

FREQUENTLY ASKED QUESTIONS

1. WHAT IS FEE ARBITRATION?

The purpose of fee arbitration is to hear and resolve disputes between attorneys and clients concerning attorneys' fees and costs. The goal of fee arbitration is to provide for a fair, speedy, and impartial hearing so that the dispute can be brought to an equitable conclusion.

2. IS THERE A CHARGE FOR FEE ARBITRATION? WHO PAYS THE FILING FEE?

Yes, there is a filing fee. The filing fee offsets the administrative costs of operation of the fee arbitration program.

Unless prior arrangements are made between the petitioner and the respondent (the person the petitioner is filing against), this fee is paid by the petitioner (the person requesting arbitration) at the time of filing. Typically, the client is the petitioner, and the attorney is the respondent.

The filing fee shall be:

- a. \$100 plus 5% of the amount in dispute when the total amount in dispute is less than \$5,000.
- b. \$100 plus 6% of the amount in dispute when the total amount in dispute is more than \$5,000, but not more than \$10,000.
- c. \$100 plus 7% of the amount in dispute when the total amount in dispute is more than \$10,000.

3. IS THE FILING FEE RECOVERABLE?

The filing fee is a recoverable cost of arbitration. As a part of the award, the arbitrator may order the other party to reimburse all, or part of the filing fee paid. For the SGVLRs's refund policy, please refer to the SGVLRs Rules and Regulations for Mandatory Fee Arbitration, Rule 19.3.

4. DOES THE ATTORNEY HAVE TO PARTICIPATE IN THE FEE ARBITRATION?

In most cases – yes. If the client's request for arbitration is timely and completed on the proper form, the client has a right to arbitrate and can compel the attorney to participate in arbitration.

If the client has NOT waived his right to fee arbitration, fee arbitration is mandatory for the attorney. If the attorney willfully chooses not to attend the hearing or otherwise participate in the arbitration proceedings, the hearing will proceed without him or her.

5. DOES THE CLIENT HAVE TO PARTICIPATE IN THE FEE ARBITRATION?

Unless the client has previously agreed in writing to arbitration of all disputes concerning fees, costs, or both, arbitration is voluntary for the client.

6. WHO ARE THE ARBITRATORS AND HOW ARE THEY ASSIGNED?

Arbitrators are attorneys and non-attorneys. They are volunteer members in good standing of the SGVLRs. All fee arbitrations are assigned at least one attorney arbitrator. All three panel arbitrations are assigned at least one non-attorney arbitrator. All arbitrators have received fee arbitration training.

Arbitrators are randomly assigned to fee arbitrations.

7. CAN ARBITRATORS BE DISQUALIFIED?

Yes. A party may seek disqualification of an arbitrator by delivering a written notice to the SGVLRs within ten (10) days of notification of the assigned arbitrator.

Every party has the right to request the disqualification of one arbitrator without giving any reason. If a party seeks to disqualify more than one arbitrator, the written notice must state a “good cause” reason for the disqualification request. If an arbitrator is disqualified the SGVLRS will assign a new arbitrator.

8. CAN A PARTY TAKE WITNESSES AND/OR FAMILY TO THE HEARING?

Parties have the right to bring witnesses to the hearing. (Please refer to Rule 26.1 of the SGVLRS Rules and Regulations for Mandatory Fee Arbitration.) Parties must obtain permission from the arbitrator to bring a family member or support person to the hearing. Hearings are generally closed to everyone else.

9. WHERE WILL THE HEARING TAKE PLACE?

Arbitration hearings usually take place at the presiding arbitrator’s office. You will receive notice of the neutral hearing location prior to the hearing.

10. HOW LONG DOES IT TAKE FOR THE HEARING TO BE SCHEDULED?

Hearings are generally scheduled within thirty (30) days of the assignment of a presiding arbitrator.

You will receive a form requesting available dates for you to attend the hearing. Your cooperation in supplying as many available dates as possible will help speed the scheduling process.

When the hearing is scheduled, a “Notice of Hearing” will be sent to all parties. The Notice will include the date, time, and place of the hearing.

11. DO I NEED A LAWYER TO REPRESENT ME AT THE HEARING?

No. Parties do, however, have the right to be represented by an attorney at the hearing.

12. WHAT HAPPENS AT THE ARBITRATION HEARING?

Arbitration hearings are generally short and relatively informal. The arbitrator will administer an oath at the beginning of the hearing. The typical arbitration hearing begins with the client presenting his or her case. The client’s objective is to persuade the arbitrator that the fees should be reduced. The attorney’s objective, on the other hand, is to convince the arbitrator that the fees charged are reasonable.

After the client has presented his or her case, and introduced witnesses, if any, and other evidence, the attorney will have the same opportunity to present his or her position and introduce witnesses and evidence. Each party may question the other party, and the arbitrator may question either party.

After all evidence has been presented, both parties will usually have the opportunity to summarize their position for the arbitrator.

At all times during the hearing, each side should refrain from making disparaging or personal comments to or about the other party. Parties should not refer to matters unrelated to the attorney-client relationship or matters based on assumption or speculation.

13. WHAT IS THE DIFFERENCE BETWEEN BINDING AND NON-BINDING (ADVISORY) ARBITRATION?

If both parties agree in writing to binding arbitration, no appeal from the final award will be allowed and both parties will have to abide by the arbitrator’s decision. If both parties do not agree to binding arbitration, the award will be non-binding (advisory) which means that each party will have the right to request a trial in court after the conclusion of arbitration.

If the amount in dispute is \$1,500.00 or less, Client must stipulate to binding arbitration. If the amount in dispute is \$1,500.00 or less and Client does not want to stipulate to binding arbitration, Client may contact the State Bar of California Mandatory Fee Arbitration Program at 415/538-2020 to obtain the forms to file with the State Bar’s program.

All awards become binding if neither party takes action within thirty (30) days after the award is mailed.

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14. CAN A CLIENT FILE A REQUEST FOR ARBITRATION AFTER THE ATTORNEY HAS FILED A LAWSUIT?

If the client has not waived his or her rights, the client may file for fee arbitration after the attorney has filed a lawsuit. It is important that the client provide the SGVLRS with the information regarding the lawsuit within thirty (30) days from being served with the lawsuit. Client must file a Notice of Stay of Proceeding in the court where the lawsuit is pending to postpone the lawsuit until the arbitration is completed. The SGVLRS can provide the client with the Notice of Stay form, but it is the client's responsibility to file it with the proper court. If the Notice of Stay form is not properly or timely filed with the court, arbitration will not be permitted, and the lawsuit will proceed. Please refer to the SGVLRS Rules and Regulations for Mandatory Fee Arbitration, Rule 9.0.

15. CAN AN ATTORNEY CHARGE HIS CLIENT FOR PREPARING AND ATTENDING THE FEE ARBITRATION HEARING?

No.

16. WHAT IF I STILL HAVE QUESTIONS?

Please refer to the SGVLRS Rules and Regulations for Mandatory Fee Arbitration. Most questions are answered in the written Rules and Regulations. You may also contact the SGVLRS staff but please do so only after having read all the information that has been sent to you.

The SGVLRS staff cannot:

- Give any opinion concerning the merits of a claim or case.
- Give an opinion as to whether or not the claim is a "good" one or the party's position is a "winning" one.
- Give any opinion concerning SGVLRS MFA jurisdiction (jurisdictional issues are decided by the Committee Chair or by the arbitrator).

If you do need legal advice, you may be referred to an attorney by calling the SGVLRS at (626) 966-5530 or (909) 599-3847.