

Information
About
THE SUPREME COURT
OF
NEW JERSEY'S



ATTORNEY FEE
ARBITRATION
SYSTEM

This pamphlet has been prepared for use by clients who believe the fee charged by their lawyer is unreasonable and may wish to file a request for fee arbitration against the lawyer. Please read it carefully. It explains the procedures and is designed to prevent misunderstanding. If, after reading this brochure you have any questions, please call the Office of Attorney Ethics.

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OFFICE OF ATTORNEY ETHICS

OF THE
SUPREME COURT OF NEW JERSEY
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HOTLINE FOR FEE ARBITRATION
FORMS

1-800-406-8594

www.judiciary.state.nj.us/oea/index.htm

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INTRODUCTION

New Jersey lawyers are required to provide written fee agreements or a letter summarizing the fee arrangement to new clients. This must be done shortly after the lawyer first accepts the case. Even if you have been regularly represented by the lawyer in the past, you should discuss any questions regarding the fee to be charged at the initial conference so that you will have a clear understanding of what the lawyer has been hired to do and how much the case will cost. Despite agreements and discussions about fees, sometimes problems arise. Fee disputes, like any disagreement over the value of services, may be resolved by a lawsuit.

As an alternative to court action, the Supreme Court of New Jersey has created district fee arbitration committees, which will resolve, at your request, through binding arbitration, disputes concerning alleged unreasonable fees. If you desire assistance by a fee arbitration committee in determining whether the fee charged by your lawyer was reasonable you should call the toll free hotline number (1-800-406-8594) and you will be connected to the district fee arbitration secretary to receive a Request for Fee Arbitration Form.

FEE ARBITRATION IS NOT ALWAYS NECESSARY

What should you do if your lawyer's bill seems unreasonable? Say so. Sometimes unpleasantness can be prevented if you and your lawyer talk things over. Ask your lawyer to explain why the bill is higher than you expected. You may find out the case was more complicated and took more time than you realized. Alternatively, the lawyer may agree that a mistake was made in the bill.

FEE ARBITRATION VS. CIVIL LITIGATION

If discussion does not solve the problem, you can take the dispute to court--or to fee arbitration. Fee arbitration is a hearing conducted by one or more persons not involved in the dispute. Like judges, they hear the arguments on both sides and decide the outcome of the dispute. Fee arbitration is impartial, inexpensive and usually faster than going to court.

A lawyer must send you formal notice of your right to utilize fee arbitration before the lawyer may institute legal action to recover a fee. That notice will advise you of your right to choose the fee arbitration process. In that notice the attorney is also required to list the name, address and phone of the fee secretary and to advise you that you have 30 days within which to choose the fee arbitration alternative. The attorney must wait 30 days from the date of notice before starting the suit. In most cases, if you promptly choose to take your dispute to arbitration, the lawyer **must** arbitrate. **If you do not file a Request for Fee Arbitration form within 30 days of receiving notice from the lawyer, you lose your right to utilize the fee arbitration system.** Most clients are interested in a speedy, inexpensive method of resolving fee disputes and animosity is likely to be reduced by the less formal, less adversarial nature of fee arbitration.

FILING FEES

All Requests for Fee Arbitration and all Attorney Fee Responses must be accompanied by a **non-refundable** \$50 administrative filing fee.

Filing fees must be paid by check payable only to "Disciplinary Oversight Committee" at the time the Request Form or Response Form is filed. Non-payment of the filing fee or dishonor of a check that has been submitted can result in dismissal with prejudice of a client's claim and can result in the attorney being barred from further participation in the case.

COMMENCING FEE ARBITRATION

The fee arbitration process is initiated by your asking for a Request for Fee Arbitration Form from the secretary of the fee committee in the district where the lawyer maintains an office for the practice of law. There are district fee committees throughout the state with jurisdiction generally conforming to county lines. Forms and information may be obtained from the appropriate committee secretary. Please call the hotline number (1-800-406-8594) and you will be connected to the appropriate district fee arbitration secretary.

BINDING ARBITRATION

Once you choose to pursue fee arbitration by signing the binding arbitration form, you are bound by the fee committee's jurisdiction unless you withdraw your request for fee arbitration within 30 days. The lawyer is also bound by the proceeding. By requesting fee arbitration both you and your lawyer agree to comply with the decision of the fee arbitration committee. There is no unconditional right to appeal any arbitration determination. Appeals are strictly limited to instances of gross procedural error, obvious legal error or actual fraud.

EXCEPTIONS TO THE RULE OF MANDATORY ARBITRATION

The fee arbitration procedure is not available in every case. A fee committee may, in its discretion, decline to arbitrate fee disputes regarding matters in which no lawyer's services have been rendered for at least two years or in which the total legal fee exceeds \$100,000. The fees in some kinds of cases, such as worker's compensation cases, are determined by the court and are not subject to fee arbitration. A fee committee may further decline to arbitrate disputes in which persons who are not parties to the arbitration have an interest that would be substantially affected by the arbitration, such as where someone other than the client will have to make payment on a fee award. Similarly, when the primary issues in dispute raise substantial legal questions in addition to the basic fee dispute, such as claims of legal malpractice, the fee committee may decline to hear the case. While fee committees do not have the authority to award you money damages for legal malpractice, they are permitted to decide the underlying fee issue if they believe the fee issue can be separated from the malpractice issue. In such situations, you will not lose your right to later file a lawsuit for legal malpractice. Finally, if the lawyer gives you proper, written notice of your right to select fee arbitration, but you fail to secure and file the appropriate form within 30 days of receiving notice, the fee committee must decline to accept the matter.

PRE-HEARING PROCEDURE

Within 20 days after the fee secretary sends your Request for Fee Arbitration to the lawyer, the lawyer must file and send you an Attorney Fee Response on a form provided by the committee. A failure to file the response may result in the lawyer being barred from further participation in the proceeding or in the exclusion of certain evidence offered by the lawyer at the hearing. The burden of proof to demonstrate the nature of the fee agreement and the reasonableness of the ultimate fee is on the lawyer. All basic documentation necessary to carry this burden should be submitted with the Attorney Fee Response. This documentation includes (1) a copy of the written fee agreement; (2) all correspondence confirming or explaining the fee arrangement; (3) the lawyer's time records; (4) all interim bills and the final bill including costs; and (5) a statement of all amounts paid on account. Prior to the hearing neither you nor your lawyer has the right to make formal inquiries or to take depositions. If your lawyer believes that any other lawyer or member of a law firm is responsible for, or entitled to, any portion of the fee, it is your lawyer's responsibility to see to it that that lawyer or firm is made a party to the arbitration proceeding.

WHO ARE THE ARBITRATORS?

Since 1979, fee arbitration committees have been composed of both lawyers and public members. Most fee arbitration cases are heard before panels of three members, composed of either two lawyers and one public member or three lawyers. However, if the total amount of the fee charged is less than \$3,000, the hearing may be held before a single lawyer member of the fee committee. All fee committee members are directly appointed by the Supreme Court of New Jersey and serve without compensation.

HEARING AND DETERMINATION

After the attorney files the Attorney Fee Response, the committee will schedule a hearing with least 10 days notice to the parties. Arbitration hearings are private and formal; however, they do not require observance of strict courtroom procedure and evidence rules. Ordinarily both you and your lawyer appear at the hearing without legal representation; however, both parties are entitled to legal counsel. All witnesses are sworn; however, no stenographic or tape-recorded record is made. Be aware that, when you are given notice of the time, date and place for the arbitration hearing, it is **your obligation** to contact all witnesses you will rely on and to insure their appearance at the hearing. If the witness is important and will not appear voluntarily, you may ask the fee secretary to issue a subpoena. You may also compel the production of documents through subpoenas. You are responsible for personally serving any subpoenas you request. You also must be prepared for the hearing by bringing **all** letters, documents or writings which you wish the arbitrators to consider. The hearing panel or single arbitrator must decide the matter promptly. Except in unusual cases, the arbitration determination will be decided within 30 days following conclusion of the hearing. You will be notified of that decision thereafter by the committee secretary. The unsuccessful party has 30 days from receipt to comply with the determination.

LIMITED RIGHT OF APPEAL

The amount of the fee as determined by the fee committee is binding and final. A **limited** right of appeal to the statewide Disciplinary Review Board is provided. The grounds for such an appeal are as follows:

- (1) Failure of a panel member with a conflict to be disqualified;
- (2) Failure of the fee committee to substantially comply with mandatory procedural requirements;
- (3) Actual fraud on the part of any member of the fee committee; or
- (4) Gross and obvious mistake of law by the fee committee.

This limited appeal may be taken **within 21 days after receipt** of the fee committee's written determination by writing to the Disciplinary Review Board at Richard J. Hughes Justice Complex, P.O. Box 962, Trenton, New Jersey 08625, requesting Notice of Appeal forms. These forms, properly completed, must be returned to the Disciplinary Review Board **within 21 days** of your receipt of the appeal forms. Absent compelling reasons, the Board will not consider untimely requests for, or returns of, Notice of Appeal forms. The timely filing of a notice of appeal automatically stops the collection of any judgment obtained based upon the fee committee's arbitration determination. All limited appeals are considered by the Board on the written record. The Board's decision is final.

ENFORCEMENT OF FEE AWARD

If a fee committee orders a lawyer to refund a portion of the fee to you, the lawyer is required to make such payment within 30 days of receipt of the fee decision. If the lawyer fails to make such payment, you should write to the Office of Attorney Ethics, which is empowered to file a motion with the Disciplinary Review Board seeking a recommendation that the lawyer be temporarily suspended from the practice of law until compliance is obtained. If the Board determines that a refund has improperly been withheld, it may recommend to the Supreme Court of New Jersey that the lawyer be suspended from the practice of law until compliance is achieved. The Board can also impose additional monetary sanctions on the delinquent lawyer for failing to abide by the fee committee's ruling. On the other hand if the fee committee determines that you owe money to the lawyer and you fail to pay within 30 days, the lawyer may enter the judgment in court. **You cannot relitigate the matter.**

CONFIDENTIALITY

Fee arbitration proceedings are confidential, except where a lawsuit is filed in a court concerning the fees. Under Supreme Court Rules, once you file for fee arbitration, you are required thereafter to keep all communications **regarding the fee matter confidential**. You are free to discuss your dissatisfaction with others. You simply may not disclose the fact that you have filed a fee dispute against the lawyer. You may not breach this confidentiality by disclosing your fee dispute to persons other than members of the fee arbitration system, except to discuss the case with other witnesses or to consult an attorney.

AVOIDANCE OF FUTURE FEE DISPUTES

Always ask your lawyer for a written fee agreement, and make sure you understand exactly what it does and does not cover. If you were renting a house, you would ask if the costs of heat and water were included in the rental price. Ask your lawyer specific questions, too. For instance, will you be charged each time you telephone the lawyer? Will

the fee go up if the case takes longer than either of you expects? If the lawyer charges by the hour, ask for a written bill on a regular basis. That way, you will know how much the case is costing as it moves along, and you will not be in for a big surprise at the conclusion of the matter.

Some lawyers will take your case on a "contingency" basis when you sue someone for money. This means you will not be charged legal fees if you lose the case, although you may be responsible for out-of-pocket costs. If you win, you pay the lawyer a percentage of the money the court awards you. Before you agree to a contingency fee, make sure you know how it will work in your case. What will the lawyer's percentage be? Will it be taken from the amount you win before or after court costs are subtracted? Will the fee be less if the case settles out of court? What if you settle the case before trial but after the lawyer has done all the work to get ready for trial? Will the fee be more if you lose in the trial court, but appeal the decision to a higher court and win?

CONCLUSION

Those involved in the New Jersey attorney fee arbitration system appreciate your interest. We seek fair and impartial resolution of fee disputes in the interests of the public, clients and the legal profession.



PLEASE NOTIFY THE
DISTRICT FEE SECRETARY
OF DISABILITY
ACCOMMODATION NEEDS.