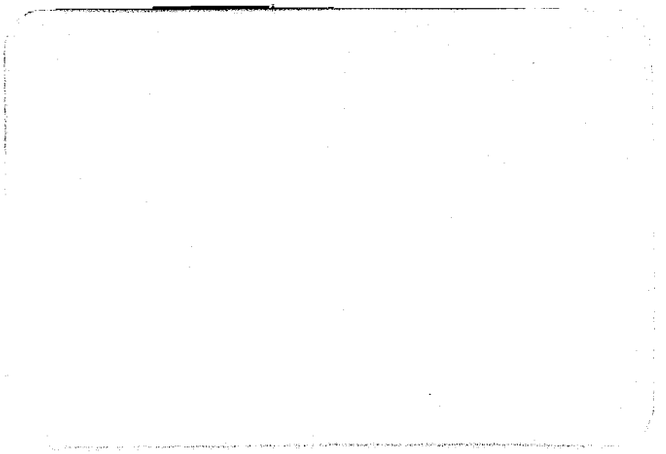

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ARBITRATING LAWYER-CLIENT FEE DISPUTES

A NATIONAL SURVEY

By HALT

1988

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Introduction

HALT - An Organization of Americans for Legal Reform is a consumer group of more than 150,000 members dedicated to enabling people to dispose of their legal affairs in a simple, affordable and equitable manner. One reform HALT supports is the expansion of fair and efficient out-of-court forums for resolving disputes of many kinds, including those between clients and their lawyers. Arbitration of lawyer-client fee disputes provides one such quick, inexpensive and informal forum.

Almost without exception, when lawyer-client fee arbitration is offered, it is operated by state and local bar associations. In practice this is how it works:

Usually, when a client contacts the bar to complain about an attorney's fees, the bar refers the client to a fee arbitration program. If the bar does not run such a program, it may recommend the dispute be pursued in court.

Bar arbitration programs are either *mandatory* or *voluntary.* In four of the five states that offer mandatory programs, lawyers are required to participate in and be bound by arbitration if the client requests it. (In the fifth, California, if one side refuses to be bound, arbitrators issue an advisory opinion.) Voluntary programs ask both parties to agree to participate in and be bound by arbitration.

Generally, in both voluntary and mandatory programs, a panel is appointed from a list of volunteers to hear testimony, examine evidence and render a decision upholding or reducing the disputed fee. If a binding decision is rendered, it can be appealed only on limited procedural grounds.

Why a National Survey?

National information on these programs has not been compiled since the now defunct American Bar Association Special Committee on Resolution of Fee Disputes issued its report in 1974. Given that fee disputes are frequent and among the complaints most often registered with the bar, the lack of information about the effectiveness of fee arbitration systems is untenable. We need to know whether these systems are working and how. If a binding decision is rendered, it can only be appealled on limited procedural grounds. HALT conducted its national survey during May and June of 1987. We designed the survey with consumers' interests in mind. Of utmost concern was whether fee arbitration programs were meeting consumers' needs. Among the questions to be answered:

How do bars publicize their programs?

Is information on the process provided to the parties before hearings?

Is early resolution encouraged?

Do arbitrators have to disclose any conflict-of-interest in a case?

Are nonlawyer arbitrators used?

Is back-up assistance offered to clients when their lawyers refuse to participate?

Is a filing fee charged?

Are hearings and records open to the public?

Answers to questions meant to elicit statistical responses, such as the total number of fee complaints filed in 1986 or the proportion of binding decisions that needed to be court-enforced, though extremely important, are

unavailable because most bars either did not have the answers to these questions or chose not to make that information public.

How the Survey Was Conducted

HALT telephoned the bars in all 50 states and the District of Columbia and asked whether they offered fee arbitration. Thirty states and the District of Columbia said they offer fee arbitration statewide, 19 offer it at the local bar level and six do not offer fee arbitration at any level (see Appendix I). It's important to note that "local bar" does not mean *all* local bars within the state. Some states have only one or two local bars that offer fee arbitration, covering but a minute portion of the state's population.

The rest of the survey was conducted only with those 30 bars and the District of Columbia that reported statewide fee arbitration systems. (Local bars were not surveyed because their caseloads are usually small and their jurisdiction limited.)

In most cases we interviewed Arbitration Committee chairs, program administrators and bar executive directors. Interviewees who were unsure about their answers were asked to make an educated guess or to consult their governing rules. HALT also asked each program to send a copy of the bar's fee arbitration rules and any other information routinely distributed to those who request fee arbitration. When possible, HALT used this printed information to verify answers given in the telephone survey. Because not all of the questions asked in HALT's survey are covered by bar rules, however, the accuracy of some of the information necessarily depends on the interviewees' knowledge of the program.

Findings

Of the 30 statewide programs and in the District of Columbia:

— 5 states (16%) offer mandatory systems that require lawyers to participate when the client requests it.

— 26 states (84%) offer voluntary systems that ask both sides to agree in advance to binding arbitration.

— 12 of the states with voluntary programs (46%) do not help clients when their attorneys refuse to participate.

— 23 states (74%) report that clients hear about fee arbitration most often by contacting the bar with a fee-related complaint.

— 5 states (16%) charge a filing fee for processing cases through arbitration.

— 12 states (39%) do not use nonlawyer arbitrators on panels.

— 29 states (94%) report that clients initiate fee arbitration more often than do their lawyers.

— 9 states (29%) report that the average fee submitted to arbitration involves more than $2,500.

— 21 states (68%) have no written rule that requires arbitrators to disclose if they have a "conflict-of-interest" in a case.

— 26 states (84%) keep proceedings and case documents confidential.

— 14 states (45%) keep awards/opinions confidential.

Appendix I

Bar-sponsored Fee Arbitration Programs

Survey Results

FEE ARBITRATION IS ADMINISTERED BY:

	STATE BAR	LOCAL BAR	NO PROGRAM		STATE BAR	LOCAL BAR	NO PROGRAM
ALABAMA			✓	MONTANA	✓		
ALASKA	✓			NEBRASKA			✓
ARIZONA	✓			NEVADA	✓		
ARKANSAS			✓	NEW HAMPSHIRE	✓		
CALIFORNIA	✓	✓		NEW JERSEY	✓		
COLORADO	✓	✓		NEW MEXICO	✓		
CONNECTICUT	✓			NEW YORK		✓	
DELAWARE	✓			NORTH CAROLINA		✓	
DISTRICT OF COLUMBIA	✓			NORTH DAKOTA	✓		
FLORIDA		✓		OHIO		✓	
GEORGIA	✓			OKLAHOMA		✓	
HAWAII	✓			OREGON	✓		
IDAHO	✓			PENNSYLVANIA		✓	
ILLINOIS	✓	✓		RHODE ISLAND	✓		
INDIANA		✓		SOUTH CAROLINA	✓		
IOWA		✓		SOUTH DAKOTA			✓
KANSAS		✓		TENNESSEE		✓	
KENTUCKY	✓			TEXAS		✓	
LOUISIANA			✓	UTAH	✓		
MAINE	✓			VIRGINIA		✓	
MARYLAND	✓	✓		VERMONT	✓		
MASSACHUSETTS	✓	✓		WASHINGTON	✓		
MICHIGAN	✓			WEST VIRGINIA			✓
MINNESOTA		✓		WISCONSIN	✓		
MISSISSIPPI	✓			WYOMING	✓		
MISSOURI		✓		TOTAL #	31	19	6
				TOTAL %	61	37	12

** Survey data was compiled during May/June of 1987.*

	ALASKA	ARIZONA	CALIFORNIA	COLORADO	CONNECTICUT	DELAWARE	DISTRICT OF COLUMBIA	GEORGIA	HAWAII	IDAHO	ILLINOIS	KENTUCKY	MAINE	MARYLAND	MASSACHUSETTS	MICHIGAN	MISSISSIPPI	MONTANA	NEVADA	NEW HAMPSHIRE	NEW JERSEY	NEW MEXICO	NORTH DAKOTA	OREGON	RHODE ISLAND	SOUTH CAROLINA	UTAH	VERMONT	WASHINGTON	WISCONSIN	WYOMING	TOTAL STATES	PERCENTAGE
TYPE OF SYSTEM:																																	
VOLUNTARY		✓		✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓		✓	✓	✓	✓	✓	26	84
MANDATORY	✓		✓										✓								✓					✓						5	16
IF A LAWYER REFUSES TO PARTICIPATE IN A VOLUNTARY PROGRAM—WHAT HAPPENS?																																	
NOTHING				✓					✓	✓	✓	✓			✓	✓		✓				✓	✓	✓	✓							12	46
CLIENT GIVEN ADVICE						✓											✓												✓			3	12
CASE INVESTIGATED, CLIENT ADVISED																																0	0
HEARING, ADVISORY OPINION																				✓							✓			✓		3	12
HEARING OR INVESTIGATION, ADVISORY OPINION, CLIENT HELPED IN COURT		✓			✓		✓	✓						✓					✓								✓				✓	8	31
HOW DO CLIENTS HEAR ABOUT FEE ARBITRATION?																																	
NEWSPAPER									✓			✓																				2	6
REFERRED BY BAR			✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓		✓		✓	✓		✓	✓	✓	✓	✓	✓	23	74
NOTICE BEFORE SUIT	✓																				✓											2	6
RULES LEFT IN PUBLIC	✓		✓		✓										✓					✓												5	16
WORD-OF-MOUTH		✓		✓			✓	✓	✓			✓	✓		✓			✓		✓	✓	✓		✓	✓		✓		✓	✓	✓	18	58

	ALASKA	ARIZONA	CALIFORNIA	COLORADO	CONNECTICUT	DELAWARE	DISTRICT OF COLUMBIA	GEORGIA	HAWAII	IDAHO	ILLINOIS	KENTUCKY	MAINE	MARYLAND	MASSACHUSETTS	MICHIGAN	MISSISSIPPI	MONTANA	NEVADA	NEW HAMPSHIRE	NEW JERSEY	NEW MEXICO	NORTH DAKOTA	OREGON	RHODE ISLAND	SOUTH CAROLINA	UTAH	VERMONT	WASHINGTON	WISCONSIN	WYOMING	TOTAL STATES	PERCENTAGE
DO LAWYERS HAVE TO INFORM CLIENTS ABOUT ARBITRATION?																																	
YES																																0	0
NO		✓		✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		26	84
BEFORE FILING SUIT	✓		✓										✓								✓										✓	5	16
A COMPLAINT MAY BE FILED BY:																																	
CLIENT OR LAWYER	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	28	90
CLIENT ONLY									✓				✓															✓				3	10
MOST COMPLAINTS ARE FILED BY:																																	
CLIENT	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	29	94
LAWYER																																0	0
BOTH CLIENT & LAWYER						✓																			✓							2	6
WHAT IS THE AVERAGE AMOUNT IN A DISPUTED FEE?																																	
ABOVE $2,500	✓		✓	✓	✓														✓			✓		✓	✓		✓					9	29
BELOW $2,500		✓				✓	✓	✓	✓				✓	✓	✓	✓	✓	✓		✓			✓			✓		✓	✓	✓	✓	18	58
NO ANSWER										✓	✓	✓									✓											4	13

	ALASKA	ARIZONA	CALIFORNIA	COLORADO	CONNECTICUT	DELAWARE	DISTRICT OF COLUMBIA	GEORGIA	HAWAII	IDAHO	ILLINOIS	KENTUCKY	MAINE	MARYLAND	MASSACHUSETTS	MICHIGAN	MISSISSIPPI	MONTANA	NEVADA	NEW HAMPSHIRE	NEW JERSEY	NEW MEXICO	NORTH DAKOTA	OREGON	RHODE ISLAND	SOUTH CAROLINA	UTAH	VERMONT	WASHINGTON	WISCONSIN	WYOMING	TOTAL STATES	PERCENTAGE
IS THERE A FILING FEE?																																	
YES			✓				✓								✓														✓		✓	5	16
NO	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓		26	84
ARE LAY-ARBITRATORS USED?																																	
YES	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓					✓	✓		✓	✓	✓				✓		✓			19	61
NO									✓					✓	✓	✓	✓			✓				✓	✓	✓		✓		✓	✓	12	39
THE NUMBER OF ARBITRATORS ON A PANEL:																																	
1 FOR AMOUNTS LESS THAN $	2000	2500	3000			2500	200			1000		2500		3000	500		2500	1500	500	2500	3000	1000	1000				1000		5000	1000	1000		
3 FOR AMOUNTS LESS THAN $	2000	2500	3000			2500	200			1000		2500		3000	500		2500	1500	500	2500	3000	1000	1000				1000		5000	1000	1000		
PARTIES CHOOSE 1 OR 3									✓																							1	3
PARTIES CHOOSE 1, 2 OR 3				✓																												1	3
1 ARBITRATOR											✓					✓																2	6
3 ARBITRATORS					✓			✓					✓											✓	✓	✓		✓				7	23

	ALASKA	ARIZONA	CALIFORNIA	COLORADO	CONNECTICUT	DELAWARE	DISTRICT OF COLUMBIA	GEORGIA	HAWAII	IDAHO	ILLINOIS	KENTUCKY	MAINE	MARYLAND	MASSACHUSETTS	MICHIGAN	MISSISSIPPI	MONTANA	NEVADA	NEW HAMPSHIRE	NEW JERSEY	NEW MEXICO	NORTH DAKOTA	OREGON	RHODE ISLAND	SOUTH CAROLINA	UTAH	VERMONT	WASHINGTON	WISCONSIN	WYOMING	TOTAL STATES	PERCENTAGE
HOW ARE LAY-ARBITRATORS RECRUITED?																																	
LAWYER RECOMMENDATION	✓				✓			✓		✓			✓						✓														6	19
BAR RECOMMENDATION		✓		✓	✓	✓	✓				✓		✓								✓	✓	✓				✓					11	35
JUDGE APPOINTMENT												✓									✓											2	6
VOLUNTEERS		✓																											✓			2	6
NO LAY-ARBITRATORS									✓					✓	✓	✓	✓			✓				✓	✓	✓		✓		✓	✓	12	39
DO ARBITRATORS HAVE TO DISCLOSE THEIR CONFLICT OF INTEREST IN A CASE?																																	
YES	✓		✓					✓		✓				✓					✓	✓	✓									✓	✓	10	32
NO																																0	0
NO PROVISION		✓		✓	✓	✓	✓		✓		✓	✓	✓		✓	✓	✓	✓				✓	✓	✓	✓	✓	✓	✓	✓			21	68
IS CHALLENGING ARBITRATORS ALLOWED?																																	
YES	✓	✓	✓		✓		✓	✓		✓		✓			✓	✓		✓			✓		✓	✓	✓			✓	✓	✓	✓	✓	19	61
NO																																0	0
NO PROVISION				✓		✓			✓		✓		✓	✓			✓		✓	✓		✓				✓	✓					12	39

	ALASKA	ARIZONA	CALIFORNIA	COLORADO	CONNECTICUT	DELAWARE	DISTRICT OF COLUMBIA	GEORGIA	HAWAII	IDAHO	ILLINOIS	KENTUCKY	MAINE	MARYLAND	MASSACHUSETTS	MICHIGAN	MISSISSIPPI	MONTANA	NEVADA	NEW HAMPSHIRE	NEW JERSEY	NEW MEXICO	NORTH DAKOTA	OREGON	RHODE ISLAND	SOUTH CAROLINA	UTAH	VERMONT	WASHINGTON	WISCONSIN	WYOMING	TOTAL STATES	PERCENTAGE
IS THE NUMBER OF WITNESSES ALLOWED AT A HEARING LIMITED?																																	
YES																																0	0
NO	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	29	93
AT CHAIR DISCRETION										✓											✓												2	6
IS EARLY RESOLUTION ENCOURAGED?																																	
YES	✓	✓		✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓		✓		✓	✓	✓				✓	✓				✓	✓	21	68
NO																																0	0
NO PROVISION			✓			✓										✓		✓				✓	✓	✓			✓	✓	✓			10	32
IS FORMAL MEDIATION OFFERED?																																	
YES									✓																							1	3
NO	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	30	97
ARE PROCEEDINGS DOCUMENTS:																																	
CONFIDENTIAL	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓				✓	✓	✓			✓	✓	✓	✓	✓	✓	✓	✓	26	84
OPEN TO PUBLIC																																0	0
NO PROVISION																✓	✓	✓				✓	✓										5	16

	ALASKA	ARIZONA	CALIFORNIA	COLORADO	CONNECTICUT	DELAWARE	DISTRICT OF COLUMBIA	GEORGIA	HAWAII	IDAHO	ILLINOIS	KENTUCKY	MAINE	MARYLAND	MASSACHUSETTS	MICHIGAN	MISSISSIPPI	MONTANA	NEVADA	NEW HAMPSHIRE	NEW JERSEY	NEW MEXICO	NORTH DAKOTA	OREGON	RHODE ISLAND	SOUTH CAROLINA	UTAH	VERMONT	WASHINGTON	WISCONSIN	WYOMING	TOTAL STATES	PERCENTAGE
ARE AWARDS OPINIONS:																																	
CONFIDENTIAL	✓			✓		✓					✓			✓	✓						✓			✓	✓	✓	✓	✓	✓	✓		14	45
OPEN TO PUBLIC		✓			✓		✓	✓	✓	✓		✓	✓						✓	✓											✓	11	35
NO PROVISION			✓													✓	✓	✓				✓	✓									6	19
ARE RULES SENT TO BOTH PARTIES BEFORE A HEARING?																																	
YES	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓		✓			✓		✓		✓	✓	✓	✓	✓	✓		✓	✓	✓	24	77
RULES NOT SENT				✓										✓		✓	✓		✓										✓			6	19
ONLY WHEN REQUESTED																					✓											1	3
IS INFORMATION ON ARBITRATION, OTHER THAN THE RULES, PROVIDED BEFORE A HEARING?																																	
YES	✓	✓	✓	✓	✓		✓	✓			✓	✓	✓		✓		✓			✓				✓			✓		✓			16	52
NO						✓			✓	✓				✓		✓		✓	✓		✓	✓	✓		✓	✓		✓		✓	✓	15	48