



STATE BAR OF ARIZONA
FEE ARBITRATION COMMITTEE

BASIC STEPS IN RESOLVING A FEE DISPUTE

The following is a summary of the steps involved in the arbitration of fee disputes before the State Bar Committee established for that purpose.

The complete rules of procedure governing the resolution of fee disputes are attached, together with the forms needed to file for arbitration. A copy of Ethical Rule 1.5 regarding fees also is attached.

The **signed** documents should be mailed to:

State Bar of Arizona
Attn: Fee Arbitration
4201 N. 24th Street, Suite 200
Phoenix, AZ 85016-6288

STEP ONE - FILLING OUT AND MAILING THE FORMS

Read the attached Rules of Arbitration of Fee Disputes. Sign and complete the following forms:

1. Petition for Arbitration
2. Agreement to Arbitrate

Sign Both Forms And Return Them To The State Bar At The Address Above. DO NOT FAX OR EMAIL FORMS.

Please include copies (not originals) of documents including the fee or retainer agreement/letter, billings, invoices, receipts or correspondence that deal with the fees charged/paid in this matter.

The Fee Arbitration Program cannot access the information in your written Bar Charge file/complaint, if one exists. You must provide any information you wish to have considered in your fee dispute matter directly to the Fee Arbitration Program

****PLEASE NOTE:** If someone other than the client paid all or part of the attorney's fees, then that person also must sign these forms. **Forms not completed or signed will be returned causing a delay in the processing of the file.**

Forms and Attachments must be submitted in single-sided, loose-leaf form. DO NOT USE STAPLES, TABS OR BINDERS.

STEP TWO - CONTACTING THE OPPOSING PARTY AND TAKING JURISDICTION

The State Bar will send copies of the forms to the opposing party, who will have an opportunity to respond. If the opposing party agrees to arbitrate, both parties will be bound by the award.

If the opposing party declines to arbitrate or does not respond, you will be notified and the file will be closed.

The petition will be reviewed to make sure that the dispute is within the Committee's jurisdiction. If the dispute is not within the Committee's jurisdiction, you will receive a letter explaining why the Committee declined jurisdiction.

STEP THREE - APPOINTMENT OF ARBITRATORS

A member of the Committee will appoint the arbitrator(s) to hear the dispute. Both parties will receive written notice of the appointment of the arbitrator(s). If either party objects to any or all of the arbitrator(s) chosen, a written objection must be sent to the State Bar within ten (10) days after personal service or date of the notice of the name(s) of the arbitrator(s).

STEP FOUR - SETTING TIME FOR HEARING

Both parties will receive written notice of the date, time and location of the hearing at least fifteen (15) days before the hearing date. This notice will be served personally or by first class mail. If either party has not kept the State Bar informed of any changes in address, this notice will go to the last known address and will constitute notice.

STEP FIVE - THE ARBITRATION HEARING

At the arbitration hearing, both parties may present witnesses and documentary evidence and you both may be represented by an attorney. Witnesses may be cross-examined at the hearing. Any party to the arbitration may make arrangements to have the hearing recorded by a court reporter or by electronic tape recording at the party's own expense, provided notice is given to the opposing party and the arbitrator(s) at least three (3) days prior to the scheduled hearing.

If either party fails to appear at the hearing without good cause, the arbitrator(s) may proceed with the hearing and resolve the dispute upon the evidence produced.

STEP SIX - THE ARBITRATION AWARD

A sole arbitrator is requested to render the award, in writing, within twenty (20) days after the close of the hearing and a panel should issue an award within forty (40) days after the close of the hearing. These are only suggested time frames - they are not mandatory. A signed copy of the award will be mailed to each party upon receipt and review by the State Bar office.

STEP SEVEN - AWARD IS FINAL AND BINDING

The arbitration award is final and binding on all parties who agree to arbitrate by signing the Agreement to Arbitrate. The parties will have thirty (30) days to comply with the award unless the arbitrator indicates otherwise. The award may be enforced by any court of competent jurisdiction.



Rev. 05/14/04

**STATE BAR OF ARIZONA
FEE ARBITRATION COMMITTEE**

RULES OF ARBITRATION OF FEE DISPUTES

As promulgated by the Fee Arbitration Committee and adopted by the Board of Governors of the State Bar of Arizona.

I. PURPOSE AND COMPOSITION OF THE COMMITTEE

- A. The purpose of the State Bar of Arizona Fee Arbitration Committee (hereinafter designated as the "Committee") is to provide a forum for the binding arbitration of fee disputes. This is a voluntary program, available to all parties who agree to be bound by the award.
- B. The Committee shall consist of members appointed by the president of the State Bar, one of whom shall be designated by the president as chair of the Committee.

II. JURISDICTION OF THE COMMITTEE

- A. The Committee's jurisdiction shall include fee disputes:
 - 1. Between and among attorneys practicing in Arizona when the dispute arose, where both parties agree to be bound by executing an Agreement to Arbitrate in the form provided by the State Bar of Arizona;
 - 2. Between attorneys practicing in Arizona when the dispute arose and their clients, where both parties agree to be bound by executing an Agreement to Arbitrate in the form provided by the State Bar of Arizona;
 - 3. Between attorneys practicing in Arizona when the dispute arose and a third party who has paid or agreed to pay the attorney's fees, if the client joins as a co-petitioner or co-respondent, as the case may be, and all parties agree to be bound by executing an Agreement to Arbitrate in the form provided by the State Bar of Arizona;
 - 4. Between clients and the law firm to which the fee in dispute may be owed or has been paid, where all parties agree to be bound by executing an Agreement to Arbitrate in the form provided by the State Bar of Arizona. In such case, agreements to arbitrate shall be executed by the firm's

managing attorney or one who is authorized to enter into binding contracts on behalf of the firm; or

5. Where a court order directs the parties to fee arbitration.
- B. The Committee shall not have jurisdiction over a dispute, except as ordered by a Court of competent jurisdiction:
1. If any party declines to execute the Agreement to Arbitrate in the form provided by the State Bar of Arizona.
 2. If there already has been a determination made as to the validity of the fee;
 3. If an action on the dispute already is pending in another forum;
 4. If the dispute is in the nature of a compulsory counter-claim that could have been raised in another proceeding;
 5. In the absence of a stipulation of the parties, if the petition is filed more than three years after the attorney-client relationship has been terminated or the final billing has been received by the client, whichever is longer; or
 6. If the amount in controversy is less than \$500.
- C. Any member of the Committee, or staff to the Committee, may decline jurisdiction in a particular case where the interests of justice would be served by dismissal or where fee arbitration is unlikely to lead to a resolution of the dispute.

III. SCOPE OF THE FEE ARBITRATION HEARING

- A. The issue before a sole arbitrator or a fee arbitration panel (hereinafter collectively referred to as “the Arbitrator”), as set forth in ER 1.5, Ariz. R.S.Ct. 42. (attached), is whether the fees charged were reasonable for the work that was performed. If disputed, the Arbitrator also may determine the reasonableness of costs.
- B. The issues regarding reasonableness of fees and costs shall be limited to those set forth in the petition, the respondent’s response, other written submissions by the parties, and the testimony and written evidence presented at the hearing.

IV. STARTING THE ARBITRATION: PETITION-AGREEMENT-RESPONSE

- A. Arbitration proceedings shall be initiated by filing a signed petition for arbitration and agreement to arbitrate at the State Bar office in Phoenix. The petition for arbitration (the “Petition”) and agreement to arbitrate (the “Agreement”) shall be in the form provided by the State Bar.

- B. The parties' signatures on the Agreement shall constitute:
1. An avowal that the parties have attempted to resolve the dispute and are unable to do so, or have a reasonable belief that such an effort would be useless.
 2. An agreement to hold harmless from suit the State Bar and its employees, the members of the Committee, the Arbitrator, and all others participating in good faith in the arbitration proceedings.
 3. An acknowledgment that the award of the Arbitrator is final and binding upon the parties and that such award may be enforced by any court of competent jurisdiction.
 4. An agreement to keep the State Bar apprised of any change in address occurring subsequent to filing the Petition. A failure to keep the State Bar so apprised shall be deemed waiver of notice of hearing.
 5. An agreement that said dispute shall be heard and determined by the Committee in accordance with the Rules of Arbitration of Fee Disputes, copies of which have been delivered to and read by each of the parties and which rules expressly are accepted.
 6. An acknowledgment to make available to the Arbitrator all relevant records pertaining to the dispute, including but not limited to the signed fee or retainer agreement, retention letter, and all billings.
 7. An avowal that no civil litigation regarding this fee dispute has been filed or if a civil suit was filed, it has been dismissed or stayed.
 8. An agreement to arbitrate the dispute to conclusion, absent a subsequent written agreement signed by all parties, agreeing to dismiss the dispute.
- C. Upon receipt of the forms initiating an arbitration, the State Bar office shall forward to the respondent a copy of the Petition and Agreement. The State Bar office will request that the respondent sign and return a copy of the Agreement with a response to the Petition. A failure to return the Agreement within twenty (20) days from the date of the transmittal letter from the State Bar will be construed as a declination to arbitrate. Upon receipt of the Agreement and response, the State Bar office will forward a copy of each to the petitioner. If an Agreement is not timely received, the matter shall be dismissed and the petitioner(s) notified of the dismissal.
- D. The State Bar office shall forward a copy of the complete file to a member of the Committee for appointment of an Arbitrator.

- E. The Arbitrator, in his/her sole discretion, may authorize additional discovery procedures or may limit discovery.

Committee Comment:

The use of discovery procedures in fee dispute arbitration is discouraged and should be granted only in the extraordinary case where the fee is of some magnitude and after consideration of whether the parties are represented by counsel.

- F. A member of the Committee, staff to the Committee, or the Arbitrator may grant extensions for any act required by these rules.

V. SELECTION OF THE ARBITRATION PANEL; OBJECTIONS TO PANEL MEMBERS

- A. In an arbitration proceeding where the amount in controversy is more than \$10,000, either party may request in the Agreement that the matter be heard by a fee arbitration panel of three (3) persons. If such a request is made, upon receipt of the file, a member of the Committee shall appoint three (3) persons to serve as an arbitration panel. The panel shall consist of two (2) members of the State Bar and one (1) layperson. One of the lawyers on the panel shall be designated as the panel chair. Absent such a request, a member of the Committee shall appoint one (1) member of the State Bar to serve as the sole arbitrator.
- B. In an arbitration proceeding where the amount in controversy is \$10,000 or less, a member of the Committee shall appoint one (1) member of the State Bar to serve as the sole arbitrator.
- C. Arbitrators shall be chosen geographically, in accordance with Rule VI.A.
- D. The member of the Committee shall advise all parties of the name(s) of the appointed Arbitrator(s) by notice served personally or by first class mail. Within ten (10) days following personal service or date of the notice, any party to the proceedings may file with the State Bar office in Phoenix an objection to the appointment of any of the Arbitrator(s). The State Bar office shall promptly inform the member of the Committee of any objection. Upon notice of an objection, a new Arbitrator shall be selected to replace each Arbitrator objected to, which selection shall be binding upon the party previously having objected.
- E. The State Bar office, with the assistance of the Committee, shall maintain a list of laypersons who have indicated a willingness to act as arbitration panel members. The member of the Committee may select laypersons from sources other than such list in appointing panels.

Committee Comment:

The list of laypersons from which arbitration panel members may be chosen should be as broad-based as possible. Every layperson who actually serves as an Arbitrator will be given a copy of ER 1.5, Ariz. R.S.Ct. 42. which sets forth the factors to be considered in determining the reasonableness of a fee.

VI. VENUE OF HEARING; CONDUCT OF HEARING; RIGHT TO PRESENT EVIDENCE; RIGHT TO COUNSEL; NOTICE OF HEARING; RIGHT TO RECORD HEARINGS; EFFECT OF FAILURE TO APPEAR; POSTPONEMENT.

- A. In the absence of a stipulation of the parties to the contrary, or a finding by the Arbitrator of a more convenient forum, the venue of the hearing shall be: 1) the county in Arizona where the services were performed; or 2) the county in Arizona where the parties contracted for the services.
- B. The Arbitrator shall set a date, time, and location for the hearing and shall notify the parties by personal service or by first class mail not less than fifteen (15) days before the hearing. In the notice of the hearing, the parties shall be informed of their right to present witnesses and documentary evidence and to be represented by counsel.
- C. Mailing of the notification of hearing by first class mail to the last known address of the parties shall constitute notice. A party's appearance at a scheduled hearing shall constitute a waiver of any deficiency in the notice of the hearing.
- D. Any party to the arbitration may make arrangements to have the hearing recorded by a court reporter or by electronic tape recording at the party's own expense, provided notice is given to the opposing party and the Arbitrator at least three (3) days prior to the scheduled hearing. In the event a hearing is tape recorded, the requesting party shall provide necessary equipment and tapes as required by the Arbitrator. Any party to the arbitration is entitled to acquire at his/her own expense a copy of the reporter's transcript of the testimony by making arrangements directly with the reporter. When no party to the arbitration requests that the hearing be recorded and the Arbitrator deems it necessary to have the hearing recorded, a court reporter may be employed for such purpose if authorized by the chair of the Committee in consultation with the Executive Director of the State Bar.
- E. The testimony of witnesses shall be given under oath. The panel chair or sole arbitrator shall administer oaths to witnesses.
- F. The panel chair or sole arbitrator shall preside at the hearing and shall determine questions of procedure and the relevancy and materiality of the evidence offered. He/she shall exercise all powers relating to the conduct of the hearing. Conformity to the legal rules of evidence shall not be required. In cases between clients and attorneys the burden of proof by a preponderance of the evidence as to

the reasonableness of the fee is on the attorney. In all other cases, the burden of proof is on the petitioner.

- G. If at the time set for the hearing all arbitrators are not present, the hearing shall be postponed unless the parties agree that the hearing may proceed with one lawyer member of the panel as the sole arbitrator. In no event shall a hearing be conducted by or proceed with two (2) members of the panel acting as arbitrators.
- H. If any party to an arbitration who has been duly notified fails to appear at a scheduled hearing without good cause as determined by the Arbitrator, the Arbitrator may proceed with the hearing and determine the controversy upon the evidence produced. Any award rendered shall have the same force and effect as if the parties personally attended.
- I. Upon request of a party for good cause, or upon his/her/their own determination, the Arbitrator may postpone or adjourn the hearing from time to time as necessary.
- J. Upon stipulation of the parties to waive a hearing, the Arbitrator may determine the controversy solely on the basis of the file, or by a conference telephone call, the expense for which shall be borne by the respective parties.
- K. Any party and any witness may testify telephonically.

VII. RENDITION; FORM; SERVICE OF ARBITRATION AWARD

- A. The hearing shall be held promptly, but not longer than ninety (90) days after receipt by the Arbitrator of the Agreement signed by both parties. The sole arbitrator shall render the award within twenty (20) days after the close of the hearing. A panel shall render its award by majority vote within forty (40) days after the close of the hearing. The foregoing time limits are not jurisdictional.
- B. The award shall be in writing and signed by at least one Arbitrator. The award shall include: 1) a preliminary statement reciting the jurisdictional factors; 2) a brief statement of the dispute; 3) the findings of fact, including a determination of the reasonableness of the fee; and 4) the award. Where appropriate, an award of interest may be made consistent with Arizona law. The Arbitrator may not award attorney's fees or costs incurred in the arbitration.
- C. The original award shall be forwarded only to the Phoenix office of the State Bar for review and processing. The State Bar staff will send the award to the parties.

Committee Comment:

It is not required that the award be in any particular form. The preliminary statement of jurisdictional factors may include, for example, that a hearing was held upon notice pursuant to a written agreement to arbitrate, the parties were given an opportunity to

testify and cross-examine, et cetera. Arbitrators are encouraged to provide sufficient analysis and facts in the award to explain the reasoning behind the award.

- D. The parties have thirty (30) days from the date upon which a copy of the award is mailed to them to comply with the award. If the parties fail to comply with the award within that time, the award may be judicially confirmed pursuant to Arizona's Uniform Arbitration Act, A.R.S. § 12-1501, et seq. Any objections or modifications to the award may be raised through this procedure.

VIII. RELIEF GRANTED BY AWARD; APPLICATION TO COURT; CONFIDENTIALITY; ENFORCEABILITY OF AWARD

- A. The award shall state the amount to which each party is entitled, if any.
- B. Service of the award on the parties shall terminate: 1) all claims and interests of the parties against one another in the subject matter of the arbitration; and 2) all rights of the attorney to retain possession of any property of the client pertaining to the subject matter of the arbitration that is not awarded to the attorney in the award.
- C. Payment of the amount awarded shall constitute a complete satisfaction of all claims arising out of the subject matter of the arbitration.
- D. With the exception of the award itself, all records, documents, files, proceedings and hearings pertaining to arbitration of any fee dispute under these rules shall not be open to the public or to any person not involved with the dispute, but shall be open to any court seeking to confirm or set aside such award and to the Discipline Department, LOMAP, MAP, and BLS programs of the State Bar. The State Bar shall retain all original awards. Arbitrators are encouraged to retain their arbitration files for a period of two years after issuance of the award.
- E. Any binding award may be enforced by the superior court of the county in which the arbitration hearing was held.

IX. ARBITRATION OF FEE DISPUTES BETWEEN AND AMONG ATTORNEYS

- A. The Committee will accept jurisdiction of disputes between and among attorneys only when all parties agree to be bound by the award.
- B. The Arbitrator shall determine whether the fee in dispute should be divided and, if so, in what proportion.

X. COMMUNICATION BETWEEN THE PARTIES AND ARBITRATOR

Verbal communication between the parties and Arbitrators is to be avoided, if possible. Arbitrators are advised to have an associate or a secretary handle scheduling problems.

All written communication to and from the Arbitrators should be copied to all parties, their counsel, if any, and the State Bar. Ex-parte communication shall be reported promptly to the opposing party.

Amended by the Board of Governors of the State Bar of Arizona this 14th day of May 2004.

Helen Perry Grimwood, President
State Bar of Arizona

Kent Nicholas, Chair
State Bar Fee Arbitration Committee

Rules Amended May 14, 2004

ER 1.5 FEES

- (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;
 - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
 - (8) the degree of risk assumed by the lawyer.
- (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing.
- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.
- (d) A lawyer shall not enter into an arrangement for, charge, or collect:
- (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof;
 - (2) a contingent fee for representing a defendant in a criminal case; or
 - (3) a fee denominated as "earned upon receipt," "nonrefundable" or in similar terms unless the client is simultaneously advised in writing that the client may nevertheless discharge the lawyer at any time and in that event may be entitled to

a refund of all or part of the fee based upon the value of the representation pursuant to paragraph (a).

- (e) A division of a fee between lawyers who are not in the same firm may be made only if:
- (1) each lawyer receiving any portion of the fee assumes joint responsibility for the representation;
 - (2) the client agrees, in a writing signed by the client, to the participation of all the lawyers involved, including the share each lawyer will receive; and
 - (3) the total fee is reasonable.

Comment

Reasonableness of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. When the scope of the representation changes, in a material way, the lawyer should notify the client about the changes in writing. In a new client-lawyer relationship, however, a written understanding as to fees and expenses must be promptly established. Generally, furnishing the client with a simple memorandum or copy of the lawyer's customary fee arrangements will suffice, provided that the writing states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.

[3] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this Rule, including consideration of the degree of risk assumed by the lawyer at the outset of the representation. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider all of the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See ER 1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to ER 1.8(i). However, a fee paid in property instead of money may be subject to the requirements of ER 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures. When there is doubt whether a contingent fee is consistent with the client's best interest, the lawyer should discuss with the client alternative basis for the fee and explain their implications.

Prohibited Contingent Fees

[6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of alimony or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, alimony or other financial orders because such contracts do not implicate the same policy concerns.

Disclosure of Refund Rights for Certain Prepaid Fees

[7] Advance fee payments are of at least four types. The "true" or "classic" retainer is a fee paid in advance merely to insure the lawyer's availability to represent the client and to preclude the lawyer from taking adverse representation. What is often called a retainer but is in fact merely an advance fee deposit involves a security deposit to insure the payment of fees when they are subsequently earned, either on a flat fee or hourly fee basis. A flat fee is a fee of a set amount for performance of agreed work, which may or may not be paid in advance but is not deemed earned until the work is performed. A nonrefundable fee or an earned upon receipt fee is a flat fee paid in advance that is deemed earned upon payment regardless of the amount of future work performed. The agreement as to when a fee is earned affects whether it must be placed in the attorney's trust account, see ER 1.15, and may have significance under other laws such as tax and bankruptcy. But the reasonableness requirement and application of the factors in paragraph (a) may mean that a client is entitled to a refund of an advance fee payment even though it has been denominated "nonrefundable," "earned upon receipt" or in similar terms that imply the client would never become entitled to a refund. So that a client is not misled by the use of such terms, paragraph (d)(3) requires certain minimum disclosures that must be included in the written

fee agreement. This does not mean the client will always be entitled to a refund upon early termination of the representation (e.g., factor (a)(2) might justify the entire fee), nor does it determine how any refund should be calculated (e.g., hours worked times a reasonable hourly rate, quantum merit, percentage of the work completed, etc.), but merely requires that the client be advised of the possibility of the entitlement to a refund based upon application of the factors set forth in paragraph (a). In order to be able to demonstrate the reasonableness of the fee in the event of early termination of the representation, it would be advisable for lawyers to maintain contemporaneous time records for all representations undertaken on any flat fee basis.

Division of Fee

[8] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee by agreement between the participating lawyers if all assume responsibility for the representation as a whole and when the client agrees, in a writing signed by the client, to the arrangement, including the share that each lawyer is to receive. A lawyer should only refer a matter to a lawyer who the referring lawyer reasonably believes is competent to handle the matter. See ER 1.1. If the referring lawyer knows that the lawyer to whom the matter was referred has engaged in a violation of these Rules, the referring lawyer should take appropriate steps to protect the interests of the client. Except as permitted by this Rule, referral fees are prohibited by ER 7.2(b).

[9] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes Over Fees

[10] The State Bar of Arizona has established an arbitration procedure for the resolution of fee disputes. Each lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.



STATE BAR OF ARIZONA
FEE ARBITRATION COMMITTEE

PETITION FOR ARBITRATION OF FEE DISPUTE

RETURN **ORIGINAL** FEE ARBITRATION FORMS TO:

State Bar of Arizona
Attn: Fee Arbitration
4201 N. 24th Street, Suite 200
Phoenix, AZ 85016-6288
(602) 340-7379

DO NOT WRITE IN THIS SPACE
STATE BAR USE ONLY

FILE NUMBER: _____
DATE RECEIVED: _____

Please type or print. Answer each *applicable* question completely. Do not write on the back of the pages. Use additional sheets as required.

1. **Client's*** name, address and telephone number:

Name

Address

City State Zip Code

Telephone Number

2. **Attorney's** name, address and telephone number:

Name

Address

City State Zip Code

Telephone Number

***If this fee dispute is between two attorneys, please use this space to indicate the name of the attorney initiating fee arbitration.**

3. If the attorney was paid by someone other than the client, give the name, address and telephone number of the person who paid the attorney. That person also must sign these forms.

_____ *Name*

_____ *Address*

_____ *City State Zip Code*

_____ *Telephone Number*

4. Was a fee or retainer agreement signed? Yes ___ No ___ If yes, please provide a copy. If you do not have a copy, please specify the nature of the fee agreement (hourly, contingent, flat fee, earned upon receipt, etc.).

5. Type of case: _____

6. What was the total amount of the fees and/or costs charged for the representation?

7. How much of the total fees and/or costs charged has been paid? _____

8. What is the EXACT DOLLAR AMOUNT in dispute? _____

9. In what county in Arizona were the legal services performed? _____

13. Name, address and telephone number of the attorney representing you in this fee arbitration, if any:

Name

Address

City State Zip Code

Telephone Number

I hereby certify, under penalty of perjury, that the foregoing information is true and correct.

I agree to keep the State Bar of Arizona apprised of my address at all times during these proceedings; my failure to notify the State Bar of any changes in my address shall constitute waiver of notice of hearing.

Signature

Date

Printed Name

Signature

Date

Printed Name



Rev. 10/02

STATE BAR OF ARIZONA
FEE ARBITRATION COMMITTEE

AGREEMENT TO ARBITRATE

FILE NUMBER _____

This Agreement is made between _____, the Client, and _____, the Attorney, regarding a fee dispute that exists between them, the nature of which is set forth in the Petition for Arbitration now on file.

Said parties expressly consent and agree as follows:

- 1. That the parties have attempted to resolve the dispute and are unable to do so, or have a reasonable belief that such an effort would be useless.
2. To hold harmless from suit the State Bar and its employees, the members of the Committee, the Arbitrator, and all others participating in good faith in the arbitration proceedings.
3. That the award of the Arbitrator is final and binding upon the parties and that such award may be enforced by any court of competent jurisdiction.
4. To keep the State Bar apprised of any change in address occurring subsequent to filing the petition. A failure to keep the State Bar so apprised shall be deemed waiver of notice of hearing.
5. That said dispute shall be heard and determined by the State Bar of Arizona Fee Arbitration Committee in accordance with the Rules of Arbitration of Fee Disputes, copies of which have been delivered to and read by each of the undersigned and which rules expressly are accepted.
6. To make available to the Arbitrator all relevant records pertaining to the dispute, including but not limited to the signed fee or retainer agreement, retention letter and all billings.
7. That no civil litigation regarding this fee dispute has been filed or if a civil suit was filed, it has been dismissed or stayed.
8. An agreement to arbitrate the dispute to conclusion, absent a subsequent written agreement signed by all parties, agreeing to dismiss the dispute.

Each party has signed this agreement on the date set opposite his/her signature.¹

Client's Signature _____ [] _____ Date
Additional Client's/Payer's Signature (if applicable) _____ [] _____ Date
Attorney's Signature _____ [] _____ Date
Attorney's Signature _____ [] _____ Date

1 In an arbitration proceeding where the amount in controversy is more than \$10,000, either party may request that the matter be heard by a fee arbitration panel of three (3) persons (See Rule V.A., Rules of Arbitration of Fee Disputes). Please check the box following your signature if the amount in controversy is more than \$10,000 and you would like this matter assigned to a three-member panel.