

# Fee Dispute Resolution Rules

Rules of the Oregon State Bar on Mediation and Arbitration of Fee Disputes  
Effective July 1, 2024

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## **Section 1 Purpose**

**1.1** The purpose of these Rules is to provide a voluntary method to resolve fee disputes between active members of the Oregon State Bar (OSB) maintaining offices in Oregon and their clients; between those members and other active OSB members; and between active members of a state bar other than Oregon and their clients who either are residents of the state of Oregon or have their principal place of business in Oregon.

**1.2** The Oregon State Bar Fee Dispute Resolution Program (“FDRP”) is administered exclusively by Arbitration Service of Portland (“ASP”), a privately owned company

## **Section 2 Mediation and Arbitration Panels; Advisory Committee**

**2.1** The OSB’s General Counsel’s Office (GCO) shall appoint attorney members to mediation panels in each Board of Governors (BOG) region, from which mediators will be selected. The normal term of appointment shall be three years, and a mediation panelist may be reappointed to a further term. All mediation panelists shall be active or active pro bono members in good standing of the Oregon State Bar with a principal business office in the BOG region of appointment.

**2.2** The OSB GCO shall appoint attorney and public members to arbitration panels in each BOG region, from which arbitrators will be selected. The normal term of appointment shall be three years, and an arbitration panelist may be reappointed to a further term. All attorney panelists shall be active or active pro bono members in good standing of the Oregon State Bar with a principal business office in the BOG region of appointment. All public panelists shall reside or maintain a principal business office in the BOG region of appointment and shall be neither active nor inactive members of any bar.

**2.3** ASP may supplement appointed panels with additional attorneys and public members if ASP deems them qualified to be appointed to the FDRP mediation and arbitration panels.

## **Section 3 Training**

**3.1** OSB, in conjunction with ASP, may offer training opportunities to panelists regarding mediation and arbitration techniques and the application of RPC 1.5 in fee disputes.

**3.2** OSB may request information about panelists’ prior training and experience and may appoint panelists based on their related training and experience.

## **Section 4 Initiation of Proceedings**

**4.1** Petitioners may request information about proceedings and submitting petitions on ASP’s website at [www.arbserve.com](http://www.arbserve.com) or by contacting ASP at [aspdx@hotmail.com](mailto:aspdx@hotmail.com).

**4.2** A mediation proceeding shall be initiated by submitting a petition and electronically signed mediation agreement directly to ASP. The petition must be submitted to ASP and electronically signed by one of the parties to the dispute within 6 years of the completion of the legal services involved in the dispute.

**4.3** An arbitration proceeding shall be initiated by submitting a petition and arbitration agreement directly to ASP. The petition must be submitted to ASP and electronically signed by one of the parties to the dispute within 6 years of the completion of the legal services involved in the dispute.

**4.4** Upon submission of a petition to mediate and mediation agreement electronically signed by the petitioning party, the petition and the agreement will be sent to the respondent named in the petition by electronic mail. Any supporting documents submitted with the petition will also be electronically provided to the respondent. If the respondent desires to submit the dispute to mediation or arbitration the respondent shall notify ASP by email [aspdx@hotmail.com](mailto:aspdx@hotmail.com) or first class mail at ASP, 9830 SW McKenzie St, Portland, OR 97223 within twenty-one (21) days of receipt. A twenty-one (21) day extension of time to respond to the petition may be granted by ASP's Administrator. Failure to electronically respond to the agreement via email or mail within the specified time shall be deemed a rejection of the request to mediate or arbitrate.

**4.5** A lawyer who is retained by a client who was referred by the OSB Modest Means Program or OSB Lawyer Referral Program may not decline to arbitrate if such client files a petition for fee arbitration.

**4.6** If the respondent agrees to mediate or arbitrate, then each party shall pay the filing fee below to ASP directly via check or contacting ASP to pay by credit card. The filing fee may be waived at the discretion of ASP's Administrator based on the submission of a statement of the petitioner's assets and liabilities reflecting inability to pay. The filing fee shall not be refunded, except on a showing satisfactory to ASP's administrator of extraordinary circumstances or hardship.

**4.7** **Filing Fees:** In cases where less than \$25,000 is in dispute, each party shall be charged a \$300 filing fee. In cases where \$25,000 or more is in dispute, each party shall be charged a \$400 filing fee. Once filing fees have been paid, the remaining services shall be performed free of charge.

**4.8** If the request to mediate or arbitrate is rejected, the petitioner will be notified via email of the rejection and of any stated reasons for the rejection. In that event, neither the petitioner nor the respondent shall pay any fee and the matter will be closed by ASP.

**4.9** The petition, mediation agreement, arbitration agreement, and statement of assets and liabilities shall be provided to the parties by ASP upon request, provided however, that mediation and arbitration agreements may be modified with the consent of both parties and the approval of ASP's Administrator.

**4.10** After the parties have electronically signed an agreement to mediate or arbitrate, if one party requests that a mediation or arbitration proceeding not continue,

ASP's Administrator shall dismiss the proceeding. A dismissed proceeding will be reopened only upon agreement of the parties. A dismissed arbitration will also be reopened upon receipt of a copy of an order compelling arbitration pursuant to ORS 36.625.

### **Section 5 Amounts in Dispute**

**5.1** Any amount of fees or costs in controversy may be mediated or arbitrated.

**5.2** The sole issue to be determined in all fee dispute proceedings under these rules shall be whether the fees or costs charged for the services rendered were reasonable in light of the factors set forth in RPC 1.5.

### **Section 6 Selection of Mediators and Arbitrators**

**6.1** Each party to a mediation shall receive a list of the members of the mediation panel from the BOG region in which a lawyer to the dispute maintains his or her law office. Each party has 14 days from receipt of the list to submit challenges pursuant to Rule 6.3.

**6.2** Each party to an arbitration shall receive a list of the members of the arbitration panel in the BOG region in which a lawyer to the dispute maintains his or her law office. Each party has 14 days from receipt of the list to submit challenges pursuant to Rule 6.3.

**6.3** Each party may challenge without cause, and thereby disqualify as mediators or arbitrators, not more than two panelists. Each party may also challenge any panelist for cause. Any challenge for cause must be made by written notice to ASP's Administrator, shall include an explanation of why the party believes the party cannot have a fair and impartial hearing before the panelist. Challenges for cause shall be determined by ASP's Administrator or ASP's Administrator's designee, based on the reasons offered by the challenging party. Upon receipt of the agreement signed by both parties, ASP's Administrator shall select the appropriate number of panelists from the list of unchallenged panelists to hear a particular dispute.

**6.4** All mediations shall be mediated by one lawyer panelist selected from the BOG region in which a lawyer to the dispute maintains his or her law office. The parties will be given notice of the mediator's appointment via email.

**6.5** Disputed amounts of less than \$25,000 shall be arbitrated by one lawyer panelist. Disputed amounts of \$25,000 or more shall be arbitrated by three panelists, including two lawyer arbitrators and one public arbitrator. If three (3) arbitrators are appointed, ASP's Administrator shall appoint one lawyer arbitrator to serve as chairperson. ASP's Administrator shall appoint panelists from the BOG region in which a lawyer to the dispute maintains his or her law office. The parties will receive notice of the appointment via email. Regardless of the amount in controversy, the parties may agree that one lawyer arbitrator hear and decide the dispute. If three arbitrators cannot be appointed in a fee dispute from the arbitration panel of the BOG region in which a dispute involving \$25,000 or more is pending, the dispute shall be arbitrated by a single arbitrator. If, however, any

party files a written objection with ASP's Administrator within ten (10) days after receiving notice that a single arbitrator will be appointed under this subsection, two (2) additional arbitrators shall be appointed.

**6.6** Any change or addition in appointment of mediators or arbitrators shall be made by ASP's Administrator. When necessary, ASP's Administrator may appoint mediators or arbitrators from a region other than the BOG region in which a lawyer to the dispute maintains his or her law office.

**6.7** Before accepting appointment, a mediator or arbitrator shall disclose to ASP's Administrator and, if applicable, to the other arbitrators, any known facts that a reasonable person would consider likely to affect the impartiality of the mediator or arbitrator in the proceeding. Mediators and arbitrators have a continuing duty to disclose any such facts learned after appointment. After disclosure of facts required by this rule, the mediator or arbitrator may be appointed or continue to serve only if all parties to the proceeding consent; in the absence of consent by all parties, ASP's Administrator will appoint a replacement mediator or arbitrator and, if appropriate, extend the time for the hearing.

**6.8** In the absence of consent by all parties, no person appointed as a mediator may thereafter serve as an arbitrator for the same fee dispute.

## **Section 7 Mediation**

**7.1** If the matter is not resolved prior to the appointment of a mediator, the mediator shall arrange a mutually agreeable date and time for the mediation to take place by videoconference or at a specified physical location if the mediator determines videoconference is not appropriate in the case. The mediator shall provide notice of the mediation date and time and place to the parties via the email and to ASP's Administrator not less than 14 days before the mediation, unless the notice requirement is waived by the parties.

**7.2** The mediation shall be commenced within sixty (60) days of appointment of the mediator. Upon request of a party, or upon his or her own determination, the mediator may adjourn, continue or postpone the mediation as the mediator determines necessary.

**7.3** Any communications made during the course of mediation are confidential to the extent provided by law. ORS 36.220. Mediations are not public meetings; the mediator has the sole discretion to allow persons who are not parties to the mediation to attend the proceedings.

**7.4** If the parties reach a settlement in mediation, the mediator may draft a settlement agreement consistent with RPC 2.4 to memorialize the parties' agreement.

**7.5** At the conclusion of the mediation, the mediator shall notify ASP's Administrator if the fee dispute was resolved. The mediator shall not provide a copy of the settlement agreement to the bar.

**7.6** Mediation must center on the reasonableness of the fee and the return of client property. Evidence of alleged malpractice or unethical conduct may be considered during mediation in addressing whether the fee charged is reasonable, and the fee may be adjusted accordingly in any mediated resolution, but no other affirmative monetary relief is be permitted in any mediation.

## **Section 8 Arbitration Hearing**

**8.1** If the matter is not resolved prior to the appointment of an arbitrator or arbitration panel, the chairperson or sole arbitrator shall determine a convenient date and time for the arbitration hearing to be held by videoconference or at a specified physical location if the chairperson or sole arbitrator determines videoconference is not appropriate in the case. The chairperson or sole arbitrator shall provide written notice of the hearing date, time and place to the parties and to ASP's Administrator not less than 14 days before the hearing. Notice may be provided via email unless otherwise ordered by the arbitrator. Appearance at the hearing waives the right to notice.

**8.2** The arbitration hearing shall be held within sixty (60) days after appointment of the arbitrator(s), subject to the authority granted in subsection 8.3.

**8.3** The arbitrator or chairperson may adjourn the hearing as necessary. Upon request of a party to the arbitration for good cause, or upon his or her own determination, the presiding arbitrator may postpone the hearing from time to time.

**8.4** Arbitrators shall have those powers conferred on them by ORS 36.675. The chairperson or the sole arbitrator shall preside at the hearing. The chairperson or the sole arbitrator may receive any evidence relevant to a determination under Rule 5.2, including evidence of the value of the lawyer's services rendered to the client. He or she shall be the judge of the relevance and materiality of the evidence offered and shall rule on questions of procedure. He or she shall exercise all powers relating to the conduct of the hearing, and conformity to legal rules of evidence shall not be necessary. Arbitrators shall resolve all disputes using their professional judgment concerning the reasonableness of the charges made by the lawyer involved.

**8.5** The parties to the arbitration are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing. Any party to an arbitration may be represented at his or her own expense by a lawyer at the hearing or at any stage of the arbitration.

**8.6** On request of any party to the arbitration or any arbitrator, the testimony of witnesses shall be given under oath. When so requested, the chairperson or sole arbitrator may administer oaths to witnesses testifying at the hearing.

**8.7** Upon request of one party, and with consent of both parties, the panel or sole arbitrator may decide the dispute upon written statements of position and supporting documents submitted by each party, without personal attendance, or live appearance by videoconference, at the arbitration hearing. The chairperson or sole arbitrator may also

allow a party to appear by telephone if, in the sole discretion of the chairperson or sole arbitrator, such appearance will not impair the ability of the arbitrator(s) to determine the matter. The party desiring to appear by telephone shall bear the expense thereof.

**8.8** If any party to an arbitration who has been notified of the date, time and place of the hearing fails to appear, the chairperson or sole arbitrator may either postpone the hearing or proceed with the hearing and determine the controversy upon the evidence produced, notwithstanding such failure to appear.

**8.9** Any party may have the hearing reported at his or her own expense. In such event, any other party to the arbitration shall be entitled to a copy of the reporter's transcript of the testimony, at his or her own expense, and by arrangements made directly with the reporter. As used in this subsection, "reporter" may include an electronic reporting mechanism.

**8.10** If during the pendency of an arbitration hearing or decision the client files a malpractice suit against the lawyer, the arbitration proceedings shall be either stayed or dismissed, at the agreement of the parties. Unless both parties agree to stay the proceedings within 14 days of the arbitrator's receipt of a notice of the malpractice suit, the arbitration shall be dismissed.

### **Section 9 Arbitration Award**

**9.1** An arbitration award shall be rendered within thirty (30) days after the close of the hearing unless ASP's Administrator, for good cause shown, grants an extension of time.

**9.2** The arbitration award shall be made by a majority where heard by three members, or by the sole arbitrator. The award shall be in writing and electronically signed by the members concurring therein or by the sole arbitrator. The award shall state the basis for the panel's jurisdiction, the nature of the dispute, the amount of the award, if any, the terms of payment, if applicable, and an opinion regarding the reasons for the award. Awards shall be substantiated in the form shown in Appendix A. An award that requires the payment of money shall be accompanied by a separate statement that contains the information required by ORS 18.042 for judgments that include money awards.

**9.3** Arbitrator(s) may award interest on the amount awarded as provided in a written agreement between the parties or as provided by law, but shall not award attorney fees or costs incurred in the fee dispute proceeding. An attorney shall not be awarded more than the amount for services billed but unpaid. A client shall not be awarded more than the amount already paid, and may also be relieved from payment of services billed and remaining unpaid.

**9.4** The original award shall be forwarded to ASP's Administrator, who shall mail certified copies of the award to each party to the arbitration. ASP's Administrator shall retain the original award, together with the original fee dispute agreement. Additional certified copies of the agreement and award will be provided on request. ASP will retain

the file materials related to the dispute for six years after the award is rendered; thereafter it may be destroyed without notice to the parties.

**9.5** If a majority of the arbitrators cannot agree on an award, they shall so advise ASP's Administrator within 30 days after the hearing. ASP's Administrator shall resubmit the matter, de novo, to a new panel within thirty days.

**9.6** The arbitration award shall be binding on both parties, subject to the remedies provided for by ORS 36.615, 36.705 and 36.710. The award may be confirmed and a judgment entered thereon as provided in ORS 36.615, 36.700 and ORS 36.715.

**9.7** Upon request of a party and with the approval of ASP's Administrator for good cause, or on ASP's Administrator's own determination, the arbitrator(s) may be directed to modify or correct the award for any of the following reasons:

- a. there is an evident mathematical miscalculation or error in the description of persons, things or property in the award;
- b. the award is in improper form not affecting the merits of the decision;
- c. the arbitration panel or sole arbitrator has not made a final and definite award upon a matter submitted; or
- d. to clarify the award.

## **Section 10 Confidentiality**

**10.1** The resolution of a fee dispute through the Oregon State Bar Fee Dispute Resolution Program as administered by ASP is a private, contract dispute resolution mechanism, and not the transaction of public business.

**10.2** Except as provided in paragraph 10.4 below, or as required by law or court order, all electronic and written records and other materials submitted by the parties to ASP, or to the mediators or arbitrators, and any award rendered by the arbitrator(s), shall not be subject to public disclosure, unless all parties to an arbitration agree otherwise. ASP considers all electronic and written records and other materials submitted by the parties to ASP, or to the mediators or arbitrators, to be submitted on the condition that they are kept confidential.

**10.3** Mediations and arbitration hearings are closed to the public, unless all parties agree otherwise. Witnesses who will offer testimony on behalf of a party may attend an arbitration hearing, subject to the chairperson's or sole arbitrator's discretion, for good cause shown, to exclude witnesses.

**10.4** Notwithstanding paragraphs 10.1, 10.2, and 10.3, lawyer arbitrators shall inform the Oregon State Bar Client Assistance Office when they know, based on information obtained during the course of an arbitration proceeding, that another lawyer has

committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

**10.5** Notwithstanding paragraphs 10.1, 10.2, and 10.3, and 10.4, all electronic and written records and other materials submitted to ASP or to the arbitrators during the course of the proceeding, and any award rendered by the arbitrator(s), shall be made available to the Client Assistance Office and/or Disciplinary Counsel for the purpose of reviewing any alleged ethical violation in accordance with BR 2.5 and BR 2.6.

**10.6** Notwithstanding paragraphs 10.1, 10.2, 10.3 and 10.4, ASP may disclose to the Client Assistance Office or to Disciplinary Counsel, upon the Client Assistance Office's or Disciplinary Counsel's request, whether a dispute resolution proceeding involving a particular lawyer is pending, the current status of the proceeding, and, at the conclusion of an arbitration proceeding, in whose favor the arbitration award was rendered.

**10.7** Notwithstanding paragraphs 10.1, 10.2 and 10.3, if any lawyer whose employment was secured through the Oregon State Bar Modest Means Program or Lawyer Referral Program refuses to participate in the FDRP, ASP's Administrator shall notify the OSB of their refusal to participate in the FDRP.

### **Section 11 Immunity and Competency to Testify**

**11.1** Pursuant to ORS 36.660, arbitrators shall be immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity. All other provisions of ORS 36.660 shall apply to arbitrators participating in the OSB Fee Dispute Resolution Program as administered through ASP.

**Appendix A**

Oregon State Bar/Arbitration Service of Portland, Inc.  
Fee Arbitration Award

Petitioner	)	Case No.
	)	
	)	
v.	)	Arbitration Award
	)	
Respondent	)	

**I. Jurisdiction**

[state basis of jurisdiction]

**II. Nature of Dispute**

[factual nature of dispute]

**III. Amount of Award**

[prevailing party and award amount]

**IV. Opinion**

[rationale for award]

**V. Award Summary**

The arbitrator(s) find that the total amount of fees and costs that should have been charged in this matter is: \$ X.XX

Of which the Client is found to have paid: \$ X.XX

For a net amount due of: \$ X.XX

Accordingly, the following award is made:

Client shall pay Attorney the sum of: \$ X.XX

(or)

Attorney shall refund to Client the sum of: \$ X.XX

(or)

Nothing further shall be paid by either attorney or client.

/Signature(s) of Arbitrator(s)