

WHAT CAN THE MANDATORY FEE ARBITRATION PROGRAM DO FOR ME?

What Is The Mandatory Fee Arbitration Program?

The Mandatory Fee Arbitration program provides an opportunity to have a neutral arbitrator or, depending on the amount of the fee dispute, a three member panel of arbitrators, resolve disputes between clients and attorneys over fees and costs through an informal, low-cost alternative to court. Although the arbitration decision is not confidential, the program's file and the arbitration hearing are confidential and not open to the public.

Do I Need An Attorney To Assist Me?

You do not need an attorney to arbitrate a fee dispute against your former attorney. You may choose to hire an attorney at your own expense to represent you at the arbitration, but the expenses incurred for your representation at the arbitration hearing are not recoverable in the fee arbitration. In any event, you should obtain a copy of the rules of procedure from the program handling your fee dispute to educate yourself about the process. Additional information may be found on the State Bar's website: calbar.ca.gov or on your local bar association's website.

How Does The Program Work?

If an attorney is claiming that you owe an outstanding balance of fees and/or costs, the attorney must forward a "Notice of Client's Right to Arbitration" form approved by the State Bar to you prior to filing a lawsuit or other proceeding to collect the amount owed. You will then have the option of requesting Mandatory Fee Arbitration with the appropriate local bar association program or with the State Bar program within 30 days of receiving that notice. If you fail to request Mandatory Fee Arbitration within 30 days of receiving that notice, you will have waived your right to arbitration and the attorney may pursue a legal action or other proceeding to collect his or her fees and/or costs.

After you submit a completed request for arbitration form and the required filing fee to the program, the attorney may respond to your request for arbitration. A neutral arbitrator or a panel of three arbitrators (depending on the amount in dispute) will be assigned to listen to both you and the attorney and decide the appropriate attorney's fees. If it is determined that you paid the attorney more than the arbitrator(s) decides is reasonable, you may be awarded a refund of attorney's fees or costs already paid. Alternatively, the arbitrator(s) may decide that you must pay the attorney his or her unpaid fees or that neither of you owe anything further.

Depending on the circumstances, the arbitrator(s) will consider a number of factors in making this decision. This may include whether there was a written fee

agreement; the value of the attorney's services; whether the attorney spent an appropriate amount of time on your case; whether or not there are any billing errors; and whether any professional negligence or misconduct by the attorney affected the value of the services. The arbitrator(s) will decide the matter based only upon the evidence presented at the hearing.

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. To preserve your right to arbitrate, you should file a request for arbitration promptly.

If I Believe That 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.

Who Will Decide The Fee Arbitration?

The program will assign your fee dispute to a volunteer attorney arbitrator who must be a member in good standing of the State Bar of California. Depending on the amount of your fee dispute, the panel will consist of one lawyer arbitrator or a three member panel consisting of two lawyer arbitrators and one lay (non-lawyer) arbitrator. Fee arbitrators serving for the State Bar or for a local bar association program must adhere to the same rules that apply to judges to avoid actual bias or the appearance of bias.

What Is The Difference Between Binding And Non-Binding Arbitration?

Non-binding arbitration means that after the arbitration decision (called the "Findings and Award") is mailed, either party may file an action in court within the next 30 days rejecting the award and requesting a trial in court. Even if you do not seek a refund of attorney's fees, you must file an action in court to reject a

non-binding award. The party who files the action to reject the award will become the plaintiff in a lawsuit against the other party. This may entail additional costs and, for lawsuits filed in the superior court, the assistance of an attorney. Fee arbitrations are non-binding unless the parties agree in writing, after the dispute arises, to binding arbitration before any evidence is taken by the arbitrator(s). If only one of the parties agrees to binding arbitration or if a party fails to respond, the matter will proceed as non-binding arbitration.

If neither party files an action in court rejecting the award and requesting a trial within 30 days after the award is mailed, a non-binding award will automatically become binding on the parties.

If the arbitration is binding, the award is considered to be final and neither you nor the attorney can request a new trial in court. A binding award can only be corrected or vacated by a court for very limited reasons.

The decision to choose binding or non-binding arbitration is entirely up to you.

How Do I Request Arbitration Of A Fee Dispute?

To initiate fee arbitration, complete a fee arbitration request form from the local bar association program or from the State Bar program if you believe that a fair hearing cannot be obtained from the local program. Attach copies of the documents requested on the form. To complete the request process you will also be required to submit the appropriate filing fee set by the particular program.

Am I Entitled To Review The File Maintained By The Attorney?

A client is entitled to a copy of his or her entire file in the attorney's possession including, but not limited to: (a) all time sheets or time records relating to the services performed by the attorney in the matter in which the fee dispute arose; (b) all statements or billings, client ledger cards, bookkeeping and/or computer records relating to the matter in which the fee dispute arose; and (c) a copy of any written fee agreement or other contract for payment of legal services relating to the matter in which the fee dispute arose. A request by the client for a copy of the file and/or any documents contained in the file must be made in writing and must be given to the attorney within a reasonable period of time prior to the arbitration hearing. At the option of the attorney, he or she may allow the client to inspect and make copies of the documents in the file or, in the alternative, provide full, complete and legible copies of the requested documents without charge to the client no later than five days following receipt of the written request. If the attorney fails to comply with the client's request, the arbitrator(s) may, at his or her discretion, disallow the production of those documents at the hearing.

You will have an opportunity to present other related information at the arbitration hearing. You should include information that specifically relates to the attorney's

fees. The arbitrator(s) needs to be able to understand why you believe the attorney's fees are excessive, but does not necessarily need to know all the details of your case. For additional information, read the State Bar's pamphlet "Preparing for the Fee Arbitration Hearing".

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 submit your request for arbitration to the program. 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 program requesting arbitration will not protect your rights. You must be sure that the arbitration request form is completely filled out and that you have included the appropriate filing fee.

If the attorney has already filed a lawsuit against you for unpaid fees, you may elect to either respond to the lawsuit or to request fee arbitration. However, if you choose to file a response to the lawsuit, you will lose your right to arbitrate the fee dispute. If you request arbitration, the lawsuit will be automatically stayed but you should file the appropriate notice of automatic stay with the court to alert the court that you have filed for arbitration in the event that the attorney has not made the court aware of your request for fee arbitration. This form may be obtained from the local fee arbitration program or from the State Bar program.

Can My Attorney Require Me To Participate In Mandatory Fee Arbitration?

Although the program is generally designed for the client to be able to require his or her attorney to participate in fee arbitration, an attorney may require the client to participate if you and the attorney have a signed agreement to submit fee disputes to a Mandatory Fee Arbitration program. Any pre-dispute agreement that requires binding arbitration, however, will not be enforced against you by the program and you will not be required to participate in Mandatory Fee Arbitration.

When Do I Receive The Arbitration Decision?

Unless the parties have reached a settlement agreement, a decision will not be made at the hearing. Within a set period of time following the hearing, the arbitrator's Findings and Award will be mailed to you by the program. 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.

What If I Believe The Attorney's Conduct Should Be Reported?

If you wish to file a disciplinary complaint with the State Bar of California about your attorney's conduct, separate from arbitrating your fee dispute, you may call the State Bar's toll-free number at 800-843-9053. You may also ask for a copy of the pamphlet "What Can I Do If I Have A Problem With My Lawyer."

Keep in mind that 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.

For further information about the attorney fee arbitration process, please contact this program at the address below:

**The State Bar of California
Office of Mandatory Fee Arbitration
180 Howard Street, 6th floor
San Francisco, CA 94105-1639
(415) 538-2020**

You may also contact your local bar association to inquire about the local fee arbitration program and to request a copy of the local bar association's Rules of Procedure for Fee Arbitrations that will be provided to you at no charge.