DC Bar Attorney/Client Arbitration Board
Preparing for the Hearing – How to Effectively Present Your Case

An arbitration hearing typically involves three distinct phases, which you should prepare for in advance of the hearing. You will be given an opportunity to give an opening statement, to present your case-in-chief, and to give a closing statement. You will also be allowed to cross-examine witness(es) called by the opposing party. Taking the time in advance of the hearing to prepare for each of these phases will help to ensure you provide the arbitrator(s) with the necessary information to support your case.

Opening Statement

Opening statements should be a concise recitation of the information you plan to present to the arbitrator(s) during the hearing. The statement should begin and conclude with a brief summary of the issue being disputed along with the exact outcome you are seeking including, if applicable, the dollar amount you are seeking. For example, the amount you believe you are due as a refund, as a discharge or as a payment for legal services performed.

Ensure your opening statement includes the following information.

- ❑ **Opening Summary**
  - **Explain what you are seeking in the case. Include exact dollar amounts and note if that differs from what the documents you filed reflects. For example, if interest calculations have changed or other fees/expenses sought need to be updated from the time you filed the Request for Arbitration or the Response to Request for Arbitration.**
    - ***What do you think you are owed?***
    - ***If the other party is seeking compensation, why don't you think you owe it?***

Case-In-Chief

Your case-in-chief is your opportunity to present evidence to support your case and what you are seeking as an outcome in the arbitration. This will include testimony given under oath and may be supported by documentary evidence. You may provide your own testimony and/or call witnesses to provide firsthand knowledge of this information.

- ❑ **Discuss the representation agreement**
  (Exhibit examples: the agreement(s); correspondence re agreement)
  - ***Was it in writing?***
  - ***Were fees agreed to be paid on a(n) hourly, contingent, or flat basis?***
  - ***Was the agreement easy to understand?***
- ❑ **Discuss the fees**
  (Exhibit examples: correspondence re the fees; client receipts and related correspondence)
  - **Were they reasonable?**
    - ***Explain why or why not***

- *Factors to consider include: (1) case complexity; (2) whether the attorney is precluded from taking other matters; (3) whether the fee is customary; (4) the amount involved in the case and the result obtained; (5) time restrictions and deadlines; (6) the nature and length of the attorney-client relationship; and (7) the experience, reputation, and skill level of the attorney.*

  - ***Explain whether the attorney kept advanced payments that were not earned by the end of the representation***

- ❑ **Discuss any other attorney charges**
  (Exhibit examples: vendor invoices/receipts; correspondence re charges)
  - **Were they reasonable?**
    - **Explain why or why not**
- ❑ **Describe the underlying matter(s)/case(s) at issue in the fee dispute**
  (Exhibit examples: court filings/decisions relevant to fee dispute; correspondence re case complexity)
  - **What was the nature of the issues underlying the case? (e.g., employment, family law, housing, contract dispute, etc.)**
  - **Case type?**
    - ***Civil?***
    - ***Criminal?***
  - **What was the outcome of the matter?**
    - ***Describe any settlement terms***
    - ***Describe any court judgement***
    - ***Explain whether any attorney fees were awarded***
- ❑ **Describe attorney communication**
  (Exhibit examples: attorney-client correspondence, particularly evidence of attorney responsiveness or lack thereof; attorney bills and related correspondence; correspondence marked as undeliverable)
  - **Explain whether the attorney kept the client informed on the case**
  - **Explain whether the attorney responded to information requests throughout the case**
  - **Were bills provided that detail the fees and other charges?**

Closing Remarks

Your closing remarks should be concise and summarize what you presented to the arbitrator(s) to support your requested outcome in the fee dispute. Be sure to reiterate the dollar amount you are seeking, or other outcome you are seeking. For example, if you don't believe you should have to pay legal fees claimed, or you seek a reduction of the legal fees claimed. Vague statements will not help the arbitrators reach a decision and are not persuasive.

Facts to include in your case-in-chief

As you prepare your case, ask yourself the following questions and include all answers – ***relevant to the fee dispute****:*

Representation Agreement

1. **Was there an agreement for the attorney to represent the client in the matter?**

If so, include that information in your opening statement and specify whether the agreement was in writing. If the agreement was not in writing, explain why to the best of your knowledge. Also, if the agreement was in writing, note the date in which the agreement was signed by all parties.

2. **Was the agreement easy for all parties to understand?**

When answering this question, include details regarding whether and when the attorney explained the agreement to the client. Also, note whether the agreement included the full scope of the expected representation; the fee and/or type of fee; how the fee was to be calculated; the expected payment timing; and whether the attorney may charge costs beyond the fees.

Fees

3. **What type of fee was agreed upon?**

Fee types include, **contingent**, **hourly**, or **fixed**.

- A **contingent fee** is one in which the attorney does not accept a fee for services unless there is a specified outcome. If you had a contingent fee arrangement, explain the details of how the award or settlement was to be divided between client and attorney. Also, include details on whether and how costs and expenses beyond the fee were to be calculated and deducted from the award or settlement. If these details were not agreed to in advance, please include that information in the opening statement as well.
- An **hourly fee** is one in which the attorney and specified staff are paid by the hour for services rendered. If you agreed to an hourly fee, include the hourly rate(s).
- A **fixed fee** is one in which the attorney is paid a flat fee for specific services. If you agreed to a fixed fee, include the agreed-to amount.

4. **Was the fee reasonable?**

When determining whether a fee is reasonable, it is important to consider the specific circumstances of the representation. Consider these following points and include any related relevant data in your opening statement:

a. ***Timing and labor required, the novelty and difficulty of the questions, involved, and the skill required to perform the legal service properly*** – the more complex the case and the higher the required skill, the higher a reasonable fee may be;
b. ***The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer*** – a matter that limits the attorney's ability to work on other matters or take on other clients or employment is reasonably expected to have a higher fee;
c. ***The fee customarily charged in the District of Columbia for similar services*** – a fee that is similar to fees charged by other local attorneys for similar legal services is more likely to be deemed reasonable;
d. ***The amount involved and the result obtained*** – particularly in a contingent fee arrangement, the amount at issue in the underlying matter or case, and the result obtained, could greatly influence the amount of the fee;
e. ***The time limitations imposed by the client or by the circumstances*** – an attorney is expected to charge a higher fee when working under rigid timeframes and deadlines;
f. ***The nature and length of the professional relationship with the client*** – the attorney-client relationship can play a role in the fee if it impacts the work required (for example, an attorney may be considerably more efficient working with a longstanding client than a new one);
g. ***The experience, reputation, and ability of the lawyer or lawyers performing the services*** – the more experienced, reputable, or able the attorney, the higher a reasonable fee may be; and
h. ***Whether the fee is fixed or contingent*** – an earned contingent fee is expected to be higher than a fixed fee because of the risk the attorney takes on by accepting the matter.

Other Attorney Charges

5. Are the attorney's charges for disbursements, costs and expenses reasonable?

When determining whether these non-fee related charges are reasonable, consider the reason for the charges. Attorneys may be reimbursed for expenses reasonably incurred in connection with the client's matter for support services provided by the lawyer or law firm. However, the attorney cannot be reimbursed for costs associated with the general maintenance of the firm's office or charge a client for more than the actual costs for third-party support services.

The Underlying Matter/Case

6. What was the nature of the case?

Include details like the subject matter and issue, (e.g., family law litigation; contract dispute) of the case, whether it was a criminal or civil case, and the extent of the matter or matters that the attorney agreed to handle.

7. What was the outcome of the matter?

Explain whether and how the matter was resolved including details regarding relevant court decisions, settlements, and case dismissals. Also include whether attorney fees were awarded to the attorney(s) involved in the fee dispute.

Attorney Communication

8. Did the attorney keep the client informed on the status of the case and comply with reasonable requests for information?

Explain whether the attorney kept the client informed on the status of the case and provide responses to requests for information. Also provide details about why any requests for information were deemed reasonable or unreasonable. Concisely provide examples that support these assertions, including the frequency and nature of the requests.

9. Was there a written bill? If so, what did it include?

Explain if and when the attorney sent the bills, and if and when the client received bills from the attorney. If there was no written bill, explain your understanding about why no such bill existed. If there was a written bill, detail whether the bill includes (1) for hourly fee arrangements, a statement on how the attorney's time was spent; (2) for contingent fee arrangements, a statement describing the outcome of the matter and, if there is a recovery, a statement showing the remittance to the client and the method for its determination; and/or (3) for arrangements in which fees or costs are allocated among clients, a statement explaining to the client the basis for the allocation. *[Attorneys should be prepared to explain their bill preparation methods – including details like which staff members work on the billing, what software is used, and whether billing is prepared contemporaneously.]*