

**Consumer Guide
to the Legal
Fee Arbitration
Program**



WHAT IS THE LEGAL FEE ARBITRATION PROGRAM?

The Fee Arbitration Program is an informal, free service provided by The Florida Bar to resolve fee disputes between attorneys and clients and between attorneys. The arbitration process may be initiated by either the client or the attorney and may be used instead of a lawsuit to settle a fee dispute.

The sole purpose of the arbitration hearing is to decide the fair and reasonable value of the legal services provided by the attorney for the client. Participation in the program is not mandatory. Written consent by both parties is required in order to participate in the fee arbitration program.

The Florida Bar encourages the friendly resolution of all fee disputes whenever possible. However, if a dispute cannot be resolved, the Fee Arbitration Program is available and authorized by the Florida Supreme Court to settle fee matters.

HOW DOES BINDING FEE ARBITRATION WORK?

Binding arbitration means that the involved parties agree to accept the decision of the arbitrators. In the Bar's program, after the parties agree to arbitrate and they file the required forms with the program administrator, one or more arbitrators are chosen to hear the case. If the dispute is \$75,000 or less, one arbitrator is appointed to hear the case. If the amount is more than \$75,000, then a panel of three arbitrators is appointed, one of whom will be named chair. If both parties in a dispute worth more than \$75,000 agree, then a single arbitrator can be appointed to hear that case. In all cases where there is a three-member panel, at least one member must be a non-lawyer and one must be a lawyer.

The arbitrators will hear testimony from both sides and take evidence from which they will make a decision. The only question the arbitrators will address is the "fair and reasonable value" of the lawyer's services. Complaints about an attorney's conduct or possible ethical violations should be filed through The Florida Bar's Lawyer Regulation Department.

WHAT INFORMATION SHOULD I FURNISH TO THE SOLE ARBITRATOR OR ARBITRATION PANEL MEMBERS?

The arbitrators need to learn as much as possible about the fee dispute and the matter the attorney is handling or has handled. Therefore, in addition to the information you supply on the required printed form, the following may be helpful in support your dispute:

- copies of the attorney's bills;
- any records you have of the time spent by the attorney on the case;
- copies of any written fee agreements;
- copies of correspondence between the parties regarding the fee dispute;
- copies of all work done by the lawyer (i.e. marital separation agreement, deeds, contracts, etc.); and
- any other documents relating to the attorney's fee or the case.

All records, documents, files, proceedings and hearings pertaining to fee arbitration are open to the public, upon request once the matter has concluded.

WHEN WILL I RECEIVE NOTICE OF THE ARBITRATION HEARING

The hearing must be scheduled within 45 days of the date the sole arbitrator or panel was assigned. Its decision should be made within 10 days after the close of the hearing, unless the chair of the standing committee extends that time for good cause.

The arbitration may proceed if one party does not attend, as long as that party received proper notice of the hearing. Postponements will be granted only if good cause is shown. Even if one party does not attend, no award will be made without the presentation of evidence to support the claim.

If the parties agree, they may waive the hearing and instead submit their case in writing, together with exhibits and other evidence. The arbitrator(s) will make the decision based on the evidence submitted.

WHAT WILL HAPPEN DURING THE HEARING?

All parties and witnesses will be sworn in before they testify. The arbitrators, if they so desire, may request opening statements. In any event, all parties will be given an opportunity to present evidence. Arbitrators are only concerned with evidence directly related to the fee dispute. Depositions shall be allowed only for the perpetuation of testimony. All other pre-hearing discovery is not permitted.

The arbitrators may ask questions at any time during the hearing. Each party should answer each question as completely as possible. The arbitrators will be better able to reach a fair decision if they have a good understanding of each position and the reasoning behind it.

SHOULD I BE REPRESENTED BY AN ATTORNEY AT THE HEARING?

The purpose of arbitration is to resolve legal fee disputes quickly and inexpensively without having to hire an attorney to represent you. However, should you question your ability to represent yourself, you have the right to be represented by an attorney at any arbitration hearing at your own cost.

WHEN CAN I EXPECT A DECISION FROM THE ARBITRATORS?

A decision should be made within 10 days after the close of the hearing, unless extended by the chair of the standing committee for good cause. The decision of the arbitrators shall be in writing, which will include a brief explanation of the award and given to the parties.

If one of the arbitrators does not agree with the majority's decision, then that arbitrator should sign the award separately, but the award is still binding if signed by the majority of the arbitrators. An award may also be entered upon consent of all the parties. Once the award is signed, the hearing may not be reopened except upon consent of all parties and the chair or sole arbitrator. The award may be confirmed, set aside, modified, or corrected only in accordance with Chapter 682, Florida Statutes, as amended.

WHAT WILL THIS PROCEDURE COST ME?

There is no charge to any party. You may incur expenses if you employ an attorney to represent you, or if you wish to employ a stenographer to record the hearing proceedings.

HOW DO I FILE FOR ARBITRATION AND WHEN WILL THE ARBITRATION OCCUR?

Submit a completed agreement to arbitrate form to the Fee Arbitration Program Administrator, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300. Once we receive the completed form, the administrator will contact the opposing side to obtain consent to participate in the program. Once both sides have consented in writing to submit their dispute to the program, the administrator shall assign the file to an arbitrator (or arbitration panel, if necessary). The process of assigning an arbitrator (or panel) may be delayed if a volunteer arbitrator is not immediately available in your area. Since this is a free service, The Florida Bar does not pay the arbitrators who are assigned to your case. Our arbitrators donate their time because they believe in the value of resolving disputes by means other than the court system. Your matter will be assigned to an arbitrator within the circuit where the attorney is located. Delays may be eliminated if the parties are willing to travel to another circuit for the arbitration hearing.

HOW TO AVOID FUTURE FEE DISPUTES

- **DISCUSS LEGAL FEES and RELATED COSTS DURING THE INITIAL CONSULTATION and DEVELOP A WRITTEN FEE AGREEMENT.** Make sure you understand what the agreement does and does not cover. For example, will the client be charged each time he or she telephones the attorney? Does the fee include regular status reports to the client?
- When a deposit or "retainer" is requested, discuss whether or not any part of it will be refunded if the case does not proceed.
- If an attorney is billing by the hour, discuss the need for a monthly statement so the client can be aware of the costs associated with the case.

- If an attorney accepts a case on a contingency basis, make sure both parties understand how it will work. Contingency means the client won't be charged attorney's fees if the case is lost; but the client may still be responsible for costs such as filing fees, investigators and/or transcripts. If the client wins, the attorney is paid a percentage of the money awarded by the court. Both parties should be knowledgeable of the attorney's percentage and whether or not it will be taken before or after court costs are subtracted.
- Request that provision for arbitration of fee disputes be included in your written fee agreement.

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