

**Fee Arbitration Rules**

**Rules of the Oregon State Bar on Arbitration of Fee Disputes**  
*Effective April 22, 2011*

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## **Section 1. Purpose**

1.1 The purpose of these Rules is to provide for the arbitration of fee disputes between active members of the Oregon State Bar maintaining offices in Oregon and their clients; between those members and other active members of the Oregon State Bar, and; between active members of a state bar other than Oregon and their clients who either are residents of the state of Oregon or have their principal place of business in Oregon. Parties who agree to participate in this program expressly waive the requirements of ORS 36.600 to 36.740 to the extent permitted by ORS 36.610 except as specifically provided herein.

## **Section 2. Arbitration Panels and Advisory Committee**

2.1 General Counsel shall appoint members to an arbitration panel in each board of governors region, from which hearing panels will be selected. The normal term of appointment shall be three years, and a panel member may be reappointed to a further term. All attorney panel members shall be active or active pro bono members in good standing of the Oregon State Bar. Public members will be selected from individuals who reside or maintain a principal business office in the board of governors region of appointment and who are neither active nor inactive members of any bar.

2.2 General Counsel shall also appoint an advisory committee consisting of at least one attorney panel member from each of the board of governors regions. The advisory committee shall assist General Counsel with training and recruitment of arbitration panel members, provide guidance as needed in the interpretation and implementation of the fee arbitration rules, and make recommendations to the board of governors for changes in the rules or program.

## **Section 3. Initiation of Proceedings**

3.1 An arbitration proceeding shall be initiated by the filing of a written petition and an arbitration agreement. The petition must be signed by one of the parties to the dispute and filed with General Counsel's Office within 6 years of the completion of the legal services involved in the dispute.

3.2 Upon receipt of the petition and arbitration agreement signed by the petitioning party, General Counsel's Office shall forward a copy of the petition and the original arbitration agreement to the respondent named in the petition by regular first-class mail e-mail or facsimile or by such other method as may reasonably provide the respondent with actual notice of the initiation of proceedings. Any supporting documents submitted with the petition shall also be provided to the respondent. If the respondent desires to submit the dispute to arbitration, the respondent shall sign the original arbitration agreement and return it to General Counsel's Office within twenty (21) days after receipt. A twenty (21) day extension of time to sign and return the petition may be granted by General Counsel. Failure to sign and return the arbitration agreement within the specified time shall be deemed a rejection of arbitration. A lawyer who is retained by a client who was referred by the OSB Modest Means Program or OSB Lawyer Referral Program may not decline to arbitrate if such client files a petition for fee arbitration.

3.3 If the respondent agrees to arbitrate, General Counsel's Office shall notify the petitioner who shall, within twenty (21) days of the mailing of the notice, pay a filing fee of \$50 for claims of less than \$7500 and \$75 for claims of \$7500 or more. The filing fee may be waived at the discretion of General Counsel based on the submission of a statement of the petitioner's assets and liabilities reflecting inability to pay. The filing fee shall not be refunded if the dispute is settled prior to the issuance of an award or if the parties agree to withdrawal of the petition, except on a showing satisfactory to General Counsel's Office of extraordinary circumstances or hardship.

3.4 If arbitration is rejected, General Counsel's Office shall notify the petitioner of the rejection and of any stated reasons for the rejection.

3.5 The petition, arbitration agreement and statement of assets and liabilities shall be in the form prescribed by General Counsel, provided however, that the agreement may be modified with the consent of both parties and the approval of General Counsel's Office.

3.6 After the parties have signed the agreement to arbitrate, if one party requests that the proceeding not continue, General Counsel's Office shall dismiss the proceeding. A dismissed proceeding will be reopened only upon agreement of the parties or receipt of a copy of an order compelling arbitration pursuant to ORS 36.625.

#### **Section 4. Amounts in Dispute**

4.1 Any amount of fees or costs in controversy may be arbitrated. The arbitrator(s) may award interest on the amount awarded as provided in a written agreement between the parties or as provided by law, but shall not award attorney fees or costs incurred in the arbitration proceeding. General Counsel's Office may decline to arbitrate cases in which the amount in dispute is less than \$250.00.

4.2. The sole issue to be determined in all arbitration proceedings under these rules shall be whether the fees or costs charged for the services rendered were reasonable in light of the factors set forth in RPC 1.5. Arbitrators may receive any evidence relevant to a determination under this Rule, including evidence of the value of the lawyer's services rendered to the client. An attorney shall not be awarded more than the amount for services billed but unpaid. A client shall not be awarded more than the amount already paid, and may also be relieved from payment of services billed and remaining unpaid.

#### **Section 5. Selection of Arbitrators**

5.1 Each party to the dispute shall receive with the petition and arbitration agreement a list of the members of the arbitration panel having jurisdiction over the dispute. The arbitration panel having jurisdiction over a dispute shall be that of the board of governors region in which the lawyer to the dispute maintains his or her law office, unless the parties agree that the matter should be referred to the panel of another board of governors region.

5.2 Each party may challenge without cause, and thereby disqualify as arbitrators, not more than two members of the panel. Each party may also challenge any member of the panel for cause. Any challenge must be made by written notice to General Counsel, shall include an explanation of why the party believes the party cannot have a fair and impartial hearing before the member, and shall be submitted along with the Petition and Agreement. Challenges for cause shall be determined by General Counsel, based on the reasons offered by the challenging party.

5.3 Upon receipt of the arbitration agreement signed by both parties, General Counsel shall select the appropriate number of arbitrators from the list of unchallenged members of the panel to hear a particular dispute. Disputed amounts of less than \$7,500 shall be arbitrated by one panel member. Disputed amounts of \$7,500 or more shall be arbitrated by three panel members (subject to Rule 5.4). If three (3) arbitrators are appointed, General Counsel shall appoint one lawyer member to serve as chairperson. Notice of appointment shall be given by the General Counsel to the parties. Regardless of the amount in controversy, the parties may agree that one arbitrator hear and decide the dispute.

5.4 If three arbitrators cannot be appointed in a particular case from the arbitration panel of the board of governors region in which a dispute involving \$7,500 or more is pending, the dispute shall be arbitrated by a single arbitrator. If, however, any party files a written objection with General Counsel within 10 days after notice that a single arbitrator will be appointed under this subsection, two additional arbitrators shall be appointed, under the procedures set out in subsection 5.5.

5.5 Any change or addition in appointment of arbitrators shall be made by General Counsel. When appropriate, arbitrators can be appointed by the General Counsel from the arbitration panel of a different board of governors region. When necessary, General Counsel may also select other arbitrators, provided that the lawyer members are active members in good standing of the Oregon State Bar.

5.6 Before accepting appointment, an arbitrator shall disclose to the parties and, if applicable, to the other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the proceeding. Arbitrators have a continuing duty to disclose any such facts learned after appointment. After disclosure of facts required by this rule, the arbitrator may be appointed or continue to serve only if all parties to the proceeding consent; in the absence of consent by all parties, General Counsel's Office will appoint a replacement arbitrator and, if appropriate, extend the time for the hearing.

## **Section 6. Arbitration Hearing**

6.1 The arbitrator(s) appointed shall determine a convenient time and place for the arbitration hearing to be held. The chairperson or single arbitrator shall provide written notice of the hearing date, time and place to the parties and to General Counsel's Office not less than 14 days before the hearing. Notice may be provided by regular first class mail, e-mail, or facsimile or by such other method as may reasonably provide the parties with actual notice of the hearing. Appearance at the hearing waives the right to notice.

6.2 The arbitration hearing shall be held within ninety (90) days after appointment of the arbitrator(s) by General Counsel, subject to the authority granted in subsection 6.3.

6.3 The arbitrator or chairperson may adjourn the hearing as necessary. Upon request of a party to the arbitration for good cause, or upon his or her own determination, the arbitrator or chairperson may postpone the hearing from time to time.

6.4 Arbitrators shall have those powers conferred on them by ORS 36.675. The chairperson or the sole arbitrator shall preside at the hearing. He or she shall be the judge of the relevance and materiality of the evidence offered and shall rule on questions of procedure. He or she shall exercise all powers relating to the conduct of the hearing, and conformity to legal rules of evidence shall not be necessary. Arbitrators shall resolve all disputes using their professional judgment concerning the reasonableness of the charges made by the lawyer involved.

6.5 The parties to the arbitration are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing. Any party to an arbitration may be represented at his or her own expense by a lawyer at the hearing or at any stage of the arbitration.

6.6 On request of any party to the arbitration or any arbitrator, the testimony of witnesses shall be given under oath. When so requested, the chairperson or sole arbitrator may administer oaths to witnesses testifying at the hearing.

6.7 Upon request of one party, and with consent of both parties, the panel or sole arbitrator may decide the dispute upon written statements of position and supporting documents submitted by each party, without personal attendance at the arbitration hearing. The chairperson or sole arbitrator may also allow a party to appear by telephone if, in the sole discretion of the chairperson or sole arbitrator, such appearance will not impair the ability of the arbitrator(s) to determine the matter. The party desiring to appear by telephone shall bear the expense thereof.

6.8 If any party to an arbitration who has been notified of the date, time and place of the hearing but fails to appear, the chairperson or sole arbitrator may either postpone the hearing or proceed with the hearing and determine the controversy upon the evidence produced, notwithstanding such failure to appear.

6.9 Any party may have the hearing reported at his or her own expense. In such event, any other party to the arbitration shall be entitled to a copy of the reporter's transcript of the testimony, at his or her own expense, and by arrangements made directly with the reporter. As used in this subsection, "reporter" may include an electronic reporting mechanism.

6.10 If during the pendency of an arbitration hearing or decision the client files a malpractice suit against the lawyer, the arbitration proceedings shall be either stayed or dismissed, at the agreement of the parties. Unless both parties agree to stay the proceedings within 14 days of the arbitrator's receipt of a notice of the malpractice suit, the arbitration shall be dismissed.

## **Section 7. Arbitration Award**

7.1 An arbitration award shall be rendered within thirty (30) days after the close of the hearing unless General Counsel, for good cause shown, grants an extension of time.

7.2 The arbitration award shall be made by a majority where heard by three members, or by the sole arbitrator. The award shall be in writing and signed by the members concurring therein or by the sole arbitrator. The award shall state the basis for the panel's jurisdiction, the nature of the dispute, the amount of the award, if any, the terms of payment, if applicable, and an opinion regarding the reasons for the award. Awards shall be substantially in the form shown in Appendix A. An award that requires the payment of money shall be

accompanied by a separate statement that contains the information required by ORS 18.042 for judgments that include money awards.

7.3 The original award shall be forwarded to General Counsel, who shall mail certified copies of the award to each party to the arbitration. General Counsel shall retain the original award, together with the original agreement to arbitrate. Additional certified copies of the agreement and award will be provided on request. The OSB file will be retained for six years after the award is rendered; thereafter it may be destroyed without notice to the parties.

7.4 If a majority of the arbitrators cannot agree on an award, they shall so advise General Counsel within 30 days after the hearing. General Counsel shall resubmit the matter, de novo, to a new panel within thirty days.

7.5 The arbitration award shall be binding on both parties, subject to the remedies provided for by ORS 36.615, 36.705 and 36.710. The award may be confirmed and a judgment entered thereon as provided in ORS 36.615, 36.700 and ORS 36.715.

7.6 Upon request of a party and with the approval of General Counsel for good cause, or on General Counsel's own determination, the arbitrator(s) may be directed to modify or correct the award for any of the following reasons:

- a. there is an evident mathematical miscalculation or error in the description of persons, things or property in the award;
- b. the award is in improper form not affecting the merits of the decision
- c. the panel or sole arbitrator has not made a final and definite award upon a matter submitted; or
- d. to clarify the award.

## **Section 8. Public Records and Meetings**

8.1 The arbitration of a fee dispute through General Counsel's Office is a private, contract dispute resolution mechanism, and not the transaction of public business.

8.2 Except as provided in paragraph 8.4 below, or unless all parties to an arbitration agree otherwise, all records, documents, papers, correspondence and other materials submitted by the parties to the General Counsel, or to the arbitrator(s), and any award rendered by the arbitrator(s), shall not be subject to public disclosure.

8.3 Arbitration hearings are closed to the public, unless all parties agree otherwise. Witnesses who will offer testimony on behalf of a party may attend the hearing, subject to the chairperson's or sole arbitrator's discretion, for good cause shown, to exclude witnesses.

8.4 Notwithstanding paragraphs 8.1, 8.2, and 8.3, lawyer arbitrators shall inform the Client Assistance Office when they know, based on information obtained during the course of an arbitration proceeding, that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. All records, documents, papers, correspondence and other materials submitted to General Counsel or to the arbitrator(s) during the course of the proceeding, and any award rendered by the arbitrator(s), shall be made available to the Client Assistance Office for the purpose of reviewing the alleged ethical violations in accordance with BR 2.5.

8.5 Notwithstanding paragraphs 8.1, 8.2, and 8.3, General Counsel may disclose to the Client Assistance Office or to Disciplinary Counsel, upon the Client Assistance Office's or Disciplinary Counsel's request, whether a fee arbitration proceeding involving a particular lawyer is pending, the current status of the proceeding, and, at the conclusion of the proceeding, in whose favor the award was rendered.

8.6 Notwithstanding paragraphs 8.1, 8.2 and 8.3, if any lawyer whose employment was secured through the Oregon State Bar Modest Means Program or Lawyer Referral Program refuses to participate in fee arbitration, General Counsel shall notify the administrator of such program(s).

## **Section 9. Arbitrator Immunity and Competency to Testify**

9.1 Pursuant to ORS 36.660, arbitrators shall be immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity. All other provisions of ORS 36.660 shall apply to arbitrators participating in the Oregon State Bar fee arbitration program.

Appendix A

**Oregon State Bar  
Fee Arbitration**

) Case No.

Petitioner

)

v.

) Arbitration Award

)

Respondent

)

**Jurisdiction**

**Nature of Dispute**

**Amount of Award**

**Opinion**

**Award Summary**

The arbitrator(s) find that the total amount of fees and costs that should have been charged in this matter is:

\$

Of which the Client is found to have paid:

\$

For a net amount due of:

\$

Accordingly, the following award is made:

\$

Client shall pay Attorney the sum of:

\$

**(or)**

Attorney shall refund to Client the sum of:

\$

**(or)**

Nothing further shall be paid by either attorney or client.

/Signature(s) of Arbitrator(s)