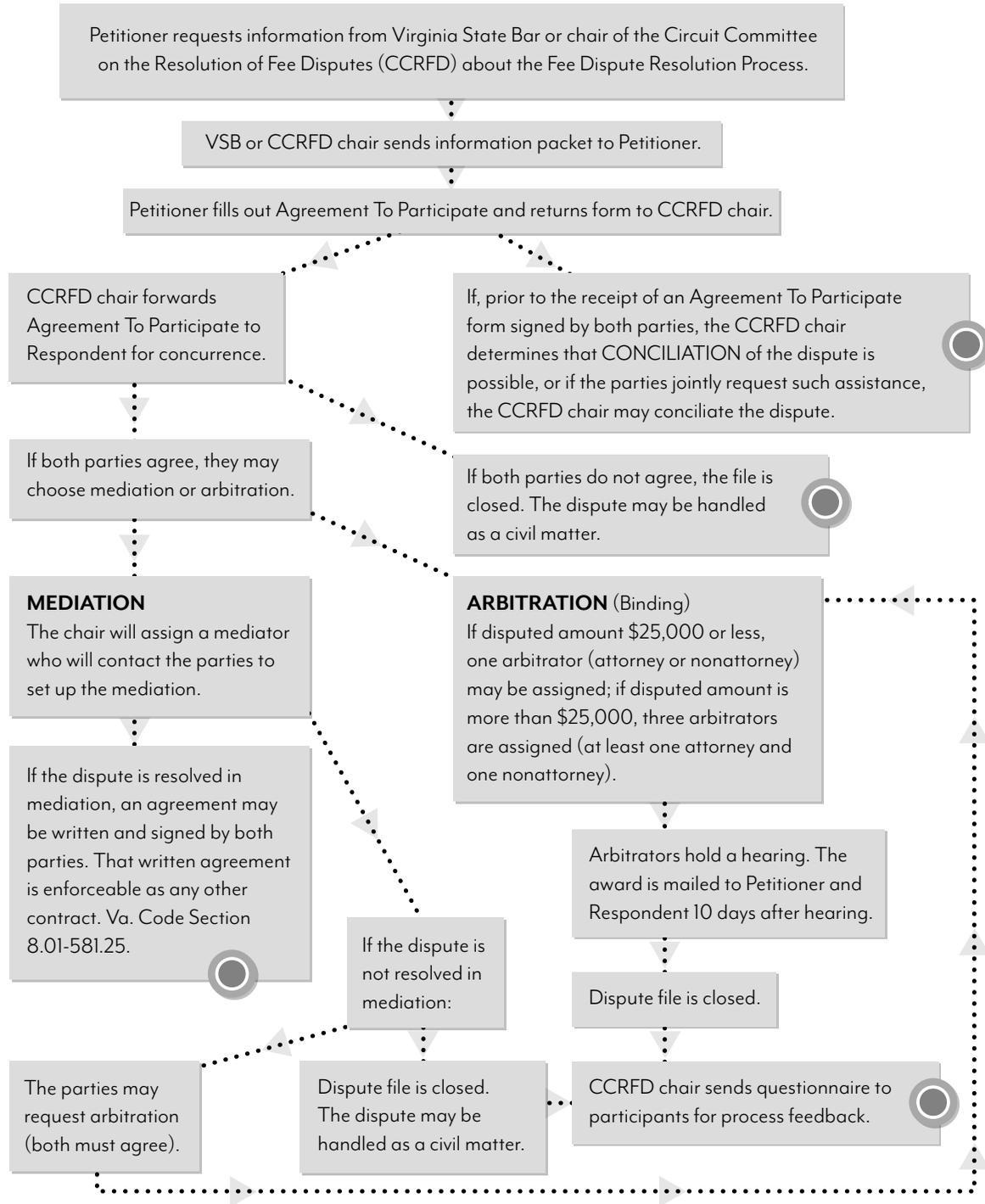


Fee Dispute Resolution Process



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Virginia State Bar Informational Pamphlets

FEE DISPUTE RESOLUTION PROGRAM

A public service of the Virginia State Bar and local bar associations.

I. Introduction

What is the Fee Dispute Resolution Program (FDRP)?

The FDRP was created as a voluntary program to help attorneys and clients resolve disputes over fees and costs paid, charged, or claimed for legal services provided by a member of the Virginia State Bar. The program achieves this goal by providing two options—mediation and binding arbitration. Parties who choose the mediation process but who do not reach a satisfactory conclusion may still utilize the binding arbitration process. However, you may not move from binding arbitration to mediation.

What is mediation?

Mediation is a voluntary, confidential process in which a neutral third party facilitates communication between the parties to help them understand and resolve their dispute. Mediators do not decide the issues in the dispute or impose solutions. If the parties choose to resolve their dispute with a written agreement, that agreement is enforceable in the same manner as any other written contract.

What is binding arbitration?

When you agree to arbitration, you are consenting to submit your case to a neutral third party who will hear all sides of your dispute and then issue a binding award. Unlike a court hearing, arbitration is informal and is conducted without strict observance of rules of civil procedure or evidence. The award of the arbitrators is enforceable by the circuit court and cannot be revised or revoked except under certain circumstances, such as the fraud, corruption, or evident partiality of an arbitrator.

II. General Program Information

How do I participate in the program?

The first step is to call the Virginia State Bar’s Fee Dispute Hotline at (804) 775-9423. You will need to leave your name, address, phone number, locality where the dispute took place and the name of the person(s) with whom you have a dispute. If you wish to receive the information via e-mail, please leave your e-mail address as well. The VSB Coordinator will provide you with the Agreement To Participate that you must fill out and sign to get your case started, as well as the program rules and guidelines. If you choose to mediate, this form becomes the Agreement To Mediate. If you choose to arbitrate, this form becomes the Agreement To Arbitrate. Please note that the VSB cannot advise you as to whether you have a valid fee dispute.

How much does it cost to participate in the FDRP?

The Petitioner — the party who contacts the program first — pays a one-time non-refundable fee of \$20.00. This is the only administrative fee charged, whether you choose to mediate your case, arbitrate your case, or mediate first, then arbitrate. Both parties are expected to cover their own costs, including copies of documents and correspondence, legal representation, or stenography.

What if an attorney has already filed a lawsuit to collect the fee?

The **Circuit Committee on the Resolution of Fee Disputes** (CCRFD) can not handle a fee dispute that has already been decided by a court. Also, the CCRFD can not handle a dispute that is pending before a court. However, if both parties sign an agreement to participate in the program, either by mediation or arbitration, and nonsuit the case or ask the court for a stay in the proceedings, the FDRP can handle your case. You should continue to prepare for the court case unless and until there is a mutual understanding to participate in the FDRP in writing.

Do I have to hire an attorney to represent me in a fee dispute resolution proceeding?

No. You do not need to hire an attorney to participate in mediation or arbitration, but you have the right to bring an attorney with you, should you decide to do so.

What if my client/attorney refuses to participate?

This is a voluntary program. If there is no mutual agreement to mediate or arbitrate through the FDRP, the CCRFD cannot resolve the dispute. The CCRFD chair will usually give each party about two weeks to decide. The Virginia State Bar strongly encourages all attorneys and clients involved in a fee dispute to consider using the FDRP instead of resorting to court.

What if I think my attorney has been unethical in representing me?

The CCRFDs are not part of the disciplinary system of the Virginia State Bar (VSB). Therefore, allegations of unethical conduct must first be reported to the VSB through the complaint process. (You may call [804] 775-0570 for information about filing a misconduct inquiry.) If the VSB determines that no disciplinary rule has been violated, the matter may be referred back to the CCRFD for resolution of the fee dispute. However, in general the VSB disciplinary process does not address complaints about a lawyer’s fee.

III. More Information about the Mediation Process

Who are the mediators?

Cases are mediated by volunteer lawyers and nonlawyers who are certified by the Supreme Court of Virginia, and have participated in a training program for resolving fee disputes.

How do I start the mediation process?

If you wish to mediate your dispute you must sign an Agreement To Mediate. On that form you will briefly state the amount of the fee in controversy and provide a brief summary of your views about the dispute. Once the other party has agreed to participate, and also signed the Agreement to Mediate, the CCRFD chair will help you identify the mediators, who will schedule the mediation session. The Agreement to Mediate form may be obtained from the Virginia State Bar or a CCRFD chair.

When will a mediation session be scheduled?

Once the Agreement To Mediate has been signed by all parties to the dispute, the mediator will then work with the parties to schedule the mediation at a mutually agreeable time, within thirty days of the mediator’s appointment.

Do I have to attend the mediation hearing in person?

The process is most likely to be successful when the parties meet face to face. If, however, both parties cannot physically be present, they may be able to arrange to mediate by telephone.

IV. More Information about the Arbitration Process

Who are the arbitrators?

The arbitrators are lawyers and nonlawyers who volunteer their time to hear and decide these disputes. All volunteers have participated in a training program focused on resolving fee disputes.

How do I start the arbitration process?

If you want to arbitrate your fee dispute, you must sign an

Agreement To Arbitrate. On that form you will state the amount of the fee in controversy and give a brief explanation of your position in the dispute. The Agreement To Arbitrate form may be obtained from the Virginia State Bar or a CCRFD chair.

When will an arbitration hearing be scheduled?

Once the Agreement To Arbitrate has been signed by all parties to the dispute, the CCRFD chair will assign the case to one arbitrator, or to an arbitration panel. The arbitrators will then schedule a hearing within forty-five days of their appointment.

How many arbitrators will handle my case?

In arbitration, if the amount in controversy is \$25,000 or less, the case is usually assigned to a single arbitrator who is usually a lawyer-arbitrator. You may request a panel of three arbitrators, but that decision is within the discretion of the CCRFD chair. For matters in excess of \$25,000, the CCRFD chair will assemble a three-arbitrator panel consisting of at least one lawyer and at least one nonlawyer.

Can I object to the appointment of a certain arbitrator?

Yes, if you question the arbitrator’s impartiality. However, once a hearing begins, such objections are waived. Removal of an arbitrator, for good cause shown, is within the discretion of the CCRFD chair.

Do I have to attend the arbitration hearing in person?

If you are unable to attend the arbitration hearing in person, the hearing may be held by teleconference, or you may waive the evidentiary hearing. If you do not appear at the hearing, and do not give a reasonable explanation for your absence, the arbitration will proceed without you. Once a hearing date has been agreed upon, it is unlikely that the hearing will be rescheduled unless there are extraordinary circumstances.

What if I decide not to arbitrate after I’ve signed the Agreement to Arbitrate?

Once you sign the Agreement To Arbitrate form, your consent to arbitration is irrevocable, and the arbitration award may be enforced against you in court.

How do the arbitrators decide?

All arbitrators have been trained and sworn to conduct the arbitration hearing in an impartial and neutral manner. When resolving a fee dispute, the arbitrators may consider all pertinent factors, including the intention and understanding of the parties at the time the representation was undertaken. Expert testimony supporting the reasonableness or unreasonableness of the fee is not necessary but is permitted. The factors to be considered are:

- The time and labor required, the novelty, complexity and difficulty of the questions involved, and the skill required for proper legal representation;

- The likelihood that the acceptance of the engagement would preclude other employment by the lawyer;
- The customary fee or rate charged in the community;
- The monetary or other stakes involved in the matter;
- The time constraints of the representation;
- The nature and length of the professional relationship with the client;
- The experience, reputation, diligence, and ability of the lawyer, as well as the skill, expertise, or efficiency of effort reflected in the actual services rendered;
- Whether the fee agreement was fixed or contingent;
- Whether the lawyer provided an adequate explanation to the client of the fee arrangement at the outset of the representation;
- Whether the fee arrangement was in writing;
- The promptness of the billing;
- The experience of the client in obtaining legal services;
- Whether an estimate of the total fee was given and, if so, how close to the final bill was that estimate;
- The extent to which the lawyer and others in the lawyer’s office have documented their time spent on the matter; and
- The results obtained by the lawyer.

When will I know the decision?

Arbitrators will deliberate in private after the formal closing of the arbitration hearing. They will issue an award within ten days after the hearing.

How do I decide whether to use mediation or arbitration?

Mediation is often appropriate when parties hope to continue a business relationship or to end that relationship without hard feelings. Mediators help the parties work together to reach a resolution that both find acceptable. If the parties do not resolve their case in mediation, they can still pursue resolution through arbitration.

Arbitration is appropriate when the parties are willing to accept the decision of a neutral third party, the arbitrator. This means that even if one of the parties objects to the decision, they are still required to implement its terms. However, arbitration does guarantee a final decision.