

**ORANGE COUNTY BAR ASSOCIATION**  
**MANDATORY FEE ARBITRATION COMMITTEE**  
Post Office Box 6130, Newport Beach, California 92658  
Telephone: 949-440-6700 Facsimile: 949-440-6710

**FREQUENTLY ASKED QUESTIONS**

**1. WHAT IS FEE ARBITRATION?**

The purpose of fee arbitration is to hear and resolve disputes between attorneys and clients concerning attorneys' fees and costs. The goal of fee arbitration is to provide for a fair, speedy and impartial hearing so that the dispute can be brought to an equitable conclusion.

**2. HOW DO I REQUEST FEE ARBITRATION?**

To initiate fee arbitration, you need to complete a Petition to Arbitrate a Fee Dispute and pay the appropriate filing fee. This form can be found on the OCBA website or by contacting the OCBA for a copy of the form. You will need to provide a detailed description of the fee dispute. You may also attach copies of any relevant documents including the fee contract and billing records.

**3. IS THERE A CHARGE FOR FEE ARBITRATION? WHO PAYS THE FILING FEE?**

Yes, there is a filing fee. The filing fee offsets the administrative costs of operation of the fee arbitration program. Unless prior arrangements are made between the petitioner and the respondent (the person the petitioner is filing against), this fee is paid by the petitioner (the person requesting arbitration) at the time of filing. Typically, the client is the petitioner and the attorney is the respondent. If the amount in dispute is less than or equal to \$1,500.00, the filing fee is \$75.00. If the amount in dispute is more than \$1,500.00, the filing fee is five percent (5%) of the total amount in dispute. The maximum filing fee is \$5,000.00. In addition, if a hearing extends beyond one (1) day arbitrators are compensated pursuant to OCBA Rules of Procedure for Mandatory Fee Arbitration, Rule 35 (A).

**4. IS THE FILING FEE RECOVERABLE?**

The filing fee is a recoverable cost of arbitration. As a part of the award, the arbitrator may order the other party to reimburse all or part of the filing fee paid. For the OCBA refund policy, please refer to OCBA Rules of Procedure for Mandatory Fee Arbitration, Rule 36.

**5. WHAT IS MY DEADLINE FOR REQUESTING FEE ARBITRATION?**

If you received a "Notice of Client's Right to Arbitration" from the attorney, you have 30 days from the date of its receipt to file a Petition to Arbitrate a Fee Dispute. If you do not file the request form with the program within 30 days, you may lose your right to arbitrate your fee dispute and the attorney may proceed with a lawsuit or other proceeding to collect the fees. A telephone call or a letter to the OCBA requesting arbitration will not protect your rights. You must be sure that the Petition to Arbitrate a Fee Dispute is received by the OCBA's office by the 30<sup>th</sup> day.

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**6. MAY I REQUEST MANDATORY FEE ARBITRATION IF I WANT A REFUND OF ATTORNEY'S FEES ALREADY PAID?**

If you are seeking a refund of attorney's fees that you have already paid, you may request Mandatory Fee Arbitration any time as long as your request is made within the applicable time period allowed in which to bring a civil action seeking judicial resolution of a fee dispute. Please note that the OCBA staff cannot advise you of this applicable time period or statute of limitations. To preserve your right to arbitrate, you should file a request for arbitration promptly.

**7. DOES THE ATTORNEY HAVE TO PARTICIPATE IN THE FEE ARBITRATION?**

In most cases - yes. If the client's request for arbitration is timely and completed on the proper form, the client has a right to arbitrate and can compel the attorney to participate in arbitration. If the client has NOT waived his right to fee arbitration, fee arbitration is mandatory for the attorney. If the attorney willfully chooses not to attend the hearing or otherwise participate in the arbitration proceedings, the hearing will proceed without him or her.

**8. DOES THE CLIENT HAVE TO PARTICIPATE IN THE FEE ARBITRATION?**

Unless the client has previously agreed in writing to arbitration of all disputes concerning fees, costs or both, arbitration is voluntary for the client.

**9. WHO ARE THE ARBITRATORS AND HOW ARE THEY ASSIGNED?**

Arbitrators are attorneys and non-attorneys. They are volunteer members in good standing of the Mandatory Fee Arbitration (MFA) Committee. All fee arbitrations are assigned at least one attorney arbitrator. All three panel arbitrations are assigned at least one non-attorney arbitrator. All arbitrators have received fee arbitration training. Arbitrators are randomly assigned to fee arbitrations.

**10. CAN ARBITRATORS BE DISQUALIFIED?**

Yes. A party may seek disqualification of an arbitrator by delivering a written notice to the OCBA MFA Committee within ten (10) days of notification of the assigned arbitrator. Every party has the right to request the disqualification of one arbitrator without giving any reason. If a party seeks to disqualify more than one arbitrator the written notice must state a "good cause" reason for the disqualification request. If an arbitrator is disqualified the OCBA MFA Committee will assign a new arbitrator.

**11. CAN A PARTY TAKE WITNESSES AND/OR FAMILY TO THE HEARING?**

Parties have the right to bring witnesses to the hearing. (Please refer to Rule 17 of the OCBA Rules of Procedure for Mandatory Fee Arbitration.) Parties must obtain permission of the presiding arbitrator to bring a family member or support person to the hearing. Hearings are generally closed to everyone else.

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**12. WHERE WILL THE HEARING TAKE PLACE?**

Arbitration hearings usually take place at the presiding arbitrator's office or at the Orange County Bar Association office. You will receive notice of the neutral hearing location prior to the hearing.

**13. HOW LONG DOES IT TAKE FOR THE HEARING TO BE SCHEDULED?**

Hearings are generally scheduled within ninety (90) days of the assignment of an arbitrator. You will receive a form requesting available dates for you to attend the hearing. Your cooperation in supplying as many available dates as possible will help speed the scheduling process. When the hearing is scheduled, a "Notice of Hearing" will be sent to all parties. The Notice will include the date, time and place of the hearing.

**14. DO I NEED A LAWYER TO REPRESENT ME AT THE HEARING?**

No. Parties do, however, have the right to be represented by an attorney at the hearing.

**15. WHAT HAPPENS AT THE ARBITRATION HEARING?**

Arbitration hearings are generally short and relatively informal. The arbitrator will administer an oath at the beginning of the hearing. The typical arbitration hearing begins with the client presenting his or her case. The client's objective is to persuade the arbitrator that the fees should be reduced. The attorney's objective, on the other hand, is to convince the arbitrator that the fees charged are reasonable. After the client has presented his or her case, and introduced witnesses, if any, and other evidence, the attorney will have the same opportunity to present his or her position and introduce witnesses and evidence. Each party may question the other party, and the arbitrator may question each party. After all evidence has been presented, both parties will usually have the opportunity to summarize their position for the arbitrator. At all times during the hearing, each side should refrain from making disparaging or personal comments to or about the other party. Parties should not refer to matters unrelated to the attorney-client relationship or matters based on assumption or speculation.

**16. WHAT IS THE DIFFERENCE BETWEEN BINDING AND NON-BINDING (ADVISORY) ARBITRATION?**

If both parties agree in writing to binding arbitration, the final award will not be subject to appeal. A binding arbitration award may be vacated or corrected by a court order only upon the grounds listed in CCP Sections 1286.2 and 1286.6.

If both parties do not agree to binding arbitration, the award will be nonbinding (advisory) which means that each party will have the right to request a trial in court after the conclusion of arbitration. If the amount in dispute is \$1,500.00, or less, Client must stipulate to binding arbitration. ***If the amount in dispute is \$1,500.00, or less and Client does not want to stipulate to binding arbitration, Client may contact the State Bar***

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***of California Mandatory Fee Arbitration Program at 415/538-2020 to obtain the forms to file with the State Bar's program.***

All awards become binding if neither party takes action within thirty (30) days after the award is mailed.

**17. CAN A CLIENT FILE A REQUEST FOR ARBITRATION AFTER THE ATTORNEY HAS FILED A LAWSUIT?**

If the client has not waived his or her rights, the client may file for fee arbitration after the attorney has filed a lawsuit. It is important that the client provide the OCBA with the information regarding the lawsuit within **thirty (30) days** from being served with the lawsuit so that a stay can be processed in a timely manner. A stay is an official court procedure which stops the lawsuit from proceeding in court until the arbitration is completed. The OCBA can provide the client with the stay form, but it is the client's responsibility to file it with the proper court. If the stay form is not properly or timely filed with the court, arbitration will not be permitted and the lawsuit will proceed.

**18. CAN AN ATTORNEY CHARGE HIS CLIENT FOR PREPARING AND ATTENDING THE FEE ARBITRATION HEARING?**

No.

**19. WHAT IF I THINK THE ATTORNEY ENGAGED IN MISCONDUCT OR MALPRACTICE, WILL FEE ARBITRATION BE ABLE TO HELP ME OUT?**

The Mandatory Fee Arbitration program cannot help you recover damages or offset expenses incurred for attorney malpractice or misconduct.

If the arbitrator(s) determines that the attorney's malpractice or professional misconduct reduced the value of his or her services, the arbitrator(s) can reduce the attorney's fees. By law, however, the arbitrator(s) cannot offset the fees or order the attorney to pay you for any damages the attorney's conduct may have caused. If you believe that you have a separate claim for attorney malpractice, you should discuss the matter with an independent attorney regarding your legal rights. If you file a lawsuit for malpractice or seek court resolution of the fee dispute, however, you will waive your right to pursue Mandatory Fee Arbitration.

You may also file a complaint against an attorney with the State Bar of California's Office of Chief Trial Counsel by calling (800) 843-9053. This office handles complaints about unethical attorney conduct. You may go through fee arbitration and file a complaint with the State Bar at the same time as a discipline complaint and a fee dispute are separate matters that achieve different results. Filing a complaint may result in disciplinary action against the attorney; however, the result may not necessarily require the attorney to refund any attorney's fees.

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**20. WHEN DO I RECEIVE THE ARBITRATION DECISION?**

Unless the parties have reached a settlement agreement, a decision will not be made at the hearing. An Arbitration Award and Statement of Decision will be mailed to you by the OCBA office. The award will be mailed to you with a written "Notice of Your Rights After Arbitration" which explains your rights and options after the arbitration award is mailed. The award may provide for a refund of fees and/or costs from the attorney to you, an amount of outstanding fees you owe to the attorney, or a determination that no money is owing to either party. The arbitrator(s) may also allocate the program filing fee, regardless of which party initially paid it. Please allow the arbitrator(s) at least 30 days to make their decision.

**21. WHAT IF I STILL HAVE QUESTIONS?**

Please refer to the OCBA Rules of Procedure for Mandatory Fee Arbitration. Most questions are answered in the written material. You may also contact the Public Services Department **but please do so only after having read all the information that has been sent to you.**

The OCBA staff cannot:

- Give any opinion concerning the merits of a claim or case
- Give any opinion as to whether or not the claim is a "good" one or the party's position is a "winning" one
- Give any opinion concerning OCBA MFA jurisdiction (jurisdictional issues are decided by the arbitrator)

If you do need legal advice, you may be referred to an attorney by calling the OCBA's Lawyer Referral & Information Service at 949/440-6747.