

THE STATE BAR OF CALIFORNIA

# Having a Fee Dispute With Your Lawyer?



1. Do I need an attorney to help me?
2. How does the program work?
3. May I request mandatory fee arbitration if I want a refund of lawyer's fees already paid?
4. If I think the lawyer engaged in misconduct or malpractice, will fee arbitration help me?
5. Who decides the fee arbitration?
6. What's the difference between non-binding and binding arbitration?
7. How do I request arbitration of a fee dispute?
8. Am I entitled to review the file maintained by the lawyer?
9. What's my deadline for requesting fee arbitration?
10. Can my attorney require me to participate in mandatory fee arbitration?
11. When do I receive the arbitration decision?
12. What if I think the lawyer's conduct should be reported?

© 2015 The State Bar of California. No part of this work may be reproduced, stored in a retrieval system, or transmitted in any medium, without prior written permission.

## Mandatory fee arbitration can help you

If you and your lawyer have a dispute about how much you owe in lawyers fees or costs, the State Bar of California has a program that can help. The mandatory fee arbitration program provides an opportunity to have a neutral arbitrator or a panel of arbitrators resolve your dispute through an informal, low-cost alternative to court.

The arbitration process is confidential and not open to the public.

### 1. Do I need an attorney to help me?

You do not need a lawyer to arbitrate a fee dispute against your former lawyer. You may choose to hire one at your own expense to represent you at the arbitration, but that expense is not recoverable in the arbitration.

Either way, you should obtain a copy of the rules of procedure from the program handling your fee dispute to educate yourself about the process. Additional information can be found on the State Bar's website, [www.calbar.ca.gov](http://www.calbar.ca.gov), or on your local bar association's website if it offers fee arbitration.

### 2. How does the program work?

If a lawyer is claiming that you owe an outstanding balance of fees or costs, he or she must forward to you a "Notice of Client's Right to Fee Arbitration" form approved by the State Bar before or at the time of filing a lawsuit or other proceeding to collect the amount. You will then have the option of requesting mandatory fee arbitration with the appropriate local bar association program within 30 days of receiving that notice, or with the State Bar if the appropriate local bar does not offer mandatory fee arbitration. If you fail to request mandatory fee arbitration within

30 days, you will have waived your right to arbitration, and the lawyer may pursue a legal action or other proceeding to collect the fees or costs.

After you submit a request for arbitration form and filing fee to the appropriate program, the lawyer is provided an opportunity to respond to your request. A neutral arbitrator or a panel of three arbitrators (depending on the amount in dispute) will be assigned to listen to both you and the lawyer and decide the appropriate fees.

The arbitrator may decide that you paid the attorney more than is appropriate, and you may be awarded a refund of lawyer's fees or costs already paid. The arbitrator may also decide that you must pay the lawyer unpaid fees, or that neither of you owe anything further. In no event will an arbitrator order you to pay more than what you agreed to in the fee agreement.

Depending on the circumstances, the arbitrator will consider a number of factors in reaching a decision. These may include whether there was a written fee agreement; the value of the lawyer's services; whether the lawyer spent an appropriate amount of time on your case; whether or not there are any billing errors; (and whether any professional negligence or misconduct by the lawyer affected the value of the services). The arbitrator will decide the matter based on written submissions and the evidence presented at the hearing. The award will be either binding or nonbinding, depending on what the two parties choose.

### 3. May I request mandatory fee arbitration if I want a refund of lawyer's fees already paid?

If you are seeking a refund of lawyer's fees already paid, you may request mandatory fee arbitration any time as long as your request is made within the time period allowed in which to bring a civil action seeking judicial resolution of a fee dispute (2 years for an

oral contract, 4 years for a written contract). However, if attorney has provided you with notice of your right to fee arbitration, you only have 30 days to file.

To preserve your right to arbitrate, you should file a request for arbitration promptly.

### 4. If I think the lawyer engaged in misconduct or malpractice, will fee arbitration help me?

No, the mandatory fee arbitration program cannot help you recover damages or offset expenses incurred for the lawyer's misconduct or malpractice.

But if the arbitrator determines that the lawyer's malpractice or professional misconduct reduced the value of legal services provided, he or she can reduce the lawyer's fees. By law, however, the arbitrator cannot offset the fees or order the lawyer to pay for damages that the misconduct may have caused.

If you think you have a separate claim for legal malpractice, you should discuss your legal rights with an independent lawyer. If you file a lawsuit for malpractice or seek court resolution of the fee dispute after receipt of the Notice of Client's Right to Fee Arbitration, however, you waive your right to pursue mandatory fee arbitration.

### 5. Who decides the fee arbitration?

The program will assign your fee dispute to a volunteer lawyer arbitrator who must be a member in good standing of the State Bar of California.

Depending on the amount of your fee dispute, the panel will consist of one lawyer arbitrator or a three-member panel consisting of two lawyer arbitrators and one non-lawyer arbitrator.

## 6. What's the difference between non-binding and binding arbitration?

Non-binding arbitration means that after the arbitration decision is mailed, either party may file an action in court within the next 30 days rejecting the award and requesting a trial in court. Even if you don't seek a refund of lawyer's fees, you must file an action in court to reject a non-binding award. The party who files the action to reject the award will become the plaintiff in a lawsuit against the other party. This may entail additional costs and, for lawsuits filed in the Superior Court, the assistance of a lawyer.

Fee arbitrations are nonbinding unless the parties agree in writing, after the dispute arises, to binding arbitration before any evidence is taken by the arbitrator. If only one of the parties agrees to binding arbitration or if a party fails to respond, the matter will proceed as non-binding arbitration.

If neither party files an action in court rejecting the award and requesting a trial within 30 days after the award is mailed, a nonbinding award will automatically become binding on the parties.

If the arbitration is binding, the award is considered to be final and neither you nor the lawyer can request a new trial in court. A binding award can only be corrected or vacated by a court for very limited reasons.

The decision to choose non-binding or binding arbitration is entirely up to you.

## 7. How do I request arbitration of a fee dispute?

To initiate fee arbitration, complete a fee arbitration request form from your local bar association program, or from the State Bar program if there is no local bar association that offers fee arbitration or you believe you can't get a fair hearing from the local program.

Attach copies of the documents requested on the form. To complete the request process you will also be required to submit a filing fee set by the program.

## 8. Am I entitled to review the file maintained by the lawyer?

As the client you are entitled to a copy of your entire file in the lawyer's possession including, (a) all time sheets or time records relating to the services performed by the attorney in the matter in which the fee dispute arose; (b) all statements or billings, client ledger cards, bookkeeping or computer records relating to the matter; and (c) a copy of any written fee agreement or other contract for payment of legal services relating to the matter. A request by the client for a copy of the file or any documents contained in it must be made in writing and given to the attorney within a reasonable time before the arbitration hearing.

Your lawyer may opt to allow you to inspect and make copies of the documents in the file or provide full, complete and legible copies of the requested documents without charge no later than five days following receipt of the written request. If the lawyer fails to comply with the client's request, the arbitrator may bar those documents from the hearing.

You will have an opportunity to present other related information at the arbitration hearing. You should include information that specifically relates to the lawyer's fees. The arbitrator needs to understand why you believe the lawyer's fees are excessive, but doesn't necessarily need to know all the details of your case.

## 9. What's my deadline for requesting fee arbitration?

If you received a "Notice of Client's Right to Fee Arbitration" from your lawyer, you have 30 days from the date of its receipt to submit your request for arbitration to the program. If you do not file the request form within 30 days, you may lose your right to ar-

bitrate your fee dispute and the lawyer may proceed with a lawsuit or other proceeding to collect the fees. A telephone call or a letter to the program requesting arbitration will not protect your rights. You must be sure that the arbitration request form is completely filled out and that you have included the appropriate filing fee.

If the lawyer has already filed a lawsuit against you for unpaid fees, you may elect to either respond to the lawsuit or to request fee arbitration. However, if you choose to file a response to the lawsuit, you will lose your right to arbitrate the fee dispute. If you request arbitration, the lawsuit will be automatically stayed. According to California Rules of Court, the person causing the stay must notify the court of the stay. If you have not appeared in the court action, it is the attorney's responsibility to notify the court of the stay.

## 10. Can my attorney require me to participate in mandatory fee arbitration?

Although the program is generally designed for a client to be able to require his or her attorney to participate in fee arbitration, an attorney may require the client to participate if you and the attorney have a signed agreement to submit fee disputes to a mandatory fee arbitration program. Any pre-dispute agreement that requires binding arbitration, however, will not be enforced against you by the program and you will not be required to participate in mandatory fee arbitration.

## 11. When do I receive the arbitration decision?

Unless the parties have reached a settlement agreement, a decision will not be made at the hearing. Following the hearing, you will receive the arbitrator's "Findings and Award" by mail. With that will be a written "Notice of Your Rights After Arbitration," which explains your options after the award.

The award may provide you a refund of fees or costs, an amount of outstanding fees you owe, or a determination that no money is owing to either party. The arbitrator may also allocate the program filing fee, regardless of which party initially paid it.

## 12. What if I think the lawyer's conduct should be reported?

If you wish to file a disciplinary complaint with the State Bar of California about your attorney's conduct – separate from arbitrating your fee dispute – you may call the State Bar's toll-free number, 800-843-9053. You may also ask for a copy of the pamphlet, **Having a Problem With Your Lawyer?**

Keep in mind that a discipline complaint and a fee dispute are separate matters that achieve different results. Filing a complaint may result in disciplinary action against the lawyer; however, the result may not necessarily require the lawyer to refund any fees or costs to you.

For further information about the attorney fee arbitration process, please contact this program at:

**The State Bar of California**  
Mandatory Fee Arbitration  
180 Howard St., 6th floor  
San Francisco, CA 94105-1639  
415-538-2020

You may also contact your local bar association to inquire about the local fee arbitration program and to request a free copy of the local bar association's Rules of Procedure for Fee Arbitrations.

The purpose of this pamphlet is to provide general information on the law, which is subject to change. It is not legal advice. If you have a specific legal problem, you may want to consult a lawyer.

**The State Bar of California**

Office of Communications

180 Howard St.

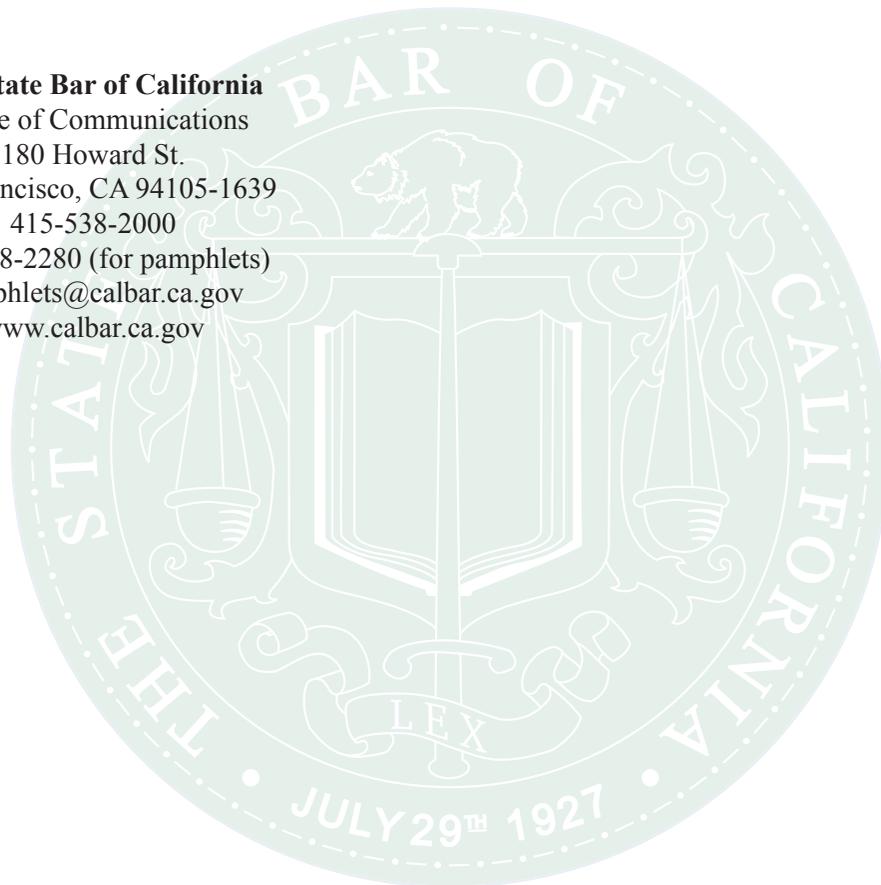
San Francisco, CA 94105-1639

415-538-2000

415-538-2280 (for pamphlets)

[pamphlets@calbar.ca.gov](mailto:pamphlets@calbar.ca.gov)

[www.calbar.ca.gov](http://www.calbar.ca.gov)





**The State Bar of California**  
Office of Communications  
180 Howard St.  
San Francisco, CA 94105-1639

Place  
stamp  
here

CB-1001-49