

IF YOU HAVE QUESTIONS, CALL US AT:

609-403-7800

<https://www.njcourts.gov/attorneys/oea.html>

Forms and information are available online.

INTRODUCTION

New Jersey attorneys are required to provide new clients with either (1) a written fee agreement or (2) a letter summarizing the fee arrangement. This must be done when, or shortly after, the attorney first accepts the case. Even if you have been regularly represented by the attorney in the past, you should discuss at the initial conference any questions that regarding the fees the attorney may charge you over the course of the representation, so that there will be a clear understanding by both the attorney and you of (1) the services you are hiring the attorney to perform, and (2) how much the attorney will charge you to perform those services and to pay related costs. Despite agreements and discussions about fees, issues may arise about the size of the attorney's bill. Fee disputes, like any disagreement over the value of services, may be resolved by a lawsuit.

As an **alternative to such a lawsuit**, the Supreme Court of New Jersey has established the fee arbitration process as a low-cost and efficient method to resolve such disputes. District fee arbitration committees throughout New Jersey are maintained by volunteers, with the goal of resolving, through binding arbitration, disputes over attorney fees. Fee arbitration is impartial and inexpensive, and the arbitration process is typically resolved more quickly than a court case. The fee arbitration process may be less stressful for all involved, since it is less formal and designed to bring matters towards their conclusion in a straightforward, time-saving, and efficient way.

What should you do if your attorney's bill seems unreasonable? As a first step, ask your attorney 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 may have expected, or that the costs of the representation were more than anticipated. Alternatively, the attorney may agree that the bill should be adjusted.

COMMENCING FEE ARBITRATION

If discussion does not resolve the issues you raise about the attorney's bill, you may either seek relief from a court (which would include the filing of a lawsuit), or commence fee arbitration.

An attorney must send you formal notice of your right to seek fee arbitration before the attorney may file a lawsuit to recover a fee. In that notice, the attorney is also required to list the name, address and phone number of the district fee secretary, and to advise you that you have 30 days within which to file the Fee Arbitration Request Form with the district fee secretary. The attorney must wait 30 days from the date of notice before filing the lawsuit. In most cases, if you promptly choose to take your dispute to arbitration, the attorney **must** arbitrate. **If you do not take steps to file the Attorney Fee Arbitration Request Form within 30 days of receiving pre-action notice from the attorney, you lose your right to seek relief through the fee arbitration system.**

Complete information about the fee arbitration process is available on the internet at <https://www.njcourts.gov/attorneys/oea.html>. You will find there the "**Attorney Fee Arbitration Request Form**" and information about the fee arbitration process, including the list of the district fee arbitration secretaries. You would print a copy of the Request Form, fill it out, sign it, and then send the completed form (along with 5 copies) to the district fee secretary for the county in which the attorney's law office is located (the fee secretary's address is listed on the website noted above). You should also call the district secretary with any questions about the process, or call the Statewide Fee Arbitration Coordinator at 609 403-7800.

HOW TO FILE:

SUBMIT THE REQUEST FORM (+ 5 ADDITIONAL COPIES) WITH THE FILING FEE

The six sets of the Attorney Fee Arbitration Request Forms (the original and 5 copies of **all** forms, including attachments) **MUST** be accompanied by a **non-refundable** \$50 administrative filing fee. The check must be made payable to the "**Disciplinary Oversight Committee.**" When the attorney thereafter submits the Attorney Fee Response Form, the attorney must also submit the original and five copies, along

with the \$50 filing fee. Both parties are required to pay the filing fee.

The Request for Fee Arbitration **will not be docketed** (formally listed as a proceeding) by the district fee secretary until the secretary receives the \$50 check from the client. If the check is not received within a short period of time, or if the check bounces, the Court Rules specify that the client's claim must be dismissed with prejudice. If the attorney fails to send in the \$50 check with the Response form within the time limits, the attorney may be barred from participation in the case, but the attorney will nonetheless be bound by the results of the arbitration.

BINDING ARBITRATION

Once the client chooses to pursue fee arbitration by signing the binding arbitration form, the client has thirty days within which to withdraw the request. Thereafter, the client will be bound by the fee committee's jurisdiction. The attorney is also bound by the proceeding. **Once the client requests fee arbitration, both the attorney and the client agree to comply with the decision of the fee arbitration committee, and they are each bound by the results of the proceeding.**

JURISDICTION OF THE FEE ARBITRATION COMMITTEES

The fee arbitration procedure is not available in every case. The fee committees do not have jurisdiction to determine cases in which six years have passed since the last attorney services were rendered. A fee committee may, in its discretion, decline to arbitrate a fee in which the total legal fee (not including costs) 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. In such situations, you would still have a right later on to file a lawsuit for legal malpractice. See R. 1:20A-2(c). Finally, if

the attorney 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.

While fee committees do not have the authority to award you money damages for legal malpractice, they are required to determine whether the fee charged was reasonable. In assessing whether the fee was reasonable, the hearing panel must consider the factors specified under Rule of Professional Conduct 1.5(a).

THE ATTORNEY'S RESPONSE AND THE ATTORNEY'S BURDEN OF PROOF

The Court Rules specify the time periods allowed for the attorney to submit the Attorney Fee Response along with the check for the \$50 filing fee, after the attorney receives from the fee secretary the client's Attorney Fee Arbitration Request Form. The attorney must return six copies of the form for filing with the fee secretary, and send an additional copy to the client. If the attorney fails to submit the response or the available supporting documentation within the allowed time limits, the attorney may be barred from further participation in the proceeding or from offering evidence at the hearing.

The **burden of proof** to demonstrate the nature of the fee agreement and the reasonableness of the fee is on the attorney. 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 attorney'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 the client nor the attorney has the right to make formal inquiries (to demand discovery) or to take depositions. If the attorney believes that any other attorney or member of a law firm is responsible for, or entitled to, any portion of the fee, it is the attorney's responsibility to see to it that that attorney or firm is made a party to the arbitration proceeding, and the attorney must notify the district secretary and follow the procedures set forth in the Court Rules. See R. 1:20A-3.

WHO ARE THE ARBITRATORS?

Since 1979, fee arbitration committees have been composed of both attorneys and public members who volunteer their time. Most fee arbitration cases are heard before panels of three members, composed of two attorneys and one public member (or three attorneys, if a public member is unavailable). If the total amount of the fee charged is less than \$3,000, the hearing may be held before a single attorney member of the fee committee. All fee committee members are volunteers who have been directly appointed by the Supreme Court of New Jersey to serve without compensation.

HEARING AND DETERMINATION

After the attorney files the Attorney Fee Response, the committee will schedule a hearing with at 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 the client and the attorney appear at the hearing without legal representation. In other words, you do **not** have to hire another attorney to assist you in the fee arbitration proceeding. You may do so if you choose, nonetheless.

Only the parties and witnesses may attend fee hearings, so if you will need the assistance of any other person (for example, a translator or interpreter), you must ask the district secretary in advance, no later than when you receive the hearing notice.

All witnesses have to swear or affirm to tell the truth. The proceedings will typically not be recorded. 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 of your witnesses 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.

Any documents on which either party will rely at the hearing should be submitted **in advance** of the hearing (typically as attachments to the Request form or the Attorney Response, and provided to the

adverse party). The parties should also bring to the hearing all of those materials, such as all letters, documents or records in any form which either party may ask 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. The parties will receive the written Arbitration Determination from the district fee secretary.

LIMITED RIGHT OF APPEAL

The amount of the fee as determined by the fee committee is binding on both parties and it is final. There is no unconditional right to appeal any Arbitration Determination. The Court Rules specify the following as the limited grounds for appeal:

- (1) Conflict of interest of a panel member;
- (2) Failure of the fee committee substantially to comply with mandatory procedural requirements, or substantial procedural unfairness which led to an unjust result;
- (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 Arbitration Determination. The appeal forms may be obtained from the Disciplinary Review Board (the "DRB") at Richard J. Hughes Justice Complex, P.O. Box 962, Trenton, New Jersey 08625, or you may download the appeal form from the DRB website at <http://www.njcourts.gov/attorneys/drb.html>. The appeal form, properly completed, must be returned to the DRB **within 21 days**. 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 DRB on the written record. **The decision of the DRB on any appeal is final.**

ENFORCEMENT OF FEE AWARD

If the Arbitration Determination directs that the attorney must pay a specified sum to the client, the attorney is **required** to make such payment within 30 days of receipt of the Arbitration Determination

(unless the matter is on appeal). Without a hearing being conducted, the parties may also reach agreement by Stipulation of Settlement to resolve the fee dispute. In either case, if the attorney fails to make the payment that is owed to the client, the client should contact the Office of Attorney Ethics (609)403-7800, which is empowered to file a motion with the DRB seeking a recommendation that the attorney be suspended from the practice of law until the attorney complies with the fee determination.

After the same 30-day period within which payment must be made (or after the appeal has been decided by the DRB), the parties may also seek to have the Arbitration Determination entered as a judgment by a Court, by following the procedures specified by Court Rules 1:20A-3(e) and 4:67. **But neither party may re-litigate the matter.**

CONFIDENTIALITY

Fee arbitration proceedings are confidential, and the Court Rules spell out the restrictions on disclosure of the proceedings. See R. 1:20A-2(c)(2)(B) and R. 1:20A-5. **Under Court Rules, once you file for fee arbitration, you are required thereafter to keep all communications and records regarding the fee matter confidential.** 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.

CONCLUSION

The New Jersey Supreme Court has established the attorney fee arbitration system to provide clients with a fair, efficient, economical, and expeditious means of resolving fee disputes, and to foster public confidence in the legal profession. Accordingly, all involved with the fee arbitration committees welcome your participation in the process.



PLEASE NOTIFY THE
DISTRICT FEE SECRETARY
OF DISABILITY
ACCOMMODATION NEEDS.

Information About THE SUPREME COURT OF NEW JERSEY'S



ATTORNEY FEE ARBITRATION SYSTEM

This pamphlet provides an overview of the fee arbitration process, which may be commenced by any client who questions the reasonableness of any fee charged by an attorney for legal

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