PROCEDURAL OVERVIEW FOR FEE ARBITRATION

Overview

The fee arbitration process is designed to create an economic and private method for resolution of disputes between lawyers and their clients over fees charged. It is not intended to be a forum for resolution of other disputes that may exist between the lawyer and the client.

Here are answers to some of the questions that you may have about how the arbitration hearing is conducted.

Rules of Procedure

The fee arbitration program is designed to allow the client or the lawyer to appear without an attorney to the dispute. The procedure is intended to be less formal than in a court setting. However, there are certain rules of procedure that are to be followed:

Burden of Proof:

The attorney has the obligation to establish that his or her fee is reasonable under the circumstances presented. The attorney should be prepared to provide a copy of any fee agreement; provide supporting documentation to establish the work performed such as timesheets, billing statements, copies of documents supporting research undertaken, and testimony of witnesses, such as associates and/or staff who performed billable or billed work, if appropriate.

The client has the obligation to establish that the fee is not reasonable or the work performed was unnecessary. Be prepared to provide concrete examples of what you believe is an unwarranted fee. Examples could include agreements to reduce fees or to modify a fee contract or evidence to establish that required work was not performed. Remember that "evidence" is not usually something in the nature of "this is unfair" or “I can't afford it." There must be some legitimate evidence presented that the lawyer should not receive the fee that is charged. If you have documents to support your position, have them organized and ready to offer at the time of the hearing. Be sure to make copies ahead of time for the arbitrator and the attorney, and keep a copy for yourself. Sometimes the arbitrators will want to have the originals marked as an exhibit. Be sure to have the originals available at the hearing.

The panel chair will decide which party presents their case first. It will usually be the attorney since he or she has the obligation to establish that his or her fee is reasonable.

Both the attorney and client are entitled to have "expert" witnesses available to testify to the necessity and reasonableness of the fees charged. The parties are responsible for any costs or fees of their own experts.

The client is entitled to have a non-lawyer available for moral support. However, the non-lawyer may not participate or attempt to try the case for the client. Both the client and the lawyer are free to have

their own legal representation. However, you will not be allowed to have friends or family members assist you in the presentation of your case.

What Factors are Taken into Consideration:

If the client previously agreed to pay a particular hourly rate for the lawyer's services, that rate shall govern. If the client and lawyer did not reach an agreement about a particular rate, the arbitrator may consider the reasonableness of the rate as well as the reasonableness of the total fees charged.

The reasonableness of the lawyer's fees takes into account the following elements:

- The time and labor required
- The novelty and difficulty of the questions involved
- The skill required to perform the legal service properly
- The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer
- The range of fees customarily charged for similar legal services
- The amount involved and the results obtained
- The time limitations imposed by the client or by the circumstances
- The nature and length of the professional relationship with the client
- The experience, reputation and ability of the lawyer performing the services
- Whether the fee is fixed or contingent

Hearsay:

This is a legal term which means that a witness can only testify about what they know. Hearsay means that you cannot testify, "My sister was present at a meeting with the lawyer and she would say that the attorney told me that he was going to cut my fee in half."

You, as the client, can only testify what you heard the attorney say. If your witness was present and heard the attorney make the same statement, your witness should be present to testify at the arbitration hearing. You cannot use letters or affidavits from other people. If you want to offer the testimony of some other person, have them available to testify. If they cannot be available to testify at the hearing, notify the panel chairperson ahead of time and he or she may let that person testify by telephone. Do not wait until the day of the hearing to ask if this procedure should be followed. The civil procedure for Small Claims actions apply. The arbitration shall be governed by the Small Claims rules of evidence, which are set out in Wis Stat 799.209. Evidence shall be admitted in the arbitration if it has reasonable probative value. An essential finding of fact may not be based solely on a party's oral hearsay statement unless it would be admissible under the Rules of Evidence.

Subpoena:

If you need to have a witness subpoenaed to appear at the hearing, contact the attorney chairperson of the arbitration panel as soon as you receive notice of the hearing date.

Other Rules of Evidence:

There are many other rules of evidence which lawyers spend years trying to learn. The whole point is to make the hearing fair for all participants. The rules of evidence do apply to arbitration hearings. If you choose to represent yourself, remember to keep yourself organized, to the point and to have all of your documentation and witnesses available at the hearing. You may want to consult a lawyer if you have any specific questions regarding the rules of evidence. The civil procedure for Small Claims actions apply. The arbitration shall be governed by the Small Claims rules of evidence, which are set out in Wis Stat 799.209. Evidence shall be admitted in the arbitration if it has reasonable probative value. An essential finding of fact may not be based solely on a party's oral hearsay statement unless it would be admissible under the Rules of Evidence.

Record of the Proceeding:

Typically, there will not be a court reporter in attendance at the hearing. The cost associated with a court reporter and the production of a transcript is not felt to be the norm. Parties are allowed to have a certified court reporter in attendance, but at their own cost. The party who intends to provide a court reporter must notify the panel chairperson of the decision to use a court reporter at least 10 days before the hearing. The panel chairperson will then notify all parties.

Under the rules of procedure, the lawyer and the client may agree to submit the dispute in writing for the arbitrators to make their decision based on the written submissions and the exhibits. The arbitrators may choose to ask for testimony of the witnesses in order to make their decision or they may feel that the written submissions are sufficient to issue a decision.

Information brought forth during an arbitration proceeding, along with the decision and award resulting from the arbitration are to be kept confidential and not to be disclosed to any individuals or entity other than the parties involved in the arbitration except for enforcement under WI Statue chapter 788.

Appeal Rights:

Understand that by agreeing to binding arbitration, your appeal rights are limited. Please refer to Chapter 788 of the Wisconsin Statutes or discuss the available grounds for appeal with an attorney.

For a complete copy of the rules of procedure, go to www.wisbar.org or contact the Administrator of the program at the State Bar at 800-444-9404 ext. 6624

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