

ARTICLES, REGULATIONS,
RULES OF ARBITRATION¹

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I Purpose, legal entity, and registered office

§ 1 Purpose

The purpose of the Zurich Bar Association is to represent the professional, commercial, and political interests of independent attorneys. It advocates for the protection of the reputation of the legal profession and the promotion of collegiality among, and the continuing professional education of, its members. In keeping with this purpose, it actively takes part in legal policy but refrains from all partisan activity.

§ 2 Legal entity and registered office

The Zurich Bar Association is an association within the meaning of Article 60 *et seq.* of the Swiss Civil Code, with its registered office in Zurich.

II Membership

§ 3 Membership requirements

- 1 Membership in the Zurich Bar Association shall be open to any individual who is qualified to practice law in the Canton of Zurich, practices law independently, and has a business address in the Canton of Zurich.
- 2 If a law firm includes more than one attorney, each of the attorneys is eligible for membership only if all other attorneys of the firm with a business address in Switzerland are members of the Zurich Bar Association or of another cantonal association being a member of the Swiss Bar Association (SBA).

3 The membership of attorneys who practice in a firm including also non-attorneys requires that the firm preserves the character of a law firm. It must be made clear at all times what sort of professional services are offered by those who are non-attorneys.

4 ...²

§ 4 Attainment and termination of membership

1 Members are admitted to the Zurich Bar Association by the Board of Directors on the basis of a written application. The Board of Directors establishes the requirements for the application.

2 The Board of Directors can, following a recommendation of the Ethics Court or on its own initiative, resolve to expel a member if the membership requirements set forth in the Articles are no longer satisfied, if the member has acted in grave violation of his member duties, or if the member has not paid the membership dues despite having been put on notice. Expulsion requires a resolution of the Board of Directors by the majority of all board members. Each resolution to expel is final.

3 A member may resign from the Zurich Bar Association at any time by serving written notice to the Board of Directors.

§ 5 Duties of members

1 Members are obligated to contribute to the attainment of the Zurich Bar Association's purpose. They must protect the reputation of the legal profession and preserve collegiality.

2 Members are obligated to observe the applicable ethical rules.

² § 3 (4) (Rules on the designation of law firms) was deleted by the Assembly of Members on November 30, 2007 without replacement.

- 3 Members shall support the Zurich Bar Association's bodies in the performance of their duties. They shall do so, in particular, by providing information to a reasonable and appropriate extent if they appear in the media, in a criminal proceeding, or in a proceeding before regulatory authorities in a manner that could compromise the reputation of the legal profession.
- 4 Members shall ensure that non-attorneys in their firm comply with the professional and ethical rules³ applicable to members of the Zurich Bar Association.
- 5 Members shall ensure that the duties applicable to them are also observed in the event of substitution by non-members.

§ 6 Passive membership

- 1 A member who ceases to practice law in the Canton of Zurich can, upon application, be acknowledged as a passive member by the Board of Directors. The resolution by the Board of Directors to acknowledge or revoke passive membership is final.
- 2 Passive members have an advisory vote in the Assembly of Members.

§ 7 Membership dues

- 1 Membership dues are charged at the beginning of the year for the entire year. Members who join before June 30 pay the full amount for the current year; those who join thereafter pay half the annual amount.
- 2 Passive members pay reduced membership dues as of the calendar year following their change of status.

3 The professional rules are state laws applicable to the legal profession; the ethical rules are private rules of the association.

3 An entry fee is owed upon admission to the Zurich Bar Association.

4 The financial obligations of a resigned or expelled member continue until the end of the calendar year in which the member leaves. Departing members can assert no claims to Zurich Bar Association's assets.

§ 8 Membership in the Swiss Bar Association

Under the Articles of the SBA, members of the Zurich Bar Association are automatically also members of the Swiss Bar Association.

III Bodies of the Association

1 Assembly of Members

§ 9 Convocation

1 Two regular Assemblies of Members take place each year, one in the summer and one in the winter. Extraordinary Assemblies of Members can be convened by the Board of Directors; it is required to do so if such convocation is demanded in writing by at least one-tenth of all members.

2 Invitations are served at least eight days before the Assembly, and they include reference to the businesses to be discussed.

§ 10 Authorities

The Assembly of Members is responsible for the following subject matters:

- a) the election of the Board of Directors, the Ethics Court, the Commission on Legal Fees, the Auditors and any substitute members, if any;
- b) the appointment of the president and vice president of the Zurich Bar Association, of the Ethics Court, and of the Commission on Legal Fees;
- c) the issuance of Regulations;
- d) the establishment of the membership dues and of the entry fees;
- e) the acceptance of the annual reports and financial statements of the Zurich Bar Association;
- f) the amendment of the Articles and the Regulations, as well as the dissolution of the Association;
- g) the nomination of candidates for members and substitute members of the Supervisory Commission for Attorneys in the Canton of Zurich who are to be elected by members of the legal profession;
- h) the election of delegates of the Swiss Bar Association.

§ 11 Rules of procedure

- 1 The president chairs the Assembly. The honorable secretary of the Board of Directors takes the minutes.
- 2 The Assembly of Members adopts resolutions by a simple majority of the votes cast. The chairperson has a vote, which serves as tie-breaker in the event of a tied vote.
- 3 The presidents and the vice presidents of the Zurich Bar Association, of the Ethics Court, and of the Commission on Legal Fees are individually elected by open ballot. New members of the Board of Directors are elected by secret ballot. The reelection of members of the Board of Directors, the election or reelection of members of the Ethics Court and of the Commission on Legal Fees, and the election or reelection of the Auditors are conducted jointly in accordance with the proposal by the Board of Directors unless the Assembly opts for individual balloting.

- 4 Resolutions pertaining to amending the Articles and Regulations require a majority of two-thirds of those present. The dissolution of the Zurich Bar Association may be resolved by a resolution supported by two-thirds of all members, as expressed in the Assembly of Members or by way of a written ballot vote.

2 Board of Directors

§ 12 Election and composition

- 1 The Board of Directors comprises seven persons.
- 2 The members of the Board of Directors are elected by the winter Assembly for a term of two years.
- 3 A member may not serve on the Board of Directors for more than three successive terms. The president may not be reelected.

§ 13 Authorities

The Board of Directors represents the Association in all matters. It attends to all matters that are not assigned by law or by the Articles to the Assembly of Members, the Ethics Court, or the Commission on Legal Fees. Such matters include, without limitation:

- a) the admission and expulsion of members;
- b) the safeguarding of the professional and economic interests of the members;
- c) the safeguarding of the duties of the legal profession pertaining to legal policy;
- d) the mediation in the event of disputes arising among colleagues that affect the legal profession, provided a member is involved;
- e) the mediation between clients and a member concerning disputes arising in connection with the mandate;
- f) the safeguarding of interests involved in the event of the death or incapacitation of a member in the absence of appropriate instructions for the purpose of safeguarding client interests and professional secrecy obligations.

§ 14 Rules of procedure

- 1 The Board of Directors meets upon invitation by the president, generally once a month. Additional meetings must be convened if at least two members of the Board of Directors so demand making reference to the businesses to be discussed.
- 2 The adoption of resolutions requires the presence of a majority of the members of the Board of Directors.
- 3 Except as provided in § 4 (2) of the Articles, the Board of Directors adopts resolutions with a simple majority of votes cast. The chairperson has a vote, which serves as tie-breaker in the event of a tied vote.
- 4 The Bar Office⁴ attends to the clerical matters of the Board of Directors and takes the minutes of meetings.

3 Ethics Court

§ 15 Election and composition

- 1 The Ethics Court comprises eight members.
- 2 The members of the Ethics Court are elected by the winter Assembly for a term of six years. Members may be reelected.

§ 16 Authorities

- 1 The Ethics Court is a private disciplinary court ruling on alleged violations of professional and ethical rules upon complaint by the Board of Directors, a member, or a third party.

⁴ The former term "secretariate" (*Sekretariat*) was changed into "Bar Office" (*Geschäftsstelle*) by resolution of the Assembly of Members of November 30, 2012.

2 The Ethics Court can impose the following sanctions:

- a) warning;
- b) reprimand;
- c) fine of between CHF 100 and CHF 5,000.

3 In addition to imposing these sanctions, the Ethics Court can apply to the Board of Directors to undertake an expulsion from the Zurich Bar Association and/or to file a complaint with the Supervisory Commission.

4 If a complaint concerning the same matter is proceeded before a regulatory authority and before the Ethics Court, the Ethics Court shall hear the complaint only to the extent that it concerns a violation of ethical rules.

5 A violation of ethical rules becomes statute-barred two years after its commission, whereby any procedural action taken by the Ethics Court adjourns the time limit. Prosecution becomes statute-barred in all instances four years after commission of a violation. This also applies to the sanctioning of violations of professional rules by the Ethics Court.

§ 17 Procedure

The procedure is set forth in a Regulation.

4 Commission on Legal Fees

§ 18 Election and composition

1 The Commission on Legal Fees comprises eleven members.

2 The members of the Commission on Legal Fees are elected by the winter Assembly for a term of six years. Members may be reelected.

§ 19 Authorities

The Commission on Legal Fees advises, upon request, on invoices for legal fees that have been issued by members.

§ 20 Procedure

The procedure is set forth in a Regulation.

5 Auditors

§ 21 Election and composition

The audit board comprises two members serving as Auditors. They are elected by the winter Assembly for a term of four years. Members may be reelected.

§ 22 Duties

The Auditors are responsible for subjecting each annual financial statement of the Zurich Bar Association to a thorough review and for submitting a written report of the results of its review to the next summer Assembly.

IV Other provisions

§ 23 Arbitration

1 The Ethics Court can be called upon as a court of arbitration to rule on disputes pursuant to § 13 (1) d and e of the Articles.

- 2 The Commission on Legal Fees can be called upon as a court of arbitration to rule on disputes between clients and members on financial claims arising out of legal services.
- 3 The procedure is governed by the Rules of Arbitration of the Zurich Bar Association.

§ 24 Financial year

The financial year is identical to the calendar year.

§ 25 Dissolution of the Zurich Bar Association

In the event of dissolution of the Zurich Bar Association, the Assembly of Members shall adopt resolutions concerning the disposal of the archives and use of the assets in accordance with the purpose of the association.

Adopted and entered into force by the Assembly of Members on November 25, 2005 (supersedes the Articles of November 29, 1996); amended by the Assembly of Members on November 30, 2007, and November 30, 2012.

REGULATION ON THE PROCEDURE BEFORE THE ETHICS COURT

§ 1 Scope of application

This Regulation applies to all disciplinary matters pursuant to § 16 of the Articles.

§ 2 Panel

The Ethics Court decides disciplinary complaints as a panel of three judges; if a fine in excess of CHF 2,000 or an application to the Board of Directors for expulsion from the Zurich Bar Association or for a complaint to the Supervisory Commission is under consideration, two additional judges are to be engaged.

§ 3 Recusal and challenge

The members of the Ethics Court are subject to the rules for recusal and challenge applicable to civil procedures in the Canton of Zurich.

§ 4 Conduct of the proceedings

The president chairs over the proceedings. The conduct of the proceedings may be delegated to the vice president or to a member of the Ethics Court.

§ 5 Expeditious discharge

Disciplinary proceedings shall be conducted expeditiously, generally within one year.

§ 6 Complaints

Complaints shall be submitted to the president in writing and in duplicate copy, together with documentary evidence and a list of exhibits. The complaint shall present the matter in dispute succinctly and comprehensively, and all means of evidence shall be attached or referenced.

§ 7 Exchange of briefs

The member conducting the proceeding requests the expeditious filing of the answer to the complaint. A reply and a rejoinder may be ordered if necessary.

§ 8 Instructing judge

After the filing of pleadings is complete, the president appoints the instructing judge.

§ 9 Ruling

1 The Ethics Court reaches its decisions on the basis of the record, including documentary evidence. If a fine in excess of CHF 2,000 or an application to the Board of Directors for expulsion from the Zurich Bar Association or for a complaint to the Supervisory Commission is under consideration, further evidence may be admitted.

2 The deliberations of the Ethics Court are held in private.

3 The Ethics Court reaches its decisions by a majority of the deciding judges.

4 The rulings of the Ethics Court are to be reasoned and served in writing. One copy each shall be served on the parties and on the president of the Zurich Bar Association.

§ 10 Costs

1 The Ethics Court charges for its efforts a fee of between CHF 200 and CHF 5,000 that accrues to the Zurich Bar Association's account. In the event of discharge through settlement, the collection of fees may be waived. The cash outlay of the Ethics Court must be reimbursed. In exceptional cases, the Ethics Court may award attorney compensation.

- 2 The president of the Ethics Court may demand that adequate bail be posted to cover fees, cash outlay, and attorney compensation.

§ 11 Supplemental provisions

Proceedings before the Ethics Court are otherwise governed by the rules applicable to civil proceedings in the Canton of Zurich, to be applied *mutatis mutandis*.

§ 12 Arbitration

The activity of the Ethics Court as court of arbitration is governed by § 23 of the Articles and by the Rules of Arbitration of the Zurich Bar Association.

Adopted and entered into force by the Assembly of Members on November 25, 2005 (supersedes Regulation III of November 27, 1998).

REGULATION ON THE PROCEDURE BEFORE THE COMMISSION ON LEGAL FEES

§ 1 Scope of application

This Regulation applies to the advice on invoices for legal fees pursuant to § 19 of the Articles.

§ 2 Recusal/challenge

The members of the Commission on Legal Fees are subject to the rules for recusal and challenge applicable to civil procedures in the Canton of Zurich.

§ 3 Conduct of the proceedings

The president chairs over the proceedings. The conduct of the proceedings may be delegated to the vice president or to a member of the Commission on Legal Fees.

§ 4 Expeditious discharge

The proceedings shall be conducted expeditiously, generally within one year.

§ 5 Request for advice

- 1 Requests for advice on an invoice for legal fees are submitted to the president of the Commission on Legal Fees.
- 2 A waiver of professional secrecy obligations is required in order for an invoice for legal fees to be advised on. In the absence of such a waiver, the request is not considered.
- 3 The advice rendered by the Commission on Legal Fees is based on a detailed invoice for legal fees. Further records shall be submitted at the request of the Commission on Legal Fees.

§ 6 Scope of the advice

- 1 All elements of the invoice for legal fees are the object of the advice. Particular consideration is given to the following elements: agreements on the legal fees, time expenditure, value of interest or dispute, significance of the matter, and cash outlay.
- 2 The appropriateness of the reported time expenditure and alleged deficiencies in the attorney's activity are considered in grave and obvious cases only.

§ 7 Procedural stages

- 1 A challenged invoice for legal fees is first evaluated in a preliminary review procedure (§ 8). If no settlement is reached in the preliminary review procedure, either party may request a formal appraisal of the invoice for legal fees (§ 9).
- 2 No taking of evidence is conducted.

§ 8 Preliminary review procedure

- 1 The president appoints an instructing member of the Commission for conducting the preliminary review procedure.
- 2 The instructing member designates the procedure applicable to the preliminary review.
- 3 The preliminary review procedure is concluded with a recommendation by the instructing member on an amicable settlement.

§ 9 Formal Appraisal

- 1 If a party requests a formal appraisal, the president appoints the instructing member of the Commission to conduct the appraisal, who is generally the same member which conducted the preliminary review procedure.
- 2 In the case of a value in dispute of up to CHF 20,000, the instructing member is responsible for the formal appraisal. If fundamental issues are to be decided, however, the president of the Commission on Legal Fees may order that the formal appraisal be performed by a panel of three members of the Commission.
- 3 In the case of a value in dispute in excess of CHF 20,000, a panel of three persons is responsible for performing the formal appraisal, with the president or vice president serving as chairperson.
- 4 The formal appraisal is generally produced following a single exchange of briefs. The instructing member specifies the other elements of the procedure.

§ 10 Costs

- 1 If the request for advice is made by the client, the preliminary review procedure is generally conducted free of charge. If the request is made by a member of the Zurich Bar Association, a fee corresponding to expenditures is charged, which accrues to the Zurich Bar Association's account.
- 2 The Commission on Legal Fees charges a fee of between CHF 200 and CHF 5,000 for its efforts in connection with a formal appraisal, depending on the value in dispute and the expenditure, and said fee accrues to the Zurich Bar Association's account. The costs of the formal appraisal shall be advanced by the party requesting the appraisal. That same party also bears the costs of the formal appraisal, independently of the outcome of the procedure. No attorney compensation is awarded.

§ 11 Arbitration

The activity of the Commission on Legal Fees as court of arbitration is governed by § 23 of the Articles and by the Rules of Arbitration of the Zurich Bar Association.

Adopted and entered into force by the Assembly of Members on November 25, 2005 (supersedes Regulation IV of November 27, 1998).

RULES OF ARBITRATION OF THE ZURICH BAR ASSOCIATION

§ 1

This Rules apply to all arbitration proceedings pursuant to § 23 of the Articles of the Zurich Bar Association (hereinafter the “Articles”).

§ 2

- 1 The Ethics Court can be called upon as a court of arbitration for the purpose of judicial ruling of disputes pursuant to § 13 (1) d and e of the Articles (see also § 23 (1) of the Articles).
- 2 The Commission on Legal Fees can be called upon as a court of arbitration for the purpose of judicial ruling of disputes between clients and members on financial claims arising out of legal services (§ 23 (2) of the Articles).
- 3 A written arbitration agreement between the parties is required.

§ 3

This court of arbitration is subject to

- the 3rd part of the Federal Act on Civil Procedures [*Schweizerische Zivilprozessordnung*] (the “ZPO”), unless the parties have agreed in writing, pursuant to Article 353 para. 2 ZPO, to exclude the application of the 3rd part of the ZPO and to have applied the 12th chapter of the Federal Act on International Conflicts of Private Laws [*Bundesgesetz über das Internationale Privatrecht*] (the “IPRG”) exclusively; or
- the 12th chapter of the IPRG in international cases, unless the parties have agreed in writing, pursuant to art. Article 176 para. 2 IPRG, that the 12th chapter does not apply and that the 3rd part of the ZPO applies exclusively.

§ 4

- 1 Eligibility for arbitration is considered in accordance with Article 354 ZPO or Article 177 IPRG, respectively.
- 2 The court of arbitration rules on its jurisdiction.

§ 5

The proceeding is conducted in accordance with

- a) the mandatory rules of the ZPO or IPRG, respectively;
- b) the terms of reference agreed upon;
- c) the present Rules of Arbitration;
- d) the instructions issued by the court of arbitration upon its constitution or at a later time and/or the court of arbitration's discretion.

§ 6

- 1 The proceeding is considered as pending once the claimant submits a statement of complaint to the president of the Ethics Court or the Commission on Legal Fees in quadruplicate.
- 2 The statement of complaint must include:
 - a) the names and addresses of the parties;
 - b) a description of the facts on which the complaint is based;
 - c) the issues of contention;
 - d) the prayer(s) for relief.
- 3 In general, the claimant is required to attach to its statement of complaint all documentary evidence it considers as material.

§ 7

- 1 If the parties have not stipulated the number of arbitrators in the arbitration agreement, the president of the Ethics Court or, as the case may be, the Commission on Legal Fees decides whether a three-person arbitral panel or a sole arbitrator is to be appointed.
- 2 In the absence of an express provision to the contrary, the provisions of these Rules of Arbitration apply both to the three-person arbitral panel and to the sole arbitrator. In the following, the term “the chairperson” shall mean, as the case may be, the chairperson of a three-person arbitral panel or the sole arbitrator.

§ 8

- 1 Either the president or the vice president of the Ethics Court or of the Commission on Legal Fees serves as chairperson of the three-person arbitral panel. The president may also appoint another member of the Ethics Court or the Commission on Legal Fees as the chairperson.
- 2 The chairperson appoints the two other arbitrators from among the members of the Ethics Court or the Commission on Legal Fees.
- 3 If a sole arbitrator is agreed on or determined by the president, the president shall appoint a member of the Ethics Court or the Commission on Legal Fees accordingly.

§ 9

The seat of the court of arbitration is in Zurich.

§ 10

As soon as the president of the Ethics Court or, as the case may be, of the Commission on Legal Fees has appointed the court of arbitration, the latter shall adopt the resolution of constitution. The resolution of constitution shall include, without limitation:

- a) names, addresses, phone and fax numbers, and e-mail addresses of the members of the court of arbitration;
- b) the deadline for the filing of a written and/or electronic statement of response, with attachments;
- c) the advance on costs to be paid by the parties, the deadline for payment, and the penalty for nonpayment;
- d) other instructions concerning the proceeding, at the discretion of the court of arbitration.

§ 11

- 1 Orders, resolutions, and awards are served by registered mail with return receipt. With the consent of the affected party, service can instead take place electronically.
- 2 Simple notices and deadline extensions may also be communicated by regular mail or fax.

§ 12

Articles 367 through 371 ZPO or Articles 179 and 180 IPRG shall apply to the processes for challenging, recalling, and replacing the arbitrators.

§ 13

- 1 The chairperson directs the proceeding in accordance with the procedural laws pursuant to § 3.

2 The chairperson is authorized to demand additional advances on costs, to convene hearings, and to set and extend deadlines.

3 The chairperson represents the court of arbitration in external matters.

§ 14

1 The court of arbitration can engage auxiliary persons.

2 The appointment of a clerk for the entire proceeding with or without an advisory vote requires the prior consent of the parties.

§ 15

If the parties reach a settlement concerning the matter in dispute, the court of arbitration shall, at the request of a party, issue an award reflecting the settlement. In the absence of such a request, the court of arbitration declares by way of decision that the proceeding has been discharged through settlement by the parties.

§ 16

The award shall be issued in writing and must satisfy requirements of Article 384 ZPO or, as the case may be, Article 189 IPRG as to the form and substance.

§ 17

As to appeals, Articles 389 through 399 ZPO and, as the case may be, Articles 190 through 192 IPRG shall apply.

§ 18

- 1 The members of the court of arbitration are compensated from the arbitration fee, which is to be fixed by the court of arbitration together with its ruling in accordance with the following provisions:
- 2 For the sole arbitrator, the base fee pursuant to the Regulation of the Court of Appeal on Attorney Fees [*Verordnung des Obergerichtes über die Anwaltsgebühren*] is usually awarded. For values in dispute that are in excess of CHF 10 million, the base fee for CHF 10 million is to be awarded, with an additional charge of no more than 0.2% of the excess amount.
- 3 In the case of a three-person arbitral panel, the total fee received by the arbitrators is usually no more than two and a half times the amounts calculated in accordance with para. 2. The allocation among the individual arbitrators is up to the arbitral panel.
- 4 The compensation of a clerk, if any, is included in the amounts set forth in para. 2 and 3.
- 5 If the arbitration proceeding is discharged in any way other than by a written and reasoned award, the amounts set forth in para. 2 and 3 can be reduced appropriately.
- 6 In any event, the total fee paid to the court of arbitration must be at least equal to the compensation for the total expenditure of the court of arbitration calculated on the basis of the rates for an *ex officio* criminal defense.

Adopted by the Board of Directors and entered into force in October 2006; supersedes the Rules of Arbitration of 1997/1998.

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