

## 1. How are legal fees determined?

The basic ingredient in determining legal fees is the amount of time spent on a matter. Most of a lawyer's service is performed when the client is not present. Advice given in a few minutes, or a three-page document prepared for a client, may be the product of many hours of study and work. Consequently, the fee will usually depend upon factors involved in the specific case and cannot be determined by a pre-established general fee schedule. The factors most often considered include:

- (1) the time and labor required, the uniqueness and difficulty of the issues involved, and the skill necessary to perform the legal service properly;
- (2) the likelihood that, by accepting employment for a specific matter, the lawyer will not be able to accept other employment;
- (3) the fee usually charged in the same location for similar legal services;
- (4) the dollar amount involved and the expected results;
- (5) the time limitations requested by the client or required by the circumstances;
- (6) the nature and length of the professional relationship between the client and the lawyer;
- (7) the experience, reputation, and ability of the lawyer, or lawyers, performing the services; and
- (8) whether the fee is fixed, hourly, contingent or otherwise.

## 2. What can I do if my lawyer's bill seems too high?

First, review your original fee contract. If you have a written contract it should provide information on how the bill is to be determined. If your contract was verbal, you may have to contact the lawyer for additional information before you can decide if the bill is reasonable. Even if you feel that you did not have a contract with the lawyer, the lawyer is entitled to a reasonable fee for services he or she provided for you. If you still believe that your bill is too high or seems unreasonable, the next step is to tell your lawyer. Sometimes all it takes is talking to your lawyer about the bill. Ask your lawyer 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 realized. Through discussing the matter with you, your lawyer may determine that an error was made on your bill or may feel that he or she is willing to reduce the bill based upon your conversation.

## 3. What is the Fee Arbitration Program?

The Fee Arbitration Program is a service to the public and lawyers of Wisconsin and is managed by the State Bar of Wisconsin. Fee Arbitration is a hearing conducted by one or more persons not involved in the dispute. Both lawyers and nonlawyer public members serve on the fee arbitration panels. Like judges, they hear the arguments on both sides before making a decision about the fee dispute. The purpose of the program is to provide a fast and inexpensive method to settlement disputes between lawyers and clients over fees.

## 4. What may be arbitrated?

In general, all disputes over fees between clients and their lawyers may be arbitrated. But, there are a few exceptions, such as the following:

- ▶ Fees charged by a lawyer who was not licensed to practice law in the State of Wisconsin when working for the client.
- ▶ Cases involving services performed outside of Wisconsin.
- ▶ Fees for which there was no lawyer/client relationship between the parties at the time the legal services were performed.
- ▶ Fees that are governed by law or statute.
- ▶ Cases in which the full amount of the fee, or all terms of which, have already been fixed or approved by order of a court, such as guardian ad litem fees.
- ▶ Cases in which the application form fails to include all of the following information:
  - (1) date;
  - (2) signature of applicant (client or lawyer);
  - (3) names and addresses of both the client and the lawyer;
  - (4) written statement explaining the dispute, including appropriate dates;
  - (5) agreement of the applicant to be bound by the result of the arbitration.
- ▶ Cases in which the applicant's claim does appear to have merit (e.g. legal action on the fee has been started, or the lawyer had not been hired by the applicant, or the matter is not a dispute over legal fees for services provided by the lawyer).

If your case falls into one or more of the exceptions, you will be notified that your application has not been accepted. While this means that no arbitration hearing will be held, it does not affect litigation or any other solution that you may wish to consider in place of arbitration.

## 5. How do I request fee arbitration?

You complete an application form which may be obtained by contacting the State Bar of Wisconsin.

**Mail:** State Bar of Wisconsin  
P.O. Box 7158  
Madison, WI 53707-7158  
**Call:** (800) 728-7788

## 6. How much will I pay for fee arbitration?

The fee assigned to each party, at the time a request for arbitration is made, is as follows:

**Disputed fees equal to or less than \$3,000 ..... \$25**

**Disputed fees greater than \$3,000, but less than \$20,000 ..... \$50**

**Disputed fees greater than \$20,000 ..... \$100**

This fee does not cover expenses incurred by either party in connection with the arbitration process. Costs for collection actions, other litigation, or appeals after an arbitration decision is made are also the responsibility of the parties.

## 7. How long does fee arbitration take?

Many cases settle before a fee arbitration hearing takes place. If the case does proceed to an arbitration hearing, it usually takes four to six months from the date the application is received at the State Bar of Wisconsin until the date the written decision is received by the parties.

## 8. Is the client required to agree to binding arbitration?

No. However, if the client does not agree to binding arbitration, the application will be dismissed and a hearing will not be held.

## 9. Does the lawyer have to agree to binding arbitration?

Yes:

- (1) If there is a State Bar Lawyer Referral.
- (2) Under SCR 20:1.15(b)(4m), a lawyer who receives an advanced payment of fees which were deposited into the lawyer's business account is required to submit to binding arbitration with the State Bar Fee Arbitration Program or a similar local bar association program within 30 days of the lawyer's receipt of the written notice of dispute from the client.

Other than the above two instances, the answer to

the question is "no." If a lawyer does not agree to participate in arbitration, a hearing will not be held and the application submitted by the client will be dismissed.

## 10. What is expected of me at the arbitration hearing?

Arbitration hearings are informal in the sense that they are not held in a courtroom and there is no judge. Usually the hearing is held in the office of one of the panel members and the participants and panel members sit at a table rather than in formal seating positions such as you may have seen in a courtroom.

It will be governed by small claims rules of evidence.

Arbitration hearings are informal. Both sides have a chance to testify and may produce witnesses. Every witness will be required to swear to tell the truth. Either party may choose to be represented by a lawyer, but one is not required. If you decide to have a lawyer, his or her fee must be paid by you.

In advance of hearing, you will be provided with Overview of Hearing Procedures which may answer some of your questions concerning the procedure which will be followed.

## 11. What if one party fails to appear at the arbitration hearing?

If one of the parties doesn't appear after both parties have agreed to arbitrate and have been notified of the date, time, and place of the hearing, the arbitration panel has the right to conduct the hearing as scheduled. It can hear the evidence of the party present (with testimony under oath) and render a binding arbitration award.

## 12. Who are the arbitrators?

The arbitrators are lawyers who have practiced law a minimum of five years, and non-lawyer members of the public. When the amount in dispute is more than \$3,000, a three-member panel will be appointed. Three-member panels will consist of two lawyers and one member of the public, if available. When the amount is under \$3,000, the arbitration will be conducted by a single arbitrator, who will be a lawyer.

The arbitrators, both lawyers and members of the public, are volunteers who receive no compensation from either the State Bar of Wisconsin or any party involved in the arbitration.

### 13. What happens following the hearing?

After the hearing, a decision should be provided to you within approximately three weeks. The panel will send both parties its written decision and award. That decision is final. The decision will state what fee is fair and reasonable. The award also states the period of time for payment or refund.

### 14. Is the arbitration decision binding?

Yes, the decision will be binding, subject only to the appeal rights under Chapter 788, Wisconsin Statutes.

### 15. How are awards collected?

According to the rules governing the Fee Arbitration Program, the losing party must make payment or refund within 30 days of the mailing of the decision to the parties, unless a payment schedule has been written into the decision. If payment or refund is not made within that time frame, the decision may be filed in the appropriate court for judgment.

### 16. What can I do to avoid fee disputes in the future?

Ask your attorney to provide you with a written fee agreement. Make certain you understand what specific services are covered by the agreement, how you will be billed and what you will be charged. If you have questions after reviewing the agreement, bring these to the attention of your lawyer before signing the agreement. A clear understanding of the initial fee agreement will help in preventing future misunderstandings.

What information can you expect to find in a fee agreement?

- (a) A fee agreement should specify the type of billing arrangement your lawyer will use. Some alternative methods of billing include: hourly charges, contingency fee, advanced fee, and flat fees. Whatever method your lawyer uses for billing, you should be provided with specific details regarding billing charges. For example, a lawyer who bills using an hourly rate should state the rate, both for his/her services and for any other members of his/her firm who may assist in representing you. Agreements based on contingency fees should include not only the percentage, but should define the "number" that will be used to determine the fee. For example, will the fee be based upon the total settlement or will court costs be taken out first? If you have any questions about the type of billing

arrangement your lawyer is using, ask them before signing the agreement.

- (b) Fee agreements should include other relevant information about your representation, such as frequency of billing, method of payment, whether interest will be charged on unpaid balances, what services are included and what services such as long distance charges, travel time, paralegal time, etc. are billed separately. If you have concerns about the terms of the fee agreement, discuss these with your lawyer before signing the agreement.
- (c) If your lawyer requires an advanced fee, your agreement should indicate that the unearned portion of the advanced fee is refundable. The agreement should also clarify the circumstances under which the unearned portion of the advanced fee will be returned to you.

### 17. How can I get more information?

Call the State Bar of Wisconsin at (608) 250-6185 and ask for the *Fee Arbitration Administrator*. Or write to:

State Bar of Wisconsin  
P.O. Box 7158  
Madison, WI 53707-7158

**The fee arbitration procedure was developed by the State Bar of Wisconsin as an alternative to litigation for resolving fee disputes. We recommend the procedure as a fair, informal, and economical way to resolve a fee dispute when the parties cannot settle the dispute themselves.**



**(800) 728-7788**  
**P.O. Box 7158, Madison, WI 53707-7158**  
**Email: [service@wisbar.org](mailto:service@wisbar.org)**  
**Internet: [www.wisbar.org](http://www.wisbar.org)**

