

Oregon
State
Bar

Preparing for Fee Mediation



**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

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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 guide is designed to help clients understand the OSB Fee Mediation process and to assist you in presenting your information at the mediation session. It is not a substitute for legal advice.



INTRODUCTION

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.

CONFIDENTIALITY

Mediation is generally confidential, but there are exceptions. For example, Mediators must disclose certain information about child and elder abuse. Your mediator will discuss confidentiality with you at the mediation.

APPOINTMENT OF THE MEDIATOR

Who is the Mediator?

The mediator will be a volunteer lawyer selected from a panel of volunteers who reside or maintain their offices in the same Board of Governors district as the lawyer involved in the mediation. If a mediator cannot be found in that district, Fee Dispute Resolution Administrator may choose a mediator from another district.

What if I have concerns about a mediator's fairness?

If you have concerns about a mediator's fairness in your case, you should contact the Oregon State Bar General Counsel's office and explain your concerns as soon as possible.

Who is in charge of the mediation?

Mediation is a collaborative process. The mediator will typically ask questions and engage in a discussion about the parties' fee dispute to help the parties move toward resolution.

SCHEDULING THE MEDIATION

When and where is the mediation held?

Once the parties sign the petition and mediation agreement, the mediator will ask about the parties' availability for mediation. You should respond promptly to any requests from the mediator regarding your availability on specific dates. Based on the parties' and the mediator's schedule, the mediator will set the date and location for the mediation.

The mediation will typically be held within ninety (90) days after the mediator is appointed. If you intend to be represented by a lawyer at the mediation, be sure to 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.

Do I have to appear in person?

Mediations are most successful when all parties participate in person. With the consent of the mediator, you may participate in the mediation by telephone, although this is not recommended. After all, in mediation, it is the parties who must decide on the outcome.

THE MEDIATION SESSION

What should I expect at the mediation?

Mediation is very informal. You are not expected to know any rules to participate. Instead, mediation is an opportunity to discuss your fee dispute and share your perspective with the mediator and the other parties.

What should I bring to the mediation?

You should bring to the mediation any documents you think would be helpful to explain your position to the mediator and other parties. These documents might include your written fee agreement and copies of billing statements received from the lawyer. You may also wish to provide copies of court pleadings and other documents reflecting the work the lawyer performed for you. Mediators may request you send these documents to them directly before the mediation.

Do not send copies of these documents to General Counsel.

Can the mediator help me?

The mediator cannot give you legal advice about your fee dispute or any other issue. Although mediators are lawyers, they do not represent either party in the mediation. Your mediator may be able to give you suggestions about how to resolve your fee dispute, but ultimately it is up to the parties to reach a mutually acceptable outcome. With your consent, the mediator may be able to help you memorialize any agreement you reach during mediation.

Can I have a lawyer at the mediation?

You may be represented at the mediation by a lawyer at your own expense. Even if you reach a good settlement with the other party you will not be awarded any amount for the fees you pay your own lawyer to be represented in mediation.

Can I be represented by a friend at the mediation?

A friend or relative may accompany you to the mediation. Except in most unusual cases, a person who is not an attorney cannot speak for you or "represent" you at the mediation.

Are accommodations available if I have a disability?

If you have a disability for which you would like accommodation at the mediation, contact the Oregon State Bar General Counsel's office.

What if I don't show up for the mediation?

Because mediators are volunteers, we ask that you give no less than three (3) business days' notice if you wish to cancel your mediation. If you fail to appear for a scheduled mediation, your case will be closed.

REACHING A RESOLUTION

What happens if you reach a mutually agreeable outcome at mediation?

If you reach a mutually agreeable outcome at mediation, if all parties agree, your mediator can memorialize and implement your 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.

How can I enforce a mediation settlement agreement?

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. The Oregon State Bar will not enforce the agreement for you.

What if mediation is not successful?

If you are not able to resolve your fee dispute in mediation, you may contact the Oregon State Bar Fee Dispute Resolution Administrator to request fee arbitration forms.

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