

Oregon
State
Bar

Fee Dispute Resolution Program



Oregon State Bar
Fee Dispute Resolution Program
16037 SW Upper Boones Ferry Rd
PO Box 231935 Tigard, OR 97281-1935
(503) 431-6334
or (800) 452-8260, ext. 334

REV April 2016

Fee Dispute Resolution Program

The OSB Fee Dispute Resolution program offers clients and lawyers a voluntary, out-of-court method for resolution of disputes over fees that is informal, quick, confidential, and inexpensive.

This brief synopsis of the dispute resolution process is not intended to answer all the questions you may have about the program. **You should also read the fee dispute resolution rules.** You may wish to hire an attorney to help you decide what to do.



INTRODUCTION

If you have a dispute with your attorney over the fee you have been charged in a case, the Oregon State Bar has a program that might be able to help you. Since 1976, the bar has operated the Fee Arbitration Program, which is available to resolve fee disputes between Oregon attorneys and their clients, Oregon clients with out-of-state attorneys, and between attorney members of the Oregon State Bar over how to apportion a fee.

In 2015 the Oregon State Bar added a fee mediation option, and the program was renamed the Fee Dispute Resolution Program.

WHAT IS FEE ARBITRATION?

Fee arbitration is a private method for resolving disputes about the reasonableness of attorneys' fees. Fee Arbitration is a binding process. Volunteer arbitrators listen to both sides and then make a decision and issue an award and money award.

WHAT IS FEE MEDIATION?

Fee mediation is a nonbinding process in which parties work with a neutral third party mediator to seek a mutually agreeable outcome. Mediators do not represent any party and are not judges. Their role is to manage the process through which parties resolve their conflict, not to decide how the conflict should be resolved. They do this by assuring the fairness of the mediation process, facilitating communication, and maintaining the balance of power between the parties. The parties can choose to resolve their dispute, or not

DISPUTES SUBJECT

Any fee dispute involving an Oregon attorney and a client, an Oregon client with an out-of-state attorney; or attorneys who are members of the Oregon State Bar.

There are two exceptions, the bar may decline disputes involving \$250 or less and the bar may not over rule an order or judgment signed by the court awarding attorney fees.

FILING FEE

The person requesting arbitration and or mediation must pay a filing fee of \$75. However, if you cannot afford to pay the fee, the bar may grant you a waiver. (Call the bar to ask for a waiver application.)

REQUESTING FEE ARBITRATION OR MEDIATION

Either the lawyer or the client may request fee arbitration or fee mediation by contacting the Oregon State Bar for forms and information, or you can go to the website www.osbar.org. The person requesting the arbitration files a "Petition for Dispute Resolution" and signs an "Agreement to Arbitrate" or an "Agreement to Mediate". The "Petition for Dispute Resolution" is a statement of the amount in dispute and an explanation of the nature of the dispute. The "Agreement to Arbitrate" or "Agreement to Mediate" is the parties' agreement to abide by the arbitrator's decision or the settlement reached by the parties.

ASSIGNMENT TO ARBITRATION HEARING OR MEDIATION SESSION

One mediator will be assigned to a case no matter how much money is in dispute. The mediator is chosen from a list of volunteers in the judicial district where the attorney whose fees are in dispute has his or her principal office.

The number of arbitrators assigned to hear a case depends on how much money is in dispute. If the amount is less than \$10,000, one lawyer arbitrator will decide the case. Otherwise, if the amount in dispute is greater than \$10,000, three arbitrators are selected for the panel, two lawyers and one non-lawyer. The arbitrators are chosen from a list of volunteers in the judicial district where the attorney whose fees are in dispute has his or her principal office.

You may object to the appointment of an arbitrator or mediator by contacting Cassandra Dyke at <mailto:cdyke@osbar.org>.

ARBITRATION HEARING

An arbitration hearing is scheduled by the sole arbitrator or by the chair of a three-person panel; except with leave of OSB General Counsel, the hearing will be scheduled within 60 days of the appointment of the arbitrator or the arbitration panel. The parties to the arbitration will be given at least 10 days advance notice of the hearing. The arbitrator or the chair of the panel conducts the hearing and decides what testimony and documents may be used as evidence.

You must come to the hearing unless all parties agree in advance to submit evidence in writing. In that case, the panel's decision will be based on the written material. With the approval of the arbitrator or mediator one or both parties may appear by telephone.

Arbitration hearings are generally informal and legal representation is not required. However, either party may be represented in the arbitration proceeding, at the party's sole expense.

If a party fails to attend the hearing, the dispute will be decided by the arbitrator or panel based upon available information.

MEDIATION SESSION

Once the parties sign an Agreement to Mediate and indicate they wish to mediate, they are asked about their availability for mediation. Based on the information provided and the mediator's schedule, the mediator will set the date and location for the mediation. You should respond promptly to any requests from the mediator regarding your availability on specific dates.

The mediation will typically be held within 60 days after the mediator is appointed. If you intend to be represented by a lawyer at the mediation, let the mediator know so that your lawyer's schedule can be taken into consideration.

Mediation sessions are usually held in the office of the mediator, but other locations, such as the Oregon State Bar office or the local courthouse, may be used.

CONFIDENTIALITY

Arbitration is confidential. Hearings are only open to the people involved in the dispute and not to the public. Records are not disclosed to anyone except on the agreement of all parties, except that the arbitrators must inform the bar of any evidence of ethical misconduct by a lawyer. ORPC 8.3.

Mediation is confidential. Records of the mediation will not be disclosed to anyone except with the agreement of all parties, except that mediators must inform the bar of any evidence of ethical misconduct by a lawyer ORPC 8.3.

MEDIATION SETTLEMENT AGREEMENT

The mediator can memorialize your settlement agreement in a mediation settlement agreement. Mediators will recommend that each party seek independent legal advice before signing a mediation settlement agreement. Mediators cannot provide you legal advice about whether it is a good idea to enter into a settlement agreement. If parties do not resolve their case in mediation, they can still pursue resolution through arbitration.

If the parties choose to resolve their dispute with a written settlement agreement, that agreement is enforceable in the same manner as any other written contract.

ARBITRATION DECISION

The arbitrator or arbitration panel makes its decision within 30 days after the close of the hearing and issues a written award. The arbitrator or the panel may decide that an attorney should refund fees already collected, should collect a reduced fee, or that the fees are reasonable under the circumstances.

The decision of the fee arbitration panel is binding upon the parties. However, when good cause exists, General Counsel may direct the arbitrators to correct or modify an award that contains a mathematical calculation error, is not in proper form, is indefinite, or needs clarification.

Either party may seek to have the award confirmed by the court and entered as a judgment as provided in ORS 36.600 to 36.740.

Either party may petition the court to vacate the award as provided in ORS 36.705 within 20 days of being served with a petition to confirm the award. There are limited grounds for vacating an award. The bar cannot assist in this phase of the process; parties who need help are encouraged to consult an attorney of their choice.

FURTHER QUESTIONS

The Oregon State Bar will answer any additional questions you might have about the fee arbitration program. To ask those questions or to obtain forms, please call the Oregon State Bar at (503) 620-0222, ext. 334 in Portland or toll-free in Oregon at (800) 452-8260, ext. 334.

FREQUENTLY ASKED QUESTIONS

Who can use the Oregon State Bar Fee Dispute Resolution?

Oregon attorneys and a client, Oregon clients with out-of-state attorneys; or Attorneys who are members of the Oregon State Bar.

Who may file a Petition for Dispute Resolution?

The attorney or the client.

How much does the fee dispute resolution cost?

The person who files the Petition pays a filing fee of \$75.

If an attorney does not agree to arbitrate or mediate the dispute, do I automatically win?

No. Fee arbitration and mediation are voluntary. Both sides must agree to participate.

What can I do if the attorney refuses to participate in the arbitration or mediation?

You may exercise your traditional civil remedies. If you have questions about your options, you should consult an attorney for advice.

What can I do if I change my mind after the attorney and I have signed the Agreement to Arbitrate or Agreement to Mediate?

The Fee Dispute Program Administrator, upon notice of one party not wanting to continue with the arbitration or mediation, shall dismiss the case. However, the Agreement to Arbitrate and Agreement to Mediate are contracts. If one party refuses to arbitrate or mediate after signing the Agreement to Arbitrate or the Agreement to Mediate, the other party may seek a judicial order compelling the arbitration or mediation, pursuant to ORS Chapter 36. There is no refund of the filing fee even if all parties agree to cancel the arbitration.

Does the arbitrator, arbitration panel, or mediator have to be from the BOG district in which the attorney maintains his or her office?

Generally, yes. However, An Arbitrator, Arbitration Panel, or Mediator from another BOG district will be appointed if there are insufficient eligible arbitrators or mediators in the attorney's district. Parties may also agree to a single Arbitrator if a panel would normally hear the dispute.

Who sits on Fee Dispute Panels?

An Arbitration Panel is made up of attorneys and non-attorneys from each BOG district who volunteer their time to serve as arbitrators.

Mediators are from each BOG district. They are attorneys who volunteer their time to serve as mediators.

Do I have to attend the arbitration hearing or mediation sessions?

Yes, unless you and the attorney agree to have the dispute decided upon written statements that are submitted. With the consent of the arbitrator, you may be able to participate by telephone.

What is the hearing like?

Arbitration hearings are informal, and there are no special rules governing the presentation of your position. You should bring any documentation that you believe would be helpful and relevant.

You may also bring witnesses who have knowledge of the circumstances. Additional information about preparing for the hearing will be provided when the hearing has been scheduled.

Mediation sessions are informal, and there are no special rules governing the presentation of your position. The Mediator will communicate with you and then with the attorney and help facilitate a settlement.

Do I have to be represented by an attorney at the hearing?

No. You may hire an attorney to represent you at the hearing, but it is not necessary. You are responsible for the expense of hiring an attorney, it will not be reimbursed even if you are successful in the arbitration.

What can I do if I disagree with the decision of the arbitrator(s)?

The arbitration award is binding on both parties, except for the judicial relief remedies provided in ORS 36.600 to 36.740. You should talk to an attorney if you need help obtaining and enforcing the judgment.

Special Needs

If you have a disability for which you need accommodation in the dispute resolution process, or if you need to receive printed materials in a different format, please contact Cassandra Dyke at (503) 431-6334 or (800) 452-8260 ext. 334, or (503) 620-0333, ext. 416 (TDD/TTY).

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