



# MAKING FEE DISPUTE ARBITRATION WORK FOR YOU

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The State Bar of Nevada's Fee Dispute Arbitration Committee has been in existence for the past 20 years but for most attorneys, it is a rarely used resource.

The fee dispute program is a free service available to both clients and attorneys trying to resolve billing issues through a neutral third-party mediator or arbitrator. To promote more expeditious resolution in the fee dispute process, the Fee Dispute Committee formally amended its bylaws this year to make mediation mandatory as a primary method for resolving disputes of

\$5,000 or less.

The vast majority of fee disputes received in the past five years, 78 percent, are for amounts of \$5,000 or less.

Mediation is a relatively quick method of communicating with your client in an environment that promotes open dialogue and facilitated compromise. If it doesn't work, the petitioning party has the opportunity to pursue resolution through arbitration.

The State Bar of Nevada's Board of Governors has appointed more than 180 arbitrators, a combination of attorneys and non-attorneys, to serve on one of six regional panels throughout the state. All arbitrators are volunteers who serve individually for claims under \$10,000 and in panels of three for claims of \$10,000 or more.

The time to agree on resolution of fee disputes through the arbitration program is before representation begins. Do it when the relationship with your client is at its best.

When it comes to loss prevention, attorneys employ a number of methods to ensure that there is a clear agreement regarding fees prior to representation. The last thing anyone wants – attorney or client – is a misunderstanding about how much is owed after services are provided. Unfortunately, if disputes over fees cannot be remedied, both parties can be left dissatisfied and attorneys face the option of writing off the bill, placing a lien on the file or ultimately filing suit against the client. There is another option.



A few firms have already begun using the program to resolve their disputes – either by encouraging their clients to file a petition for arbitration or by filing one personally. Other firms have proactively addressed the issue by placing the resolution of potential fee disputes in their binding retainer agreements. For example, one firm’s retainer states:

“Unless otherwise agreed in writing by the parties or unless decided by a Nevada court of competent jurisdiction on a motion for the award of fees, any dispute about the amount or payment of legal fees for this engagement shall be submitted for final and binding arbitration before the Fee Dispute Committee of the State Bar of Nevada.”

This arrangement, agreed upon at the onset of representation, helps to maintain a level of

civility between the parties, especially when the expenses involved with costly litigation are disputed. Moreover, because the retainer agreement also clearly states that it is a binding legal document, the decision rendered by the fee dispute arbitrator is also binding. Prior to using this language, it is advised that you check with your malpractice insurance carrier as the limited appeal rights involved in arbitration may be problematic.

Finally, if a client files a petition for fee dispute arbitration against you, take the opportunity to treat the action as a non-confrontational method of resolving an issue before it escalates into a forced legal action.

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By signing a binding arbitration agreement, you can demonstrate your willingness to participate fully in the process and abide by the determined outcome. Additionally, if a client does file a fee dispute petition against you, but the client actually owes you fees, you can file a counterclaim against the client and resolve the entire dispute. In instances where both parties agree to binding arbitration, the award rendered may be enforced by any court of competent jurisdiction.

For a full description of the Fee Dispute Arbitration Committee, its bylaws, processes, and writeable PDF forms, visit the state bar's website at [www.nvbar.org](http://www.nvbar.org) and click on the fee dispute link. ■



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