing a petition. The forms required to file a petition can be obtained from the ACAB office (see Appendix A for contact information). A petition may be filed either by a lawyer or by a client. The party who files a petition to arbitrate is referred to as the "Petitioner." A petition may be returned to the filing partyif it lacks information to support that the ACAB has jurisdiction, the amount in dispute, or the requisite forms. A case is not considered opened by the ACAB until it has been assigned a docketname and number.

7. Fee: A filing fee is charged for the ACAB's services and must be paid in full by check or money order when a petition or counterclaim is filed. The amount of the fee is provided in the fee schedule attached to these rules of procedure. The ACAB may waive the filing fee upon a showing of indigency. Subject to the provisions of Rule 21(b) of these rules of procedure the filing fee is not refundable.

8. Agreement to Arbitrate: After the petition is filed and after the petition has been opened by the ACAB:

(a) If the petition is filed by a client, the lawyer is deemed to have agreed to arbitrate and the arbitration will go forward unless the client withdraws the petition before the lawyer responds to the petition. The ACAB will send the lawyer a copy of the

petition and a copy of these rules, and the arbitration process will begin. Petitions to arbitrate filed by the client may not be withdrawn by the client after the lawyer responds unless the lawyer and the client agree to do so in writing.

(b) If the petition is filed by a lawyer, the ACAB will send the client a copy of these rules and an Agreement to Arbitrate form.

(i) If the client signs the Agreement to Arbitrate and returns it to the ACAB, the arbitration process will begin. A signed Agreement to Arbitrate form is binding and cannot be withdrawn by the client unless both the lawyer and the client agree to do so in writing.

(ii) If the client refuses to sign the Agreement to Arbitrate, then the arbitration process will not begin. The arbitration service offered by the ACAB to clients is voluntary. If the client does not agree to arbitrate, the ACAB cannot compel the client to do so.

(iii) The ACAB will enforce an attorney/client agreement to arbitrate a fee dispute if the agreement: (1) is valid and enforceable, (2) is signed by all parties to the dispute, and (3) encompasses fee disputes in the scope of disputes to be arbitrated. Further, the client must have been adequately informed of the scope and effect of a mandatory arbitration provision, consistent with D.C. Bar Legal Ethics Committee Opinion 376 (copy attached.) In this instance, the ACAB can compel a client to arbitrate a fee dispute filed by a lawyer. Petitions to arbitrate filed by a lawyer may not be withdrawn by the lawyer after the client responds unless the lawyer andthe client agree to do so in writing.

9. Responsive materials, requests to dismiss and counterclaims: The following governs responsive materials, requests to dismiss and counterclaims:

(a) Responsive materials - The party against whom a petition is filed (the "Respondent") shall file any response to the petition with the ACAB within 20 calendar days of the date the petition is mailed by the ACAB to the Respondent.

(b) Requests to dismiss – If the Respondent believes that the dispute does not meet the requirements of Rule 3 and should be dismissed, the Respondent must file a request to dismiss, with supporting material, within 20 calendar days of the date the petition was mailed by the ACAB to the Respondent. The ACAB Assistant Director will determine whether the ACAB or arbitrator(s) assigned to the case should decide any such request. If, at any time, the ACAB or arbitrator(s) assigned to the case determine that the dispute does not satisfy the requirements of Rule 3, the petition will be dismissed.

(c) Determinations about whether to dismiss a petition will be made by the ACAB Assistant Director if the request is based upon a procedural issue and by the sole

arbitrator or the chairperson of a three-arbitrator panel (the "Chairperson") if the request is based upon a substantive issue.

(d) Counterclaims - If the Respondent has any claims against the Petitioner that involve the same facts as the claim described in the petition, the Respondent may file a counterclaim. Counterclaims must be filed with the ACAB within the 20-calendar day limit for filing responses and must be accompanied by the filing fee (Rule 7). A counterclaim should fully describe the basis on which the Respondent believes (s)he is entitled to relief. The ACAB will provide a copy of the counterclaim to the Petitioner promptly. The Petitioner must provide any reply to the counterclaim within 20 calendar days of the date it is sent by the ACAB to the Petitioner.

(e) Extensions – To assure that responsive materials, requests to dismiss, counterclaims and other submissions are accepted, parties should comply with the deadlines set forth by the ACAB and in subparagraphs (a) – (d) above. As a matter of discretion, the ACAB may allow materials filed after the 20-calendar day deadline on a case-by-case basis. Determinations about requests for extensions will be made by the ACAB Assistant Director unless arbitrator(s) have been assigned to the case. If arbitrator(s) have been assigned, the decision will be made by the sole arbitrator or the Chairperson.

10. Informal Settlement: The ACAB encourages informal settlement of disputes prior to the arbitration hearing.

11. Voluntary mediation: The ACAB offers voluntary mediation as an option to parties in a pending fee dispute. Mediation is voluntary for both the client and the lawyer. Both parties must agree in writing to mediate before the ACAB will schedule a mediation session. Both parties will receive information about the voluntary mediation program after a fee dispute has been opened and docketed by the ACAB. If either party does not agree in writing to mediate, or if a settlement is not reached at a mediation session, the ACAB will continue processing the case for arbitration.

12. Dismissal of petitions: The ACAB Assistant Director may dismiss a petition it has accepted if it determines, after contacts with the lawyer and the client, that the dispute should be decided elsewhere (as described in Rule 4), or no signed Agreement to Arbitrate can be obtained from the client. When the petition is dismissed, the case is closed, and the ACAB sends a notice to the lawyer and the client of this action. A dismissal by the ACAB does not affect other remedies available to the client or the lawyer.

13. Assigning arbitrators: The ACAB will assign either one arbitrator or three arbitrators to decide the dispute. Arbitrators are selected from the ACAB's trained and experienced volunteers.

(a) If the combined amount of the claim and any counterclaim is less than or equal to $10,000, one arbitrator will be assigned to decide the dispute. The sole arbitrator may be either a lawyer or a non-lawyer.

(b) If the combined amount of the claim and any counterclaim is greater than $10,000, a panel of three arbitrators will be assigned to decide the dispute. The panel will include at least one lawyer and at least one non-lawyer. A Chairperson will be designated by the ACAB. The lawyer and the client may agree to a panel including all lawyers or all non-lawyers or to have the dispute heard by a sole arbitrator.

(c) If requested by both the lawyer and the client, and if feasible, the ACAB will select an arbitrator with particular expertise in the practice area of the underlying dispute.

14. Striking arbitrators: The ACAB will mail to the lawyer and the client a notice identifying the arbitrator(s) who have been selected to decide the dispute and a short biographical statement about each. Either the lawyer or the client may strike any arbitrator by sending a written objection to the ACAB, within 10 calendar days of the date of the ACAB notice, stating any good reason why the arbitrator who has been assigned should not decide the dispute. Otherwise all objections to the arbitrator or arbitrators assigned by the ACAB are waived. Generally, the ACAB will honor requests to remove an arbitrator if based on the arbitrator's knowledge of or familiarity with any party, witness, or facts of the dispute. Generally, a request for removal of an arbitrator will not be granted if based solely on the party's perception that the arbitrator lacks the professional qualifications or expertise to serve.

15. Contacting arbitrators: The lawyer and the client may not contact the arbitrator(s) regarding the dispute or award before or after the hearing. All written submissions about the dispute must be sent directly to the ACAB office for distribution to the arbitrator(s). The lawyer and the client may contact the ACAB staff about the case, whenever necessary.

16. Replacing arbitrators: If an arbitrator becomes unavailable after having been assigned, but before the hearing, a new arbitrator will be selected and assigned to the matter. If an arbitrator becomes unavailable before the hearing has begun but after the hearing has been scheduled, both the lawyer and the client may consent in writing to proceed with the scheduled hearing with two arbitrators without a new selection process. If an arbitrator becomes unavailable after the beginning of the hearing but before the award, the arbitration will be stopped and the selection process for all arbitrators will start again. The provisions of Rule 14 and Rule 15 apply to replacing arbitrators.

17. Schedule and notice: The ACAB, in consultation with the parties and the sole arbitrator or the Chairperson, will set a schedule for deciding the dispute and will send written notice to the lawyer and the client.

(a) A hearing normally will be scheduled within 90 days of the notice of the selection of the arbitrators. The lawyer and the client will have at least 20 days' notice of the initial hearing date.

(b) The lawyer and the client may submit written statements of their case together with any relevant records or documents. Any written materials, hearing exhibits and a list of witness, if any, should be submitted at least 10 calendar days prior to the hearing. If written materials are submitted less than 10 calendar days prior to the hearing date, it is within the discretion of the sole arbitrator or the Chairperson to decide whether to accept such materials as evidence.

(c) The award of the arbitrators normally will be issued within 15 days after the close of the hearing.

18. Extensions and postponements: The sole arbitrator or the Chairperson will decide any requests for extensions of time or postponements. A request for a continuance may be denied if it is made unreasonably close to the hearing. It shall be presumed that a request filed less than 72 hours prior to the hearing will be denied unless a compelling reason is shown. Requests by parties for postponements of scheduled hearings must be submitted to the ACAB in writing.

19. Hearing: The lawyer and the client are entitled to a hearing at which they may present evidence and cross-examine witnesses. The arbitrator(s) may schedule a preliminary hearing to resolve any threshold or dispositive issues (e.g., jurisdiction, statute of limitations).

(a) The sole arbitrator or the Chairperson will give any notices required in connection with the hearing, decide questions of procedure or scheduling, issue any necessary subpoenas permitted by law, preside at the hearing, administer oaths, rule on the admission and exclusion of evidence, and exercise any other powers of arbitrators pursuant to District of Columbia law. The requesting party shall be responsible for service of the subpoenas.

(i) At the discretion of the sole arbitrator or Chairperson, ACAB hearings may be conducted by way of remote hearing either telephonically or using video conferencing technology. The precise method in which a remote hearing will be conducted remains within the discretion of the sole arbitrator of Chairperson assigned to the individual case, within the bound of applicable law, rules, and these rules of procedure.

(b) There is no provision for formal discovery. The sole arbitrator or the Chairperson may, within his or her discretion, grant a request for discovery based on the relevancy and materiality of the request. Any request for discovery shall be submitted at least 30 calendar days prior to a scheduled hearing.

(c) Anyone involved in a hearing, as lawyer, client, or witness, is entitled to be represented by an attorney. It is the responsibility of anyone wishing to be represented by an attorney to make the necessary arrangements in advance as the hearing will not be delayed for someone who has failed to make the appropriate arrangements. Counsel for parties should enter their appearance in writing to the ACAB prior to a scheduled hearing.

(d) If both the lawyer and the client agree, the hearing may be waived and the arguments of each may be submitted in writing, together with any supporting documents, and the dispute may be decided on the basis of the written submissions. Even if the hearing is waived, the arbitrators may require oral testimony from any witness, and issue a notice to that effect to the lawyer and the client.

(e) The lawyer and the client are entitled to attend all hearings. Attendance at a scheduled hearing is a waiver of any deficiency in the notice of the hearing. Witnesses waiting to be heard may be excluded from the hearing until they testify.

(f) The lawyer shall have the burden of proving the reasonableness of the fee by a preponderance of the evidence.

(g) The lawyer and the client are entitled to be heard at the hearing, either personally or through an attorney or other advisor or representative.

(i) Opening statements outlining the case may be presented at the hearing. The lawyer and the client will be provided equal time in which to make such statements.

(ii) Evidence may be presented at the hearing by the testimony of witnesses and in documentary form. The lawyer and the client will be afforded full and equal opportunity for the presentation of any relevant evidence.

(iii) Questions may be asked by the lawyer and the client in cross-examination at the hearing of any witness who testifies.

(iv) Questions may be asked by the arbitrators(s) of any party or witness who testifies.

(v) Closing statements summarizing the case may be presented by the lawyer and the client at the hearing after all the evidence has been received.

(h) All relevant evidence will be considered, within the discretion of the arbitrator(s). Relevant evidence may include evidence relating to claims of alleged malpractice or alleged negligence, but only to the extent that those claims bear upon the fees, costs or related expenses to which the lawyer is entitled.

(i) Testimony will be given under oath.

(j) Hearings which cannot be completed on the first day will be continued, with due regard to the circumstances of those involved in the hearing and the desirability of a speedy determination. When all necessary statements and evidence have been heard, the hearing will be closed.

(k) If either the lawyer or the client fails to appear at the hearing, the arbitrators may hear and decide the dispute upon the evidence produced and, notwithstanding any failure to appear, may enter a binding award. No decision may be based solely on the absence of the lawyer or the client, but a decision may be rendered based on the failure of a party to meet its burden of proof.

(l) At any time before the award is signed, the hearing may be reopened by a sole arbitrator or a majority of a three-arbitrator panel, either at the request of the lawyer or the client with a showing of good reason, or for reasons determined by the arbitrators.

(m) Hearings are neither transcribed nor recorded by the ACAB. Requests by a party to have the ACAB transcribe or record the hearing will be denied. The parties are prohibited from transcribing or recording the hearing using their own or third-party resources (note-taking by hearing participants is not prohibited, however).

20. Standards: Arbitrators use the following standards in deciding fee disputes:

(a) Fee arrangements between lawyer and client should be clear and unambiguous. It is the responsibility of the lawyer to ensure this, and to explain to a new client, in writing, before or within a reasonable time after the lawyer has been employed, the scope of the lawyer's representation, what the fee will be, how the fee will be computed, what charges there may be in addition to the fee, and how and when the client will be expected to pay.

(b) Unless there are unique aspects of the fee arrangement, the lawyer may utilize a standardized letter, memorandum, or pamphlet explaining the lawyer's fee practices, and indicating those practices applicable to the specific representation. Such publications would, for example, explain applicable hourly billing rates, if billing on an hourly basis is contemplated, and indicate what charges (such as filing costs, transcript costs, duplicating costs, long distance telephone costs) are imposed in addition to hourly rate charges.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a criminal case where no contingent fee may be charged. A contingent fee agreement shall be in writing and shall state:

(i) The method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; and

(ii) Whether litigation and other expenses are to be deducted from the recovery, and whether such expenses should be deducted before or after the contingent fee is calculated.

(d) A lawyer may require advance payment of any fee but is obliged to return any unearned portion.

(e) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(f) When developments occur during the representation that renders an earlier estimate substantially inaccurate, a revised estimate should be provided to the client.

(g) The client is entitled to a written bill, which includes:

(i) In an arrangement based on hourly rates, a statement of how the time on which a lawyer's fee is based was spent.

(ii) In an arrangement based on contingent fees, a statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(iii) In an arrangement in which fees or costs are allocated among clients, a statement explaining to the client the basis for the allocation.

(h) A lawyer's fee shall be reasonable. Factors to be considered in determining the reasonableness of a fee include the following:

(i) The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly;

(ii) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(iii) The fee customarily charged in the District of Columbia for similar legal services;

(iv) The amount involved and the result obtained;

(v) The time limitations imposed by the client or by the circumstances;

(vi) The nature and length of the professional relationship with the client;

(vii) The experience, reputation, and ability of the lawyer or lawyers performing the services; and

(viii) Whether the fee is fixed or contingent.

(i) A lawyer's charges for disbursements, costs and expenses shall be reasonable. Factors to be considered in determining the reasonableness of charges other than fees include the following:

(i) A lawyer may not charge a client for overhead expenses generally associated with properly maintaining, staffing and equipping an office.

(ii) A lawyer may recoup expenses reasonably incurred in connection with the client's matter for support services provided by the lawyer or the law firm, such as photocopying, long distance telephone calls, computer research, special deliveries, secretarial overtime, and other similar services, so long as the charge reasonably reflects the lawyer's actual cost for the services rendered.

(iii) A lawyer may not charge a client more than the actual disbursements for services provided by third parties like court reporters, travel agents, or expert witnesses.

(j) Statutory and common law principles applicable in the District of Columbia to fee arrangements between lawyer and client may be used by the arbitrators.

21. Award: The decision with respect to the dispute will be set out in a written award signed by the sole arbitrator or the majority of a three-arbitrator panel who concur with the award. Any dissent may be signed separately. No opinion, setting out reasons, will be issued with the award.

(a) The award will specify the amount, if any, to be paid to the person who filed the petition and include a deadline for compliance with the award. The arbitrators may grant any award they deem proper, but they have no authority to award an amount in excess of the amount set out in the Agreement to Arbitrate, or any amendment to the Agreement to Arbitrate made before the hearing.

(b) It is within the discretion of the arbitrators whether to grant pre-award interest. If interest is awarded, the arbitrators shall consider any interest rate stated in the fee agreement between the attorney and client and the pre-judgment interest rate established under District of Columbia law.

(c) The award will specify whether the filing fee paid by the person who filed the petition is to be reimbursed.

(d) If an informal settlement has been reached, that settlement may be set out in an award as a consent decision.

(e) The sole arbitrator or the Chairperson will file the written award with the ACAB, and the ACAB will send a copy to the lawyer and the client by mail.

(f) Once the award is signed and filed, the hearing may not be reopened except upon the consent of the lawyer and the client.

(g) All documents submitted during the course of the arbitration proceedings will be returned by the arbitrator(s) to the ACAB when the written award is filed with the ACAB. Such documents may be claimed from the ACAB within 30 calendar days after the entry of the award, by the person(s) who submitted them.

(h) The award may also incorporate any confidentiality agreement or order.

22. Death or incompetence: If either the lawyer or the client dies or becomes incompetent prior to the close of the hearing, the hearing will be adjourned, and no award will be made. If either the lawyer or the client dies or becomes incompetent after the close of the hearing but prior to a decision, the decision rendered will be binding on the heirs, administrators, or executors of the deceased and on the estate or guardian of the person who became incompetent.

23. Enforcement: Any award may be enforced by the Superior Court of the District of Columbia and any other court having jurisdiction.

(a) If and to the extent that the award determines that the lawyer is not entitled to any portion of the disputed fee, service of a copy of the award on the lawyer shall terminate all claims and interest of the lawyer against the client with respect to the disputed fee and shall terminate all rights of the lawyer to retain possession of any records, documents, or property of the client pertaining to the disputed fee.

(b) If and to the extent that the award determines that the lawyer is entitled to any portion of the disputed fee, payment of that amount by the client shall constitute a complete satisfaction of all claims and interest of the client with respect to the disputed fee and shall terminate all rights of the lawyer to retain possession of any records, documents, or property of the client pertaining to the disputed fee.

(c) If and to the extent that the award determines that the lawyer must make a refund of any portion of the disputed fee, payment of that amount to the client shall constitute a complete satisfaction of all claims and interest of the client with respect to the disputed fee and service of a copy of the award on the lawyer shall terminate all rights of the lawyer to return possession of any records, documents or property of the client with respect to the disputed fee.

24. Subsequent proceedings: No ACAB arbitrator, member, or staff person may be subpoenaed as a witness in any parallel or subsequent proceeding about any dispute submitted to

the ACAB for arbitration. No records or documents of the ACAB may be subpoenaed for any subsequent enforcement proceeding arising out of any dispute arbitrated by the ACAB. The award issued in any ACAB arbitration is a public document; certified copies are available upon request.

25. Retention of records: The ACAB shall maintain all fee arbitration files for a period of three years from the date a decision is issued. Thereafter, the ACAB may retain or dispose of such documents at its sole discretion.

26. Accessibility and disability: It is the intent of the D.C. Bar to provide accessibility to services, programs and activities offered by the D.C. Bar to any qualified applicant, member, or participant with a disability, upon reasonable notice and without requiring action which would result in a fundamental alteration in the nature of a service, program or activity or in undue financial or administrative burden. To make arrangements for an accommodation, please contact the ACAB.

27. Other information: Copies of the sections of the District of Columbia Code that govern arbitration proceedings, the District of Columbia Rules of Professional Conduct and other information about the ACAB arbitration process are available at the D.C. Bar. The District of Columbia Rules of Professional Conduct and Legal Ethics Opinions may also be obtained from the D.C. Bar's Web site at www.dcbar.org/ethics

ACAB FEE ARBITRATION PROCESS OVERVIEW

1

Petitioner has a concern regarding the amount charged for legal services OR the lack of payment for legal services rendered.

2

Petitioner attempts to resolve the concern by talking with Respondent.

3

If the concern is unresolved, Petitioner submits a completed fee arbitration petition and filing fee to the ACAB.

4

The ACAB reviews the petition for jurisdiction and the case file is docketed if it conforms with ACAB rules.

5

An opening letter is sent to Respondent, who has 20 days to respond.

6

The response is received and a copy is sent to Petitioner who has 20 days to reply.

7

The reply is received and sent to Respondent.

8

The ACAB sends parties an assignment letter naming the arbitration panel and requesting availability for a hearing. If within 10 days a party objects to an arbitrator, the ACAB will review the objection, assign a new arbitrator if the objection is valid, and proceed with scheduling the hearing.

9

The sole arbitrator or Chairperson of the panel selects a hearing date based on availability provided by the parties and arbitration panel.

10

The ACAB sends a Notice of Hearing letter to parties at least 20 days prior to the hearing date.

11

Parties must submit all hearing exhibits and witness lists to the ACAB at least 10 days prior to the hearing date.

12

The hearing is held at DC Bar office or via Zoom.

13

At the conclusion of the hearing, all parties are dismissed, the arbitration panel deliberates and renders a decision.

14

Typically, within 10 days of the conclusion of the hearing, the ACAB notifies parties of the arbitration decision and award. This award is final and binding.

1 of 1 DOCUMENT

DISTRICT OF COLUMBIA COURT RULES ANNOTATED

*** THIS DOCUMENT REFLECTS CHANGES RECEIVED FOR STATE COURT RULES THROUGH 6/14/2010, AND FOR FEDERAL RULES THROUGH 4/30/2010 ***
*** Annotations are current through decisions posted as of 1/31/2010 ***

DISTRICT OF COLUMBIA BAR RULES

D.C. Bar Rule XIII (2010)

Review Court Orders which may amend this Rule.

Rule XIII. Arbitration.

(a) An attorney subject to the disciplinary jurisdiction of this Court shall be deemed to have agreed to arbitrate disputes over fees for legal services and disbursements related thereto when such arbitration is requested by a present or former client, if such client was a resident of the District of Columbia when the services of the attorney were engaged, or if a substantial portion of the services were performed by the attorney in the District of Columbia, or if the services included representation before a District of Columbia court or a District of Columbia government agency.

(b) The arbitration provided under this rule shall be final and binding on the parties according to applicable law, and shall be enforceable in the Superior Court and in any other court having jurisdiction. Unless the attorney and client agree otherwise, the arbitration shall be before the Attorney-Client Arbitration Board of the District of Columbia Bar, and shall be pursuant to such reasonable rules and regulations (including those relating to fees for arbitration services) as may be promulgated from time to time by the District of Columbia Bar and the Attorney-Client Arbitration Board.

HISTORY: Added, Nov. 10, 1994, effective Jan. 1, 1995.

NOTES: EDITOR'S NOTES. -- The order of the D.C. Court of Appeals dated November 10, 1994, and effective January 1, 1995, inter alia, added present Rule XIII and redesignated former Rules XIII and XIV to be present Rules XIV and XV.

AWARD OF FEES AND EXPENSES IN ARBITRATION UPHELD. --

Appellate court refused to vacate an arbitration award, which awarded a lawyer and a law firm $26,000 in fees and $2,230 in expenses for their representation of a client in litigation arising out of an automobile accident and in seven other unrelated matters; the fact that the award provided no explanation as to the ra-

tionale of the decision was an insufficient ground to justify judicial relief. Schwartz v. Chow, 867 A.2d 230, 2005 D.C. App. LEXIS 22 (2005).

WAIVER OF RIGHT TO ARBITRATE. --

In a law firm's suit to recover legal fees, the clients were not entitled to mandatory arbitration under D.C. Bar R. XIII(a) because they waived that right by participating in the suit, and compelling arbitration under such circumstances would have allowed the clients to indulge in a second bite at the very questions presented to the court for disposition during the summary judgment stage.

WAIVER OF RIGHT TO ARBITRATE. --

In a law firm's suit to recover legal fees, the clients were not entitled to mandatory arbitration under D.C. Bar R. XIII(a) because they waived that right by participating in the suit, and compelling arbitration under such circumstances would have allowed the clients to indulge in a second bite at the very questions presented to the court for disposition during the summary judgment stage. Winston & Strawn, LLP v. Doley, -- F. Supp. 2d --, 2009 U.S. Dist. LEXIS 84783 (D.D.C. Sept. 17, 2009).

CITED in Ginberg v. Tauber, App. D.C., 678 A.2d 543 (1996), cert. denied, 519 U.S. 1077, 117 S. Ct. 738, 136 L. Ed. 2d 677 (1997).

DISTRICT OF COLUMBIA

OFFICIAL CODE

TITLE 16.
PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS.

CHAPTER 44.
ARBITRATION; REVISED UNIFORM ACT.

2001 Edition

DISTRICT OF COLUMBIA OFFICIAL CODE

CHAPTER 44. ARBITRATION; REVISED UNIFORM ACT.

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Refs & Annos

REPEAL OF UNIFORM ARBITRATION ACT

<Section 3 of D.C. Law 17-111 provides: "Effective July 1, 2009, Chapter 43 of Title 16 of the District of Columbia Official Code is repealed." Chapter 44 of Title 16 governs agreements to arbitrate made on or after February 27, 2008, and agreements made before February 27, 2008, if the parties to the arbitration agreement so agree in a record. Otherwise Chapter 43 of Title 16 governs agreements made before February 27, 2008, until July 1, 2009.>

Jurisdiction	Laws	Effective Date	Statutory Citation
Alaska [FN1]	2004, c. 170	1-1-2005	AS 09.43.300 to 09.43.595.
Arizona [FN1]	2010, c. 139	1-1-2011	A.R.S. §§ 12-3001 to 12-3029.
Arkansas [FN1]	2011, No. 695		A.C.A. §§ 16-108-201 to 16-108-230.
Colorado	2004, c. 363	8-4-2004	West's C.R.S.A. §§ 13-22-201 to 13-22-230.
District of Columbia	D.C. Law 17-111	2-27-2008	D.C. Official Code, 2001 Ed. §§ 16-4401 to 16-4432.
Hawaii	2001, c. 265	7-1-2002	H.R.S. §§ 658A-1 to 658A-29.
Minnesota	2010, c. 264	8-1-2011	M.S.A. §§ 572B.01 to 572B.31.
Nevada	2001, c. 280	10-1-2001	NRS 38.206 to 38.248.
New Jersey	2003, c. 95	1-1-2003	N.J.S.A. 2A:23B-1 to 2A:23B-32.
New Mexico	2001, c. 227	7-1-2001	NMSA 1978 §§ 44-7A-1 to 44-7A-32.
North Carolina	2003, c. 345	1-1-2004	G.S. §§ 1-569.1 to 1-569.31.
North Dakota	2003, c. 280	8-1-2003	NDCC 32-29.3-01 to 32-29.3-29.
Oklahoma	2005, c. 364	1-1-2006	12 Okl.St.Ann. §§ 1851 to 1881.
Oregon	2003, c. 598	1-1-2004	ORS 36.600 to 36.740.
Utah	2002, c. 326	5-15-2003	U.C.A. 1953, §§ 78B-11-101 to 78B-11-131.
Washington	2005, c. 433	1-1-2006	West's RCWA 7.04A.010 to 7.04A.903

[FN1] Adopted the Uniform Arbitration Act (2000) without repealing the Uniform Arbitration Act (1956).

§ 16-4401. DEFINITIONS.

For the purposes of this chapter, the term:

(1) "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

(2) "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

(3) "Consumer" means a party to an arbitration agreement who, in the context of that arbitration agreement, is an individual, not a business, who seeks or acquires, including by lease, any goods or services primarily for personal, family, or household purposes including, but not limited to, financial services, healthcare services, or real property.

(4) "Consumer arbitration agreement" means a standardized contract, written by one party, with a provision requiring that disputes arising after the contract's signing shall be submitted to binding arbitration, and the other party is a consumer.

(5) "Court" means the Superior Court of the District of Columbia.

(6) "Financial interest" means:

(A) Holding a position in a business as officer, director, trustee, or partner, or holding any position in management of the business; or

(B) Ownership of more than 5% interest in a business.

(7) "Knowledge" means actual knowledge.

(8) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(9) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

Law 17-111, the "Arbitration Amendment Act of 2007", was introduced in Council and assigned Bill No. 17-50 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on October 2, 2007, and December 11, 2007, respectively. Signed by the Mayor on December 31, 2007, it was assigned Act No. 17-236 and transmitted to both Houses of Congress for its review. D.C. Law 17-111 became effective on February 27, 2008.

Uniform Law

This section is based upon § 1 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4402. NOTICE.

(a) Except as otherwise provided in this chapter, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

(b) A person has notice if the person has knowledge of the notice or has received notice.

(c) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 2 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4403. WHEN CHAPTER APPLIES.

(a) This chapter governs an agreement to arbitrate made on or after [February 27, 2008].

(b) This chapter governs an agreement to arbitrate made before [February 27, 2008] if all the parties to the agreement or to the arbitration proceeding so agree in a record.

(c)(1) Any provision in an insurance policy with a consumer that requires binding arbitration is void and unenforceable.

(2) An insurance policy with a consumer may permit the resolution of disputes through arbitration; provided, that:

(A) The decision to arbitrate is made by the parties at the time a dispute arises; and

(B) The decision whether to arbitrate is not a condition for continued policy coverage under the same terms that otherwise would apply.

(3) If the parties to an insurance policy with a consumer elect to arbitrate, the provisions of this chapter shall apply.

(d) A provision for mandatory binding arbitration within a consumer arbitration agreement is void and unenforceable except to the extent federal law provides for its enforceability.

(e) On or after July 1, 2009, this chapter governs an agreement to arbitrate whenever made.

(f)(1) This chapter does not apply to any arbitrator or any arbitration organization in an arbitration proceeding governed by rules adopted by a securities self-regulatory organization; provided, that the rules are approved by the United States Securities and Exchange Commission under federal law.

(2) For the purposes of this paragraph, the term "securities self-regulatory organization" means:

(A) A securities exchange registered under the federal Securities Exchange Act of 1934, approved June 6, 1934 (48 Stat. 881; 15 U.S.C. § 78a *et seq.*) ("Securities Exchange Act");

(B) A national securities association of broker-dealers registered under the Securities Exchange Act;

(C) A clearing agency registered under the Securities Exchange Act; or

(D) The Municipal Securities Rulemaking Board established under the Securities Exchange Act.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 3 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4404. EFFECT OF AGREEMENT TO ARBITRATE; NONWAIVABLE PROVISIONS.

(a) Except as otherwise provided in subsections (b) and (c) of his section, a party to an agreement to arbitrate or to an arbitration proceeding may waive or, the parties may vary the effect of, the requirements of this chapter to the extent permitted by law.

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(1) Waive or agree to vary the effect of the requirements of §§ 16-4403(d) and (e), 16-4405, 16-4406(a) or (c), 16-4408, 16-4409, 16- 4412, 16-4417(a), 16-4417(b), 16-4421, 16-4426, or 16-4427; or

(2) Waive the right under § 16-4416 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this chapter, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(c) A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or §§ 16-4403(a) or (c), 16-4407, 16-4414, 16-4418, 16-4419, 16-4420(d) or (e), 16-4422, 16-4423, 16-4424, 16- 4425, and 16-4429, except that, if there is an agreement to arbitrate disputes over insurance obligations by and between 2 or more insurers, reinsurers, self-insurers, or reinsurance intermediaries, or any combination of them, the parties to the agreement may waive the right to vacatur under § 16-4423.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 4 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4405. APPLICATION FOR JUDICIAL RELIEF.

(a) Except as otherwise provided in § 16-4427, an application for judicial relief under this chapter shall be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(b) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this chapter shall be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion shall be given in the manner provided by law or rule of court for serving motions in pending cases.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 5 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4406. VALIDITY OF AGREEMENT TO ARBITRATE.

(a) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

(b) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(c) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(d) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 6 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4407. MOTION TO COMPEL OR STAY ARBITRATION.

(a) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(1) If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and

(2) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(b) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(c) If the court finds that there is no enforceable agreement, it may not, pursuant to subsection (a) or (b) of this section, order the parties to arbitrate.

(d) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

(e) If a party makes a motion to the court to order arbitration, the court, on just terms, shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(f) If the court orders arbitration, the court, on just terms, shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 7 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4408. PROVISIONAL REMEDIES.

(a) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(b) After an arbitrator is appointed and is authorized and able to act:

(1) The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

(2) A party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

(c) A party does not waive a right of arbitration by making a motion under subsection (a) or (b) of this section.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 8 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4409. INITIATION OF ARBITRATION.

(a) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice shall describe the nature of the controversy and the remedy sought.

(b) Unless a person objects for lack or insufficiency of notice under § 16- 4415(c) not later than the beginning of the arbitration hearing, the person, by appearing at the hearing, waives any objection to lack of or insufficiency of notice.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 9 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4410. CONSOLIDATION OF SEPARATE ARBITRATION PROCEEDINGS.

(a) Except as otherwise provided in subsection (c) of this section, upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(1) There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(2) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(3) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(4) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(c) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation; provided, that nothing in this section is intended to prevent a party's participation in a class action lawsuit or arbitration.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 10 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4411. APPOINTMENT OF ARBITRATOR; SERVICE AS A NEUTRAL ARBITRATOR.

(a) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method shall be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

(b) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 11 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4412. DISCLOSURE BY ARBITRATOR.

(a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding, and to any other arbitrators, any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(1) A financial or personal interest in the outcome of the arbitration proceeding; and

(2) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or other arbitrators.

(b) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding, and to any other arbitrators, any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

(c) If an arbitrator discloses a fact required by subsection (a) or (b) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under § 16-4423(a)(2) for vacating an award made by the arbitrator.

(d) If the arbitrator did not disclose a fact as required by subsection (a) or (b) of this section, upon timely objection by a party, the court, under § 16-4423(a)(2), may vacate an award.

(e) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under § 16-4423(a)(2).

(f) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under § 16-4423(a)(2).

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 12 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4413. ACTION BY MAJORITY.

If there is more than one arbitrator, the powers of an arbitrator shall be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under § 16-4415(c).

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 13 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4414. IMMUNITY OF ARBITRATOR; COMPETENCY TO TESTIFY; ATTORNEY'S FEES AND COSTS.

(a) An arbitrator is immune from civil liability to the same extent as a judge of a court of the District of Columbia acting in a judicial capacity.

(b) The immunity afforded by this section supplements any immunity under other law.

(c) The failure of an arbitrator to make a disclosure required by § 16-4412 does not cause any loss of immunity under this section.

(d) In a judicial, administrative, or similar proceeding, an arbitrator is not competent to testify, and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of the District of Columbia acting in a judicial capacity. This subsection does not apply:

(1) To the extent necessary to determine the claim of an arbitrator against a party to the arbitration proceeding; or

(2) To a hearing on a motion to vacate an award under § 16-4423(a)(1) or (2) if the movant establishes prima facie that a ground for vacating the award exists.

(e) If a person commences a civil action against an arbitrator arising from the services of the arbitrator or if a person seeks to compel an arbitrator to testify or produce records in violation of subsection (d) of this section, and the court decides that the arbitrator is immune from civil liability or that the arbitrator is not competent to testify, the court shall award to the arbitrator reasonable attorney's fees and other reasonable expenses of litigation.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 14 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4415. ARBITRATION PROCESS.

(a) An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality, and weight of any evidence.

(b) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(1) If all interested parties agree; or

(2) Upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding, and the other parties have a reasonable opportunity to respond.

(c)(1) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than 5 days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection.

(2) Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time, as necessary, but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date.

(3) The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear.

(4) The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(d) At a hearing under subsection (c) of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(e) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator shall be appointed in accordance with § 16-4411 to continue the proceeding and to resolve the controversy.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 15 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4416. REPRESENTATION BY LAWYER.

A party to an arbitration proceeding may be represented by a lawyer.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 16 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4417. WITNESSES; SUBPOENAS; DEPOSITIONS; DISCOVERY.

(a) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena shall be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(b) To make the proceedings fair, expeditious, and cost effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(c) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective.

(d) If an arbitrator permits discovery under subsection (c) of this section, the arbitrator may:

(1) Order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders;

(2) Issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding; and

(3) Take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in the District of Columbia.

(e) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in the District of Columbia.

(f) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in the District of Columbia.

(g)(1) The court may enforce a subpoena or discovery-related order for the attendance of a witness within the District of Columbia and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost effective.

(2) A subpoena or discovery-related order issued by an arbitrator in another state shall be served in the manner provided by law for service of subpoenas in a civil action in the District of Columbia and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in the District of Columbia.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 17 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4418. JUDICIAL ENFORCEMENT OF PREAWARD RULING BY ARBITRATOR.

If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under § 16-4419. A prevailing party may make a motion to the court for an expedited order to confirm the award under § 16-4422, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under § 16-4423 or 16-4424.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 18 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4419. AWARD.

(a) An arbitrator shall make a record of an award. The record shall be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice, as provided for in § 16-4409, of the award, including a copy of the award, to each party to the arbitration proceeding.

(b) An award shall be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend, or the parties to the arbitration proceeding may agree in a record to extend, the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 19 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4420. CHANGE OF AWARD BY ARBITRATOR.

(a) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(1) Upon a ground stated in § 16-4424(a)(1) or (3);

(2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(b) A motion under subsection (a) of this section shall be made and notice given to all parties within 20 days after the movant receives notice of the award.

(c) A party to the arbitration proceeding shall give notice of any objection to the motion within 10 days after receipt of the notice.

(d) If a motion to the court is pending under § 16-4422, 16-4423, or 16-4424, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(1) Upon a ground stated in § 16-4424(a)(1) or (3);

(2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(e) An award modified or corrected pursuant to this section is subject to §§ 16-4419(a), 16-4422, 16-4423, and 16-4424.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 20 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4421. REMEDIES; FEES AND EXPENSES OF ARBITRATION PROCEEDING.

(a) An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(b) An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(c) As to all remedies other than those authorized by subsections (a) and (b) of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under § 16-4422 or for vacating an award under § 16-4423.

(d) An arbitrator's reasonable expenses and fees, together with other expenses, shall be paid as provided in the award.

(e) If an arbitrator awards punitive damages or other exemplary relief under subsection (a) of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 21 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4422. CONFIRMATION OF AWARD.

After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to § 16-4420 or 16-4424 or is vacated pursuant to § 16-4423.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 22 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4423. VACATING AWARD.

(a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

(1) The award was procured by corruption, fraud, or other undue means;

(2) There was:

(A) Evident partiality by an arbitrator appointed as a neutral arbitrator;

(B) Corruption by an arbitrator; or

(C) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to § 16-4415, so as to prejudice substantially the rights of a party to the arbitration proceeding;

(4) An arbitrator exceeded the arbitrator's powers;

(5) There was no agreement to arbitrate; or

(6) The arbitration was conducted without proper notice of the initiation of an arbitration as required in § 16-4409 so as to prejudice substantially the rights of a party to the arbitration proceeding.

(b) The court may vacate an award made in the arbitration proceeding on other reasonable ground.

(c) A motion under this section shall be filed within 90 days after the movant receives notice of the award pursuant to § 16-4419 or within 90 days after the movant receives notice of a modified or corrected award pursuant to § 16-4420, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion shall be made within 90 days after the ground is known or by the exercise of reasonable care would have been known by the movant.

(d) If the court vacates an award on a ground other than that set forth in subsection (a)(5) of this section, it may order a rehearing. If the award is vacated on a ground stated in subsection (a)(1) or (2) of this section, the rehearing shall be before a new arbitrator. If the award is vacated on a ground stated in subsection (a)(3), (4), or (6) of this section, the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator shall render the decision in the rehearing within the same time as that provided in § 16-4419(b) for an award.

(e) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 23 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4424. MODIFICATION OR CORRECTION OF AWARD.

(a) Upon motion made within 90 days after the movant receives notice of the award pursuant to § 16-4419 or within 90 days after the movant receives notice of a modified or corrected award pursuant to § 16-4420, the court shall modify or correct the award if:

(1) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(2) The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(3) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(b) If a motion made under subsection (a) of this section is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

(c) A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

(d) Irrespective of the time periods established in subsection (a) of this section and § 16-4423(c), a consumer may also seek to modify or vacate an award issued pursuant to a consumer arbitration agreement within 30 days of receiving notice of a motion to confirm the award.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 24 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4425. JUDGMENT ON AWARD; ATTORNEY'S FEES AND LITIGATION EXPENSES.

(a) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(b) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(c) On application of a prevailing party to a contested judicial proceeding under § 16-4422, 16-4423, or 16-4424, the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 25 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4426. JURISDICTION.

(a) A court of the District of Columbia having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

(b) An agreement to arbitrate providing for arbitration in the District of Columbia confers exclusive jurisdiction on the court to enter judgment on an award under this chapter.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 26 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4427. APPEALS.

(a) An appeal may be taken from:

(1) An order denying or granting a motion to compel arbitration;

(2) An order granting a motion to stay arbitration;

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

(5) An order vacating an award without directing a rehearing; or

(6) A final judgment entered pursuant to this chapter.

(b) An appeal under this section shall be taken as from an order or a judgment in a civil action.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 28 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4428. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 29 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4429. RELATIONSHIP TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 467; 15 U.S.C. § 7001 *et. seq.*), but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U. S.C. § 7003(b)).

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 30 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 16-4430. REGULATION OF ARBITRATION ORGANIZATIONS.

(a) Any arbitration organization that administers or otherwise is involved in 50 or more consumer arbitrations a year shall collect, publish at least quarterly, and make available to the public in a computer-searchable database that permits searching with multiple search terms in the same search, and is accessible at the Internet website of the arbitration organization, if any, and on paper, upon request, all of the following information regarding each consumer arbitration it has administered or otherwise been involved in within the preceding 5 years:

(1) The name of any corporation or other business entity that is party to the arbitration.

(2) The type of dispute involved, including goods, banking, insurance, health care, debt collection, employment, and, if it involves employment, the amount of the employee's annual wage divided into the following ranges:

(A) Less than $100,000;

(B) From $100,000 to $250,000, inclusive; and

(C) More than $250,000;

(3) Whether the consumer was the prevailing party;

(4) The number of occasions, if any, a business entity that is a party to an arbitration has previously been a party in an arbitration or mediation administered by the arbitration organization;

(5) Whether the consumer party was represented by an attorney and, if so, the identifying information for that attorney, including the attorney's name, the name of the attorney's firm, and the city in which the attorney's office is located;

(6) The date the arbitration organization received the demand for arbitration, the date the arbitrator was appointed, and the date of disposition by the arbitrator or arbitration organization;

(7) The type of disposition of the dispute, if known, including withdrawal, abandonment, settlement, award after hearing, award without hearing, default, or dismissal without hearing;

(8) The amount of the claim, the amount of the award, and any other relief granted, if any; and

(9) The name of the arbitrator, the arbitrator's fee for the case, and the percentage of the arbitrator's fee allocated to each party.

(b) If the information required by subsection (a) of this section is provided by the arbitration organization in a computer-searchable format at the company's Internet website and may be downloaded without any fee, the company may charge the actual cost of copying to any person who requests the information on paper. If the required information is not accessible by the Internet, the company shall provide that information

without charge to any person who requests the information on paper.

(c) No arbitration organization shall have any liability for collecting, publishing, or distributing the information in accordance with this section.

(d)(1) All fees and costs charged to or assessed in the District of Columbia upon a consumer by an arbitration organization in a consumer arbitration shall be waived for any person having a gross monthly income that is less than 300% of the federal poverty guidelines issued annually by the United States Department of Health and Human Services.

(2) Any consumer requesting a waiver of fees or costs may establish eligibility by making a declaration under oath on a form provided by the arbitration organization indicating the consumer's monthly income and the number of persons living in the household. No arbitration organization may require a consumer to provide any further statement or evidence of indigence. The form, and the information contained therein, shall be confidential and shall not be disclosed to any adverse party or any nonparty to the arbitration.

(3) An arbitration organization shall not keep confidential the number of waiver requests received or granted, or the total amount of fees waived.

(e) Nothing in the section shall affect the ability of an arbitration organization to shift fees that would otherwise be charged or assessed upon a consumer party to another party.

(f) Before requesting or obtaining any fee, an arbitration organization shall provide written notice of the right to obtain a waiver of fees in a manner calculated to bring the matter to the attention of a reasonable consumer, including, but not limited to, prominently placing a notice in its first written communication to a consumer and in any invoice, bill, submission form, fee schedule, rules, or code of procedure.

(g) No neutral arbitrator or arbitration organization shall administer a consumer arbitration under any agreement or rule requiring that a consumer who is a party to the arbitration pay the fees and costs incurred by any opposing party if the consumer does not prevail in the arbitration, including, but not limited to, the fees and costs of the arbitrator, provider organization, attorney, or witnesses.

(h) No arbitration organization may administer a consumer arbitration to be conducted in the District of Columbia, or provide any other services related to such a consumer arbitration, if:

(1) The arbitration organization has, or within the preceding year has had, a financial interest in any party or attorney for a party; or

(2) Any party or attorney for a party has, or within the preceding year has had, any type of financial interest in the arbitration organization.

(i) Where this section is violated, any affected person or entity, including the Attorney General of the District of Columbia, can request a court to enjoin the arbitration organization from violating the section and order such restitution as appropriate. The arbitration organization shall be liable for that person or entity's reasonable attorney fees and costs where that person or entity prevails or where, after the action is commenced, the arbitration organization voluntarily complies with the section.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

§ 16-4431. DISCLOSURE OF ARBITRATION COSTS.

(a) A party drafting a consumer arbitration agreement shall clearly and conspicuously disclose in regard to any arbitration:

(1) The filing fee;

(2) The average daily cost for an arbitrator and hearing room if the consumer elects to appear in person;

(3) Other charges that the arbitrator or arbitration organization will assess in conjunction with an arbitration where the consumer appears in person; and

(4) The proportion of these costs which each party bears in the event that the consumer prevails, and in the event that the consumer does not prevail.

(b) The costs specified in subsection (a) of this section need not include attorney fees, and, to the extent that, with regard to the disclosures required by subsection (a) of this section, a precise amount is not known, the disclosures may be based on reasonable, good-faith estimates. A party providing a reasonable, good-faith cost estimate shall not be liable in any manner for the fact that the actual cost of a particular arbitration varies from the estimate provided.

(c)(1) Failure to comply with this section is not grounds to refuse to enforce an arbitration agreement, but may constitute a violation of § 28-3904.

(2) The information provided in the disclosure can be considered in a determination of whether an arbitration agreement is unconscionable or otherwise is not enforceable under other law.

(d) Where this section is violated, any person or entity, including the Attorney General of the District of Columbia, can request a court to enjoin the drafting party from violating this section as to agreements it enters into in the future. The drafting party shall be liable to the person or entity bringing such an action for that person or entity's reasonable attorney fees and costs where the court issues an injunction or where, after the action is commenced, the drafting party voluntarily complies with the section.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

§ 16-4432. SAVINGS CLAUSE.

This chapter does not affect an action or proceeding commenced or right accrued before the effective date of this chapter. Subject to § 16-4403, an arbitration agreement made before the effective date of this chapter is governed by §§ 16-4301 to 16-4319.

(Feb. 27, 2008, D.C. Law 17-111, § 2(b), 55 DCR 1847.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 17-111, see notes following § 16-4401.

Uniform Law

This section is based upon § 33 of the Uniform Arbitration Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

Ethics Opinion 376

Mandatory Arbitration Provisions in Fee Agreements

Fee agreements containing mandatory arbitration provisions are "ordinary fee arrangements," and the requirements of Rule 1.8 which addresses business transactions between lawyers and clients do not apply. The standard for obtaining client consent to fee agreements containing mandatory arbitration provisions is set forth in Comment [13] to Rule 1.8, and Legal Ethics Opinions 211 and 218 are superseded by Comment [13] and this opinion.

Applicable Rules

- Rule 1.0(e) (Definition of "Informed Consent")
- Rule 1.4 (Communication)
- Rule 1.5 (Fees)
- Rule 1.8 (Conflict of Interest: Specific Rules)

Inquiry

The Committee has received an inquiry as to whether D.C. Legal Ethics Opinions 211 and 218 state the current requirements for a mandatory arbitration provision in a fee agreement to comply with the D.C. Rules of Professional Conduct, in light of the 2007 amendments to the D.C. Rules of Professional Conduct, in particular Comments [1] and [13] to Rule 1.8 (hereinafter "Comment [1]" and "Comment [13]").[1]

Discussion

Legal Ethics Opinion 211 (Fee Agreements; Mandatory Arbitration Clauses) and Legal Ethics Opinion 218 (Retainer Agreement Providing for Mandatory Arbitration of Fee Disputes Is Not Unethical) were issued by the Committee in May 1990 and June 1991, respectively. In the more than twenty-five years since, the use of arbitration as a means for dispute resolution has proliferated, and this development, together with the 2007 amendments to the D.C. Rules of Professional Conduct, have led the Committee to determine it is the appropriate time to revisit these opinions. A brief summary of these two prior opinions and the 2007 amendments to the Rules is set forth below.

A. Opinion 211

The retainer agreement at issue in Opinion 211 contained a provision requiring the firm and the client to arbitrate claims by the firm against its client for unpaid fees and claims against the firm for malpractice. In analyzing whether such mandatory arbitration provisions in fee agreements would be permitted, the Committee looked to Rule 1.8(a) and to D.C. Legal Ethics Opinion 190 (Retainer Agreement Mandating Arbitration of Attorney-Client Disputes) (1988), which was issued prior to the promulgation of Rule 1.8. The Committee disagreed with the pre-Rule 1.8(a) conclusion in Opinion 190 that a lawyer could include a mandatory arbitration provision provided that the lawyer made full disclosure to the client of any rights the client may waive by agreeing to arbitration and that the lawyer must not create arbitration procedures that violated DR 6-102(A); Opinion 190 did not require the client to obtain advice from independent counsel.

In Opinion 211, the Committee determined that Opinion 190 was "incorrect in its belief that the complex nature of arbitration could be adequately disclosed to a lay client." In reaching this determination, the Committee was guided by its belief that it was "unrealistic" to expect that lawyers could provide their clients with sufficient information regarding arbitration so that the client could give his informed consent to a mandatory arbitration provision.

The Committee also relied on Rule 1.8(a), which requires independent review by counsel of any "business transaction" between a lawyer and a client. The Committee acknowledged, however, that a mandatory arbitration provision did not "precisely fit the language of Rule 1.8(a)." It also described mandatory arbitration provisions as "atypical" for fee agreements and on that basis determined that lawyers must bring attention to that provision at the time the fee agreement is entered into so it can be considered fully by the client. Ultimately, the Committee concluded that "mandatory arbitration agreements covering all disputes between lawyer and client are not permitted under either our prior Opinions or Rule 1.8(a) unless the client is in fact counseled by another attorney."

B. Opinion 218

Opinion 218 was issued by the Committee not long after Opinion 211 and also addressed mandatory arbitration clauses in fee agreements. Unlike Opinion 211, however, Opinion 218 was limited to fee disputes. The inquiry addressed in Opinion 218 was brought to the Committee by the Attorney-Client Arbitration Board ("ACAB"), an arbitration service provided by the D.C. Bar to its members and their clients to resolve solely disputes about legal fees. The ACAB inquired about the impact of Opinion 211 on fee agreements providing for mandatory arbitration of fee disputes before the ACAB.

The Committee distinguished the mandatory arbitration provisions in fee agreements under the ACAB rules from the arbitration provision at issue in Opinion 211. Unlike the possible AAA arbitration discussed in Opinion 211, the ACAB rules and procedures are relatively simple. The fees are low and the arbitrators are not compensated. In addition, the Committee determined that the ACAB staff was able to advise clients who were contemplating signing fee agreements with mandatory arbitration provisions about fee arbitration, its advantages and disadvantages, as well as its alternatives.

Based on these features of a fee arbitration before the ACAB, the Committee determined in Opinion 218 that a client could be adequately informed of the pros and cons of mandatory arbitration so that the client could make a decision about whether to enter into a fee agreement that contained a provision requiring mandatory arbitration under the ACAB's rules and procedures. The Committee required, however, that "the client be advised in writing that counseling and a copy of the ACAB's rules are available through the ACAB staff and further that the lawyer encourage the client to contact the ACAB for counseling and information prior to deciding whether to sign the agreement and that the client consent in writing to mandatory arbitration."

C. 2007 Amendments

The February 2007 amendments to the D.C. Rules of Professional Conduct added two comments to Rule 1.8 that directly impact Opinions 211 and 218. Comment [1] to Rule 1.8 states that paragraph (a) "does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5 . . . ." In addition, Comment [13] states: "Rule 1.8(g) does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, to the extent that such agreement is valid and enforceable and the client is fully informed of the scope and effect of the agreement."

Analysis

For the reasons discussed below, the conclusions reached by the Committee in Opinions 211 and 218 are not consistent with amended Comments [1] and [13] to Rule 1.8. These comments, when applied to mandatory arbitration provisions in fee agreements, require the Committee to loosen the requirements set forth in Opinions 211 and 218.[2]

A. The Effect of Comment [13] on Opinions 211 and 218

Comment [13] speaks specifically to agreements to arbitrate legal malpractice claims and deems such agreements permissible provided that the client is "fully informed of the scope and effect of the agreement." This explanation is in conflict with the mandates of Opinion 211, which required much more, including that the client must in fact receive advice from independent counsel regarding the arbitration provision. Comment [13] recognizes the evolution and proliferation of arbitration as an alternative dispute resolution method that has occurred since the issuance of Opinion 211.[3] Because of this change, clients are now likely to be able to understand the "complex nature" of arbitration in a way they might not have been able to in the early nineties when arbitration was less common.

In light of Comment [13], the Committee determines that the more onerous requirements imposed by Opinion 211 are no longer required. The same is true for Opinion 218, which deals with a narrow subset of arbitration provisions – those limited to fee arbitrations before the ACAB. Comment [13] specifically addresses agreements to arbitrate legal malpractice claims, and it was arbitration agreements with this scope that caused the Committee great concern in Opinion 211. To the extent Comment [13] has rendered such agreements generally permissible as long as the client is "fully

informed of the scope and effect of the agreement," more narrow agreements (i.e., those limited to the arbitration of fee disputes) should not have different, more burdensome requirements related to obtaining client consent.

B. Application of Comment [1] to Rule 1.8 to Fee Agreements Containing Mandatory Arbitration Provisions

Although the 2007 amendments to Comment [13] standing alone are enough to convince the Committee that agreements between lawyers and clients to arbitrate fee disputes do not fall within the scope of Rule 1.8(a), the 2007 amendments to Comment [1] of Rule 1.8 also lend support to such a conclusion.

Comment [1] explains that the purpose of the requirements of paragraph (a) is to prevent "the possibility of 'overreaching' when a lawyer participates in a "business, property or financial transaction with a client." However, Comment [1] now specifically states that the requirements of 1.8(a) "do not apply *to ordinary fee arrangements between client and lawyer*, which are governed by Rule 1.5…." The Comment also provides a specific example of a "non-ordinary fee arrangement" that would subject a lawyer to the requirements of 1.8(a), namely, "when a lawyer accepts an interest in a client's business or other non-monetary property as payment of all or some of the fee."

We conclude that fee arbitration provisions are *ordinary fee arrangements* within the meaning of Comment [1] to Rule 1.8(a). First, in the many intervening years since the Committee issued Opinion 211, the use of arbitration clauses in fee agreements has grown considerably, and the Committee's description in Opinion 211 of such clauses as "atypical" is no longer accurate. As the American Bar Association ("ABA") Standing Committee on Ethics and Professional Responsibility noted as early as 2002: "The use of binding arbitration provisions in retainer agreements has increased significantly in recent years." ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 425 (2002). The increase in mandatory arbitration provisions in fee agreements reflects the overall trend towards greater reliance on arbitration to resolve commercial and other disputes.

Second, the example in Comment [1] of a non-ordinary fee arrangement, "when a lawyer accepts an interest in a client's business or other non-monetary property as payment of all or some of the fee" underscores the specific harm for which the protections of Rule 1.8(a) are deemed necessary: to ensure fairness to the client when the lawyer may be in a better position by virtue of legal skill and training to assess the value of a client's business or non-monetary property and therefore potentially take advantage of the client. As the Committee explains in D.C. Legal Ethics Opinion 300 (Acceptance of Ownership Interest in Lieu of Legal Fees) (2000):

> We agree with the commentators who have written on the subject …that a stock-as-fees arrangement is subject to Rule of Professional Conduct 1.8(a), which governs certain transactions with or related to clients…. In many respects, Rule 1.8(a) codifies the well-established common law principle that a lawyer occupies a fiduciary position vis-à-vis his client,

which means that all transactions between lawyer and client are suspect and must be fair to the client.

However, this specific concern is not present when a lawyer and client agree to arbitrate rather than litigate future fee disputes. So long as a client is fully informed of the extent and scope of such an agreement as required by Comment [13], and the client agrees to such a provision before any dispute arises, the selection of an arbitration forum as the setting in which fee disputes will be resolved does not give a lawyer any particular advantage over his or her client. Rather, it is part and parcel of any ordinary fee agreement.

As an ordinary fee arrangement, the requirements of Rule 1.8(a) do not apply (i.e., the client need not be given a reasonable opportunity to seek the advice of independent counsel or give informed consent in writing), and the further obligation imposed by Opinion 211, namely, that the client "is in fact counseled by another attorney," should no longer apply as well. This conclusion is wholly consistent with the Committee's analysis of the effect of Comment [13] on Opinions 211 and 218.[4]

Comment [13] makes clear that it is permissible for a lawyer and a client to agree to arbitrate leg l malpractice claims provided that the "agreement is valid and enforceable" and the "client is fully informed of the scope and effect of the agreement." Comment [13] does not require that the client be given the reasonable opportunity to seek the advice of independent counsel or that the client give informed consent in writing as is required by Rule 1.8(a), let alone go as far as Opinion 211, to require that the client "in fact [be] counseled by another attorney."

Indeed, the only way to square Comment [13] and Comment [1] in the context of mandatory arbitration provisions in fee agreements is to conclude that such arbitration agreements are "ordinary" and Rule 1.8(a) does not apply. This result is also appropriate given the Committee's own recognition, when it relied on Rule 1.8(a) in reaching its conclusion in Opinion 211, that a mandatory arbitration provision did not "precisely fit the language of Rule 1.8(a)." This is particularly true in light of the clarifying amendments to Comments [1] and [13] that explain the meaning of the Rule.

C. The Requirement That The Client Be "Fully Informed"

Comment [13] to Rule 1.8 permits a lawyer and client to agree to arbitrate legal malpractice claims as long as the "client is fully informed of the scope and effect of the agreement." Although the phrase "fully informed" is not defined elsewhere in the comments to Rule 1.8, the definition of the term "Informed Consent" in Rule 1.0(e) is instructive. "'Informed Consent' denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated "adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct."

The definition of "Informed Consent" contains a description of the nature and extent of information that must be presented to a client in order to obtain that client's consent to a "proposed course of conduct." In the Committee's view, that description ably summarizes the information that must be

shared with a client in order for that client to be "fully informed." Indeed, a fully informed client is the prerequisite to obtaining "Informed Consent." Therefore, Rule 1.0(e), along with Comment [13] to Rule 1.8, should guide a lawyer's communications to a client regarding a mandatory arbitration provision in a fee agreement. Put another way, in order for a client to be "fully informed" about the "scope and effect" of a mandatory arbitration provision, a lawyer should communicate "adequate information and explanation about the material risks of and reasonably available alternatives" to entering into a fee agreement that contains such a provision.

For a client to appreciate the "scope and effect" of a mandatory arbitration provision, the lawyer must provide a client with sufficient information about the differences between litigation in the courts and arbitration proceedings. As a general matter, a discussion regarding at least the following differences between the two methods of dispute resolution is prudent: (1) the fees incurred;(2) the available discovery;(3) the right to a jury; and (4) the right to an appeal. As with the application of the informed consent standard, the scope of this discussion depends on the level of sophistication of the client.[5]

Conclusion

Legal Ethics Opinions 211 and 218 are superseded by Comments [1] and [13] to Rule 1.8 and this opinion. Mandatory fee agreements are ordinary fee arrangements and are thus not subject to the requirements of Rule 1.8(a). Comment [13] clarifies that mandatory arbitration provisions in fee agreements are permissible, provided that the requirements set forth in Comment [13] are met.

Published January 2019

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1. Rule XIII of the District of Columbia Court of Appeals' Rules Governing the Bar ("Rules Governing the Bar") states that: "[a]n attorney subject to the disciplinary jurisdiction of this Court shall be deemed to have agreed to arbitrate disputes over fees for legal services and disbursements related thereto when such arbitration is requested by a present or former client...." The arbitration shall take place before the ACAB, unless the client and attorney agree otherwise. See Rule XIII of the Rules Governing the Bar.
2. A lawyer's failure to comply with an obligation or prohibition imposed by a D.C. Rule of Professional Conduct is a basis for invoking the disciplinary process. See D.C. Rules, SCOPE [3]. The Comments to the D.C. Rules are promulgated by the District of Columbia Court of Appeals. Although they do not add obligations to the Rules, they provide guidance for interpreting the Rules and practicing in compliance with them. Id. at [1]. Comment [13] was promulgated by the District of Columbia Court of Appeals after Opinions 211 and 218 were issued by this Committee. Comment [13] therefore controls the use of mandatory arbitration clauses in fee agreements, and the conflicting guidance offered in Opinions 211 and 218 must not be followed.
3. See ABA Comm. on Ethics &Prof'l Responsibility, Formal Op. 425 (2002).
4. While the ethics rules no longer require that the client be advised in writing that the ACAB staff is available to provide counseling, the ACAB staff remains available to advise a lawyer's client who is contemplating signing a fee agreement with a mandatory provision about fee arbitration, its advantages and disadvantages, as well as its alternatives. Lawyers may continue to voluntarily provide information about this resource to a client.
5. In December 2018, the D.C. Bar Board of Governors amended Section 8 of the ACAB Rules of Procedure. Section 8(b)(iii) now provides, "The ACAB will enforce an attorney/client agreement to arbitrate a fee dispute if the agreement: (1) is valid and enforceable, (2) is signed by all parties to the dispute, and (3) encompasses fee disputes in the scope of the disputes to be

arbitrated. Further, the client must have been adequately informed of the scope and effect of a mandatory arbitration provision, consistent with D.C. Bar Legal Ethics Committee Opinion 376 (copy attached). In this instance, the ACAB can compel a client to arbitrate a fee dispute filed by a lawyer…."

DC Bar Attorney-Client Arbitration Board
Opening Statement Guide

Opening Statement Checklist

Ensure your opening statement includes the following information.

- ❑ **Opening Summary**
  - **Explain what you are seeking in the case**
    - ***What do you think you are owed?***
    - ***If the other party is seeking compensation, why don't you think you owe it?***
- ❑ **Discuss the representation agreement**
  (Exhibit examples: the agreement(s); correspondence re agreement)
  - ***Was it in writing?***
  - ***Were fees agreed to be paid on a(n) hourly, contingent, or flat basis?***
  - ***Was the agreement easy to understand?***
- ❑ **Discuss the fees**
  (Exhibit examples: correspondence re the fees; client receipts and related correspondence)
  - **Were they reasonable?**
    - ***Explain why or why not***
      - *Factors to consider include: (1) case complexity; (2) whether the attorney is precluded from taking other matters; (3) whether the fee is customary; (4) the amount involved in the case and the result obtained; (5) time restrictions and deadlines; (6) the nature and length of the attorney-client relationship; and (7) the experience, reputation, and skill level of the attorney.*
    - ***Explain whether the attorney kept advanced payments that were not earned by the end of the representation***
- ❑ **Discuss any other attorney charges**
  (Exhibit examples: vendor invoices/receipts; correspondence re charges)
  - **Were they reasonable?**
    - **Explain why or why not**
- ❑ **Describe the underlying matter(s)/case(s) at issue in the fee dispute**
  (Exhibit examples: court filings/decisions relevant to fee dispute; correspondence re case complexity)
  - **What were the nature of the issues underlying the case? (e.g., employment, family law, housing, contract dispute, etc.)**
  - **Case type?**
    - ***Civil?***
    - ***Criminal?***
  - **What was the outcome of the matter?**
    - ***Describe any settlement terms***
    - ***Describe any court judgement***
    - ***Explain whether any attorney fees were awarded***
- ❑ **Describe attorney communication**
  (Exhibit examples: attorney-client correspondence, particularly evidence of attorney responsiveness or lack thereof; attorney bills and related correspondence; correspondence marked as undeliverable)
  - **Explain whether the attorney kept the client informed on the case**
  - **Explain whether the attorney responded to information requests throughout the case**
  - **Were bills provided that detail the fees and other charges?**
- ❑ **Concluding Summary**
  - **Reiterate what you are seeking in the case**

DC Bar Attorney-Client Arbitration Board
Opening Statement Guide

Opening statements should be a concise recitation of the information necessary for the arbitrator(s) to render a decision. The statement should begin and conclude with a brief summary of the issue being disputed along with the exact outcome you are seeking including, if applicable, the dollar amount you think you are entitled to.

As you draft your opening statement, ask yourself the following questions and include all answers ***– relevant to the fee dispute –*** *in your statement:*

Representation Agreement

1. **Was there an agreement for the attorney to represent the client in the matter?**

If so, include that information in your opening statement and specify whether the agreement was in writing. If the agreement was not in writing, explain why to the best of your knowledge. Also, if the agreement was in writing, note the date in which the agreement was signed by all parties.

2. **Was the agreement easy for all parties to understand?**

When answering this question, include details regarding whether and when the attorney explained the agreement to the client. Also, note whether the agreement included the full scope of the expected representation; the fee and/or type of fee; how the fee was to be calculated; the expected payment timing; and whether the attorney may charge costs beyond the fees.

Fees

3. **What type of fee was agreed upon?**

Fee types include, **contingent**, **hourly**, or **fixed**.

- A **contingent fee** is one in which the attorney does not accept a fee for services unless there is a specified outcome. If you had a contingent fee arrangement, explain the details of how the award or settlement was to be divided between client and attorney. Also, include details on whether and how costs and expenses beyond the fee were to be calculated and deducted from the award or settlement. If these details were not agreed to in advance, please include that information in the opening statement as well.
- An **hourly fee** is one in which the attorney and specified staff are paid by the hour for services rendered. If you agreed to an hourly fee, include the hourly rate(s).

- A **fixed fee** is one in which the attorney is paid a flat fee for specific services. If you agreed to a fixed fee, include the agreed-to amount.

4. Was the fee reasonable?

When determining whether a fee is reasonable, it is important to consider the specific circumstances of the representation. Consider these following points and include any related relevant data in your opening statement:

a. ***Timing and labor required, the novelty and difficulty of the questions, involved, and the skill required to perform the legal service properly*** – the more complex the case and the higher the required skill, the higher a reasonable fee may be;

b. ***The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer*** – a matter that limits the attorney's ability to work on other matters or take on other clients or employment is reasonably expected to have a higher fee;

c. ***The fee customarily charged in the District of Columbia for similar services*** – a fee that is similar to fees charged by other local attorneys for similar legal services is more likely to be deemed reasonable;

d. ***The amount involved and the result obtained*** – particularly in a contingent fee arrangement, the amount at issue in the underlying matter or case, and the result obtained, could greatly influence the amount of the fee;

e. ***The time limitations imposed by the client or by the circumstances*** – an attorney is expected to charge a higher fee when working under rigid timeframes and deadlines;

f. ***The nature and length of the professional relationship with the client*** – the attorney-client relationship can play a role in the fee if it impacts the work required (for example, an attorney may be considerably more efficient working with a longstanding client than a new one);

g. ***The experience, reputation, and ability of the lawyer or lawyers performing the services*** – the more experienced, reputable, or able the attorney, the higher a reasonable fee may be; and

h. ***Whether the fee is fixed or contingent*** – an earned contingent fee is expected to be higher than a fixed fee because of the risk the attorney takes on by accepting the matter.

Other Attorney Charges

5. Are the attorney's charges for disbursements, costs and expenses reasonable?

When determining whether these non-fee related charges are reasonable, consider the reason for the charges. Attorneys may be reimbursed for expenses reasonably incurred in connection with the client's matter for support services provided by the lawyer or law firm. However, the attorney cannot be reimbursed for costs associated with the general maintenance of the firm's office or charge a client for more than the actual costs for third-party support services.

The Underlying Matter/Case

6. What was the nature of the case?

Include details like the subject matter and issue, (e.g., family law litigation; contract dispute) of the case, whether it was a criminal or civil case, and the extent of the matter or matters that the attorney agreed to handle.

7. What was the outcome of the matter?

Explain whether and how the matter was resolved including details regarding relevant court decisions, settlements, and case dismissals. Also include whether attorney fees were awarded to the attorney(s) involved in the fee dispute.

Attorney Communication

8. Did the attorney keep the client informed on the status of the case and comply with reasonable requests for information?

Explain whether the attorney kept the client informed on the status of the case and provide responses to requests for information. Also provide details about why any requests for information were deemed

reasonable or unreasonable. Concisely provide examples that support these assertions, including the frequency and nature of the requests.

9. Was there a written bill? If so, what did it include?

Explain if and when the attorney sent the bills, and if and when the client received bills from the attorney. If there was no written bill, explain your understanding about why no such bill existed. If there was a written bill, detail whether the bill includes (1) for hourly fee arrangements, a statement on how the attorney's time was spent; (2) for contingent fee arrangements, a statement describing the outcome of the matter and, if there is a recovery, a statement showing the remittance to the client and the method for its determination; and/or (3) for arrangements in which fees or costs are allocated among clients, a statement explaining to the client the basis for the allocation. *[Attorneys should be prepared to explain their bill preparation methods – including details like which staff members work on the billing, what software is used, and whether billing is prepared contemporaneously.]*

After the Arbitration Hearing - Post Arbitration Information

ATTORNEY/CLIENT ARBITRATION BOARD (ACAB) DECISION & AWARD

The ACAB Decision & Award will specify the amount, if any, to be paid to the person who filed the petition and include a deadline for compliance with the award. The arbitrators may grant any award they deem proper, but they have no authority to award an amount in excess of the amount set out in the Agreement to Arbitrate, or any amendment to the Agreement to Arbitrate made before the hearing.

ACAB Decision & Awards are provided to parties in writing, but arbitrators are prohibited from including opinions or providing explanations or reasons for their decision. The panel will generally issue an award within 10 business days from the date the record is closed. The decision will be sent to parties by staff. Parties are prohibited from contacting arbitrators about the dispute or decision. The ACAB's jurisdiction over the fee dispute concludes with the issuance of the award.

All awards are final and binding and are not subject to review or appeal, except under limited circumstances described below. Once the award is signed by a majority of the arbitrators, the ACAB will send copies of the signed award to each party or representative of the party. **Chapter 44 of the District of Columbia Code states that any efforts to confirm, modify or vacate an arbitration award must be filed in the Civil Actions Branch of the Superior Court of the District of Columbia**.

WHAT TO DO IF THE TERMS OF THE AWARD ARE NOT FULFILLED

If a party is awarded monetary relief, the award will set forth the date by which the fees are to be paid. The non-prevailing party must pay the awarded amount within the specified timeframe to the prevailing party, unless they file a motion to vacate. A motion to vacate is a challenge to the validity of the award. Courts decide these motions and can either vacate (or overturn), confirm, or modify the award. A confirmed award stands as issued by the arbitrators. An award vacated by the courts is voided. The ACAB does not have an enforcement mechanism through which a party may seek enforcement of an award. This means that the ACAB does not have the authority to compel a party to comply with an arbitration award. If a party is awarded monetary relief, the award will set forth the date by which the fees are to be paid.

Pursuant to Chapter 44 §16-4422 of the District of Columbia Code, "[a]fter a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to §16-4420 or §16-4424 or is vacated pursuant to §16-4423."

If a non-prevailing party does not file a motion to vacate the prevailing party should file a motion to confirm the award in the Superior Court of the District of Columbia. **Motions must be filed in the Civil Actions Branch and NOT Small Claims Court, regardless of the dollar amount of the award**. The relief sought is a matter of equitable relief and Small Claims Court does **not** have jurisdiction to review such claims.

The Civil Actions Branch of the District of Columbia Superior Court is located at Moultrie Courthouse, 500 Indiana Avenue, N.W., Room 5000, Washington, D.C. 20001 The telephone number for the clerk's office is (202) 879-1133. You may also find additional information about the court at https://www.dccourts.gov/superior-court/civil-division

CHALLENGING AN ARBITRATION AWARD

Arbitration awards issued by the ACAB are final and binding. The ACAB's role over the fee dispute concludes with the issuance of the decision and award. A party seeking to vacate or overturn an award must file a motion in court and must state specific and narrow grounds. The ACAB does not have an appeal process through which a party may challenge an award.

Pursuant to Chapter 44 §16-4423 of the District of Columbia Code, there are limited grounds on which a court may hear a party's motion to vacate an award. Specifically, the law permits a court to vacate or overturn an arbitration award if it finds that:

- the award was procured by corruption, fraud, or undue means;
- there was evident partiality or corruption in the arbitrators;
- the arbitrators were guilty of misconduct in refusing to postpone the hearing, even in light of sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been prejudiced;
- the arbitrators exceeded their powers;
- there was no agreement to arbitrate;
- the arbitration was conducted without proper notice of the initiation of an arbitration so as to prejudice substantially the rights of a party to the arbitration proceeding; or
- the court may vacate an award made in the arbitration proceeding on other reasonable ground.

OTHER DC BAR RESOURCES

- DC Office of Disciplinary Counsel

In some circumstances, the failure of a DC Bar member to comply with an arbitration award may be considered ethical misconduct. The Office of Disciplinary Counsel is charged with investigating complaints and allegations of ethical misconduct and initiates appropriate resolutions, ranging from dismissals, diversions, and informal admonitions, to the preparation of formal charges. Ethical complaints must be submitted in writing. The Complaint form and other information about the disciplinary process may be found on the Bar's website at https://www.dcbar.org/attorney-discipline/office-of-disciplinary-counsel/purpose-and-mission The **Office of Disciplinary Counsel can be reached at:** District of Columbia Court of Appeals, 515 5th Street, NW, Building A, Suite 117, Washington, DC 20001. The telephone number is 202-638-1501.

- DC Bar Clients' Security Fund

If a client has pursued the enforcement of an arbitration award in court and has successfully confirmed the award in court but the DC Bar member still has not paid the award, the Clients' Security Fund may be able to provide reimbursement to the client. The Clients' Security Fund can be reached at 202-780-2780 or csfinfo@dcbar.org. More information about the Fund and the requisite forms for filing a claim with the Fund can be found at www.dcbar.org/csf