

Survey of Fee Arbitration Programs
(1999 Data)

I. A. INTRODUCTION

There have been disputes between clients and lawyers regarding fees for probably as long as there have been clients and lawyers. An old German proverb illustrates the common view of lawyers and their fees: “Doctors purge the body, preachers the conscience, and lawyers the purse.” Mark Twain pithily summarized the American perspective: “Nothing is so strange as the sight of a lawyer with his hand in his own pocket.” How to resolve disputes over legal fees has been an equally longstanding problem.

In 1992, the American Bar Association issued the seminal McKay Report (Report of the Commission on Evaluation of Disciplinary Enforcement). In Recommendation 3 of the McKay Report, the ABA recognized that the lawyer disciplinary system was not designed to address complaints about the quality of lawyers’ services or fee disputes. Recommendation 3 called upon each jurisdiction to expand their system of lawyer regulation to include a Court-established, mandatory fee arbitration program.

In an effort to implement this recommendation of the McKay Report, the Standing Committee on Client Protection issued the *ABA Model Rules for Fee Arbitration*, which were adopted by the ABA House of Delegates in 1995. These rules were largely patterned on the experience of the two leading jurisdictions that had previously enacted mandatory fee arbitration programs: New Jersey, by court rule; and California, by statute (both in 1978).

In 1999, the Standing Committee on Client Protection conducted its initial survey of state and local fee arbitration programs. The Standing Committee on Client Protection developed an 18-question survey, and distributed the survey in 1999 to all 50 states and the District of Columbia, and to various local bar fee arbitration programs. Multiple reminders were sent to those jurisdictions that failed to respond. The response was fair, considering that this was the initial fee arbitration survey. Twenty-seven jurisdictions responded, of which only one, Arkansas, had no fee arbitration program at all. A guide to the entities responding can be found at the end of the survey responses.

B. Survey Responses

1. Is your fee arbitration program local or statewide?

Thirty-six local arbitration programs responded, including twenty-five local California programs, nine Pennsylvania programs, and two others.¹ Of the jurisdictions that responded, twenty-three conducted statewide programs (many with local panels). Two jurisdictions, North Carolina and Montana, operated the program on a local basis (although Montana has a statewide panel where no local program exists). The Committee hopes that the response rate will improve in future surveys, so that a more comprehensive view of the status of fee arbitration can be obtained.

- a. Local: **MN** and
ACBA, ALAM, BAMSL, BCBA, BERKS, BHBA, BUTTE, CHESTER, CCCBA, FCBA, KCMBA, LCBA, LBBA, LCBA, ICBA, Marin, MCBA, MON, MONT, Perry, PHIL, PCBA, RCBA, SaCBA, SanBer; SAN, SGVLRS, SJCBA, SBCBA, SCBA, SCCBA, SOLANO, SONOMA, TCBA, VCBA
- b. Statewide: **AL, AZ, CA, CT, DE, DC, FL, HI, ME, MS, MO, NV, NH, NJ, NM, NJ, OR, RI, UT, VT, WA, WI**
- c. Both: **NC** (program established by state bar but panels exist in each district); **MT** (local arbitrators in each judicial district and a statewide panel if not available; statewide office handles all paperwork)

2. How was your fee arbitration program established?

The survey indicated a wide-range of methods for establishing a fee arbitration program. For the state-wide programs, the most common method of adoption was by action of the state bar association (15 jurisdictions): AL, AZ, CT, DE, DC, HI, MN, MS, MO, NM, ND, OR, VT, WA, and WI). The next most common method was by court rule (9 jurisdictions: FL, ME, MT, NV, NH, NJ, NC, RI and UT). Only one state (CA) had a program established by statute, reflecting the fact that matters regarding the regulation of the legal profession are more commonly within the purview of the highest court of the jurisdiction, rather than of the legislature.

- a. Court Rule: **FL, ME, MT, NV, NH, NJ, NC, RI, UT** and Perry, SGVLRS
- b. Statute: **CA** and ALAM, ACBA, BHBA, , CCCBA, ICBA, LBBA, LCBA, Marin,

¹ The opening paragraph after each question summarizes the responses of only the statewide programs (including the District of Columbia). The responses from the local programs are set forth in the survey itself.

MCBA, MONT, SAN, SJCBA, SMCBA, SBCBA, SCCBA, SOLANO, SONOMA, TCBA

- a. Other (by bar association): **AL, AZ, CT, DE, DC, HI, MN, MS, MO, NM, ND, OR, VT, WA, WI** and ACBA, BAMSL, BCBA, BERKS, CHESTER, FCBA, KCMBA, LCBA, MON, PHIL, PCBA, RCBA, SaCBA, SCBA, VCBA

3. Is your fee arbitration program mandatory or voluntary?

The most important distinction among various types of fee arbitration programs is between those programs that are mandatory and those that are purely voluntary. Both of the groundbreaking programs, in New Jersey and California, are mandatory on lawyers if requested by clients. While some jurisdictions have followed that example, many others have opted for purely voluntary programs. Of the statewide programs responding to the survey, only six have programs that are mandatory for the lawyer if requested by the client (CA, DC, ME, MT, NJ, and NC). Nineteen jurisdictions responded that they had voluntary programs (AL, AZ, CT, DE, FL, HI, MN, MS, MO, NV, NH, NM, ND, OR, RI, UT, VT, WA and WI). Information previously received by the Committee suggests that 11-12 jurisdictions have mandatory programs, which is probably consistent with the findings of this survey, given the number of jurisdictions that did not respond to this survey.

- a. Mandatory for both client and lawyer: Marin (mandatory for both if previously agreed to)
- b. Mandatory for lawyer if initiated by client: **CA, DC, ME, MT, NJ, NC** and ALAM, ACBA, BHBA, BUTTE, , CCCBA, FCBA, ICBA, LBBA, LCBA, , Marin, MCBA, MONT, PCBA, RCBA, SanBer, SAN, SJCBA, SMCBA, SBCBA, SCCBA, SOLANO, SONOMA, TCBA, VCBA
- c. Voluntary for both client and lawyer: **AL, AZ, CT, DE, FL, HI, MN, MS, MO, NV, NH, NM, ND, OR, RI, UT, VT, WA, WI** and BCBA, BERKS, CHESTER, , KCMBA, LCBA, , MON, Perry, PHIL, SaCBA, SCBA
- d. Other: **DC** (mandatory for client if agreed to in retainer agreement); **FL** (may be mandated as a disciplinary sanction) and BAMSL (binding arbitration and mediation by consent of both parties); ICBA (voluntary for client if requested by lawyer); SGVLRs (must be initiated by client), SOLANO (lawyer must give client notice of arbitration before filing lawsuit)

4. Does your fee arbitration program apply to all fee disputes?

- a. All fee disputes: **AZ, DE (up to \$30,000), DC, FL, ME, MS, MO** (except if court sets fee), **NH, NM, NC, ND, OR, RI, UT, VT, WA, WI** and ALAM, ACBA, BCBA,

BERKS, BHBA (and costs disputes), BUTTE, CHESTER, CCCBA, FCBA, LCBA, LBBA, Marin, MCBA, MON, MONT, Perry, PCBA, RCBA, SaCBA, SanBer, SAN, SGVLRs, SJCBA, SMCBA, SBCBA, SCBA, SCCBA, SOLANO, SONOMA

- b. Only fee disputes in certain cases: **AL** (no jurisdiction over claims subject to court order or statute); **CA** (excludes fees determined pursuant to statute or court order, or where client seeks affirmative relief); **CT** (no jurisdiction over disputes where fee is subject to statute or court order or where matter is pending before grievance board); **HI**; **MN**; **MT** (dispute must be over \$500); **NV** (dispute not pending in court or involving malpractice), **NJ** (no jurisdiction over claims resulting from legal malpractice or fees established by a court) and BAMSL, KCMBA (no jurisdiction if fee determined by court or the subject of litigation); ICBA (dispute has to be within limits of program); LCBA (between client and lawyer or between two or more lawyers), established by court); PHIL (dispute greater than \$350 but less than \$100,000; no cases involving court awarded fees) TCBA (only disputes over \$750); VCBA (only if fees excessive, charged for services never performed, inadequate representation so client in same position as if no services rendered).

5. Are fee arbitration awards made by your entity binding on the parties?

Another important characteristic of is whether the program provides for binding or non-binding awards. A large majority (14) of the statewide programs responding to the survey have binding awards (AL, AZ, DE, DC, FL, ME, MS, NH, NJ, NM, OR, RI, WA and WI). In the remaining statewide programs, awards are binding only in certain cases, as follows:

- Binding if both parties agree (8: CT, HI, MN, MO, NV, NC, UT and VT)
 - Subject to state administrative law (1: ND)
 - Binding if both parties agree, or after 30 days (2: CA, MT)
- a. Binding in all cases: **AL, AZ, DE, DC, FL, ME, MS, NH, NJ, NM, OR, RI, WA, WI** and BAMSL, BCBA, BERKS, SGVLRs
- b. Non-binding in all cases: FCBA, KCMBA, LCBA, Perry, SCBA
- c. Binding in certain cases:
1. Binding if both parties agree: **CT, HI, MN, MO, NV, NC, UT, VT** and ACBA, BHBA, CHESTER, CCCBA, LBBA, LCBA, Marin, MCBA, MON, MONT, PHIL, RCBA, SanBer, SAN, SJCBA, SMCBA, SBCBA, SCCBA, SONOMA, TCBA, VCBA
 2. Subject to state administrative law: **ND**

3. Binding if both parties agree, or after 30 days: **CA, MT** and ALAM, BUTTE, ICBA, SaCBA

4. Binding if client agrees: SOLANO

6. How many arbitrations does your program conduct on an annual basis?

New Jersey leads all jurisdictions in the number of arbitrations, with approximately 1,000 hearings annually, in addition to 400 cases that settle without necessity of a hearing. California conducts approximately 150-200 cases per year through its state program, but the 42 local bar association programs in California conduct a total of approximately 1,500-2,000 arbitrations per year. Other significant numbers of hearings are from North Carolina (450 per year), Nevada (150) and Wisconsin (100). No other statewide program conducts more than 100 hearings per year.

- a. 0-10 per year: **AL** (5), **ND** (5-10), **VT** (5) and ACBA (4), BCBA (10), BERKS (3-5), FCBA (2-3), ICBA (4-5), LCBA (none last year), MCBA (10), MON (5), Perry (1), SGVLRs (2-6), SCBA (3)
- b. 11-49 per year: **DE** (40), **ME** (45), **MS** (30), **MO** (24), **MT** (30-35), **NH** (25), **NM** (22), **RI** (20), **WA** (41) and BUTTE (25), CHESTER (15-20), LBBA (20-25), Marin (46), PCBA (10-15), SJCBA (45), SBCBA (26), SOLANO (10-15),
- c. 50-99 per year: **AZ** (78), **CT** (60-80), **DC** (51), **FL** (51), **OR** (60), **UT** (65) and BAMSL (30-60), CCCBA (94), KCMBA (55), MONT (50), RCBA (80-100), SanBer (50-70), SMCBA (75), SONOMA (50), TCBA (50), VCBA (75),
- d. 100-200 per year: **CA** (150-200), **NV** (150), **WI** (100) and ALAM (170), BHBA (120), PHIL (125), SCCBA (130-150),
- e. Over 200 per year: **NJ** (1000 hearings, 400 settled without hearing), **NC** (450), SaCBA (350-400), SAN (225)

7. Does your program maintain statistics on the substantive areas of law involved in the arbitrations?

- a. Yes: **CA, CT, DC, NJ, UT** and CCCBA, Marin, MCBA, SCCBA, SJCBA, TCBA, VCBA
- b. No: **AL, AZ, DE, FL, HI, ME, MN, MS, MO, MT, NV, NH, NM, NC, ND, OR, RI, VT, WA, WI** and ALAM, ACBA, BAMSL, BCBA, BERKS, BHBA, BUTTE, CHESTER, FCBA, ICBA, KCMBA, LCBA, LBBA, LCBA, MON, MONT, Perry,

PHIL, PCBA, RCBA, SaCBA, SanBer, SAN, SGVLRs, SMCBA, SBCBA, SCBA, SOLANO, SONOMA

8. Does your program utilize non-lawyers as arbitrators?

Non-lawyer arbitrators are used in 18 jurisdictions (AZ, CA, CT, DC, FL, HI, ME, MN, MO, MT, NJ, NM, NC, ND, OR, UT, WA and WI). Most jurisdictions have monetary thresholds of between \$5,000 and \$10,000 before three-person panels are utilized. Only six jurisdictions do not use non-lawyer arbitrators at all (AL, MS, NV, NH, RI and VT).

a. Non-lawyer arbitrators used:

1. Member of 3-person panel: **CT, DC, HI, ME, MN, MO, MT, NC, ND** and ALAM, CHESTER, CCCBA, LBBA, LCBA, Marin, MCBA, RCBA, SaCBA, SanBer, SJCBA
2. Member of 3-person panel for disputes over \$1000: PHIL
3. Member of 3-person panel for disputes over \$1500: **UT**
4. Member of 3-person panel for disputes over \$2000: ICBA
5. Member of 3-person panel for disputes over \$2500: **FL**
6. Member of 3-person panel for disputes over \$3000: **NJ, OR** and BUTTE
7. Member of 3-person panel for disputes over \$3500: BAMSL
8. Member of 3-person panel for disputes over \$5000: **NM, WA, WI** and MCBA, SCCBA
9. Member of 3-person panel for disputes over \$7000: SONOMA
10. Member of 3-person panel for disputes over \$7500: VCBA
11. Member of 3-person panel for disputes over \$10,000: **AZ, CA** and ACBA, BHBA, SAN, TCBA
12. Member of 3-person panel for disputes over \$15,000: SBCBA
13. Member of 3-person panel for disputes over \$50,000: MONT

a. Non-lawyers not used: **AL, MS, NV, NH, RI, VT** and BCBA, BERKS, FCBA, KCMBA, LCBA, MON, Perry, PCBA, SGVLRs, SCBA, SOLANO

9. Does your fee arbitration program have an enforcement mechanism if a lawyer does not refund money to a client pursuant to a fee arbitration award?

A persistent problem in fee arbitration programs is the enforcement of arbitration awards. Jurisdictions have responded to this dilemma in a variety of ways. Enforcement mechanisms are provided by a total of 14 jurisdictions, as follows:

- Through the authority of the highest court, state bar, or disciplinary counsel (**AZ, CA, MS, NV, NJ, RI** and **VT**);
- Through the Uniform Arbitration Act (**AL, ME** and **NM**);
- Assist in having judgment entered (**FL** and **NV**);

- Filing award as judgment (**AL, MS, UT** and **WA**);
- Subject to court enforcement by statute (**NH**).

The remaining ten jurisdictions that responded to the survey reported no enforcement mechanisms (**CT, DE, DC, HI, MN, MO, NC, ND, OR, WI**).

- a. Yes: Through authority of highest court, state bar (or disciplinary counsel): **AZ, CA, MT, NV** (if lawyer agrees to binding arbitration), **NJ** and ALAM, ACBA, BHBA, CCCBA, ICBA, LBBA, ME, Marin, MONT, SaCBA, SMCBA, SBCBA

Through the Uniform Arbitration Act: **AL, ME** and **NM**

Assist having judgment entered: **FL, NV** (if lawyer does not agree to binding arbitration) and BAMSL (collect on award), PHIL, SMCBA

Assist filing claim with lawyers' fund for client protection: PHIL

File award as judgment: **AL, MS, UT, WA** and BCBA, MON

Subject to court enforcement by statute: **NH**

- b. No: **CT, DE, DC, HI, MN, MO, NC, ND, OR, RI, VT, WI** and BERKS, BUTTE, CHESTER, FCBA, KCMBA, LCBA, LCBA, MCBA, , Perry, PCBA, RCBA, SanBer, SAN, SGVLRs, SJCBA, SCBA, SCCBA, SOLANO, SONOMA, TCBA, VCBA

10. Does your program charge to clients and/or lawyers filing fees to participate in fee arbitration:

A large majority of the jurisdictions responding to the survey do not charge the participants any filing fees. 18 jurisdictions charge no filing fees (AL, AZ, CT, HI, ME, MN, MS, MO, MT, NV, NH, NM, NC, ND, RI, UT and VT). Seven jurisdictions do charge some type of filing fee (CA, DC, FL, NJ, OR, WA and WI). There is a wide variety of types of filing fees, including flat fees, graduated fees, and some jurisdictions that charge a percentage of the amount in dispute for the larger amounts, typically with a cap on the filing fee. It would not be surprising to see more jurisdictions move to charging filing fees, as a way to defray the expenses of administering fee arbitration programs.

- a. Yes: **ALAM** (dispute \$10,000 or less = 3% of dispute or minimum \$50; \$10,001 to \$25,000, 4% of dispute; over \$25,001 = 5% of dispute not to exceed \$5000); **ACBA** (\$100 if dispute under \$5,000, if over \$5000 subject to reallocation by arbitrator); **BHBA** (5% of amount in dispute, \$50 minimum, \$3500 maximum); **BUTTE** (\$1000 or less, \$49; \$1001 to \$15,000, \$74; \$15,001 and up, \$99); **CA**

(5% of amount in dispute, minimum fee \$50, maximum fee \$3500); **CCCBA** (\$50 for less than \$2,999; \$75 if \$3000-\$4,999; \$100 if \$5000-\$9,999; \$150 plus 1% of amount over \$10,000); **DC, FL** (\$15 for both client and lawyer); **ICBA** (\$25 for cases less than \$2000; \$50 for cases over \$2000); **LBBA** (\$24); **LCBA** (7% of amount in dispute, \$100 minimum and \$500 maximum), **Marin** (up to \$5000 and binding: \$100; up to \$5000 and non-binding: \$250; over \$5000 and binding: \$180; over \$5000 and non-binding: \$360; over \$15,000 and binding: \$250; over \$15,000 and non-binding: \$500); **MCBA** (\$15 for less than \$2500; \$30 for \$2500-\$15,000; \$50 for more than \$15,000), **MONT** (\$100 if dispute under \$7,499; \$250 if between \$7500 and \$14,999; \$500 if between \$15,000 and \$24,999; \$1000 if \$25,000 and \$49,999; \$2500 plus 5% of amount of dispute if over \$50,000, maximum of \$5,000); **NJ** (no fee for less than \$1000; \$25 for \$1000-\$3,000; \$50 for more than \$3,000); **OR** (\$30 for disputes less than \$3000; \$50 for disputes more than \$3000); **PCBA; RCBA** (client pays 7.5% of amount in dispute), **SaCBA** (5% of amount in dispute, can be part of award); SanBer (7% of dispute, \$100 minimum, \$1500 maximum), **SAN** (5% of amount in dispute); **SGVLRs** (\$25 for disputes up to \$3000; \$40 for disputes from \$3001 to \$5000; \$50 for disputes over \$5000), **SJCBA** (\$50 for disputes under \$1000; \$100 for disputes between \$1000 and \$2000; \$125 for disputes between \$2000 and \$5000; \$125 plus 2% of total amount charged for disputes over \$5000 to a maximum fee of \$750); **SMCBA; SBCBA** (\$3000 or less, \$100 plus 2% of amount in dispute; \$3000 or more, \$200 plus 2% of amount in dispute); **SCCBA** (\$0-\$500 = \$25; \$501-\$1000 = \$50; \$1001 - \$2000 = \$75; \$2001 - \$3000 = \$100; \$3001 - \$4000 = \$125; \$4001 \$5000 = \$150; \$5001 - \$6000 = \$175; \$6001 - \$7000 = \$200; \$7001 - \$8000 = \$225; \$8001 - \$9000 = \$250; \$9001 - \$10,000 = \$275; \$10,001 and above = 3% of the amount in dispute with a \$7500 maximum fee); **SOLANO** (5% of dispute, minimum of \$50, maximum of \$500, no disputes under \$300); **SONOMA** (lawyers pay \$40 if member of bar, \$60 if not; sliding scale for based on amount in dispute for clients); **TCBA; VCBA** (mandatory for client and lawyer); **WA** (\$50 for each party); **WI** (\$25 per party for disputes under \$5000, \$50 per party for disputes between \$5000 and \$20,000, \$100 per party for disputes over \$20,000)

- b. No: **AL, AZ, CT, HI, ME, MN, MS, MO, MT, NV, NH, NM, NC, ND, RI, UT, VT** and **BAMSL, BCBA, BERKS, CHESTER, FCBA, KCMBA, MON, Perry, PHIL, SCBA**

11. What is the total annual expense of the operation of your fee arbitration program?

There is wide variation in the expenses of administering such programs, with many of the smaller programs run wholly or mostly with volunteers and incurring minimal expense. California spends over \$400,000 on its statewide program and New Jersey spends \$270,000 on its program.

AL: (Don't know, first year of operation)

ALAM: Unknown (arbitrators serve *pro bono*, rent personnel, utilities, postage, telephone and computer costs)

ACBA: \$100 (Local bar pays \$24 per case to cover supplies, postage, etc. Chair volunteers time to administer program)

AZ: \$40,000 (salary, postage, copying)

BAMSL: Unknown (salary, postage, photocopying, telephone)

BCBA: None (all voluntary)

BERKS: Not applicable

BHBA: \$25,000 (rent, personnel, parking, mail, printing, telephones)

BUTTE: \$3,219.28 (personnel, postage, photocopying)

CA: \$410,000

CHESTER: Unknown (absorbed by the bar)

CT: No specific line-item in budget

CCCBA: \$4,840. (photocopying, materials, postage, refunds 9filing fees), committee meetings). Does not include staff & overhead expenses.

DC: Unknown

FL: \$31,582 (travel, personnel, mail distribution, misc. office expenses)

FCBA: None

HI: \$14,000

ICBA: None (all expenses donated by lawyers)

KCMBA: Unknown

LCBA: None

LBBA: None/Unknown

LCBA: Unknown

ME: 15-20% of annual Board of Overseers budget (All members are volunteers and compensated only for travel expenses to attend hearings)

Marin: \$6000 (some personnel, copying costs, meetings)

MCBA: \$117.50 (photocopies, postage, telephone)

MN: Unknown

MS: Unknown (rent, personnel, mileage, copying cost, telephone)

MO: \$50, 615 (partial salary and benefits, paper, postage, telephone, volunteer training, hearing room rental, lodging, meals)

MON: None

MT: \$7000-10,000 (share of administrative expenses like rent, supplies, one part-time salary)

MONT: (Staff time)

NV: \$74,303 (salaries, overhead, travel and committee expenses)

NH: No expenses, all volunteers.

NJ: \$270,000 (personnel, district secretary out of pocket expenses, rent and overhead not included)

NM: \$600 (printing, photocopying, postage incurred by staff)

NC: \$53,000 (personnel, rent and operating expenses)

ND: \$2,000 (personnel, copies and postage)

OR: Unknown (Don't budget separately for Fee Arbitration)

Perry: None

PHIL: \$32, 039.32 (personnel, insurance, postage, printing)

PCBA: (varies with number of cases)

RI: Unknown

RCBA: Unknown

SaCBA: \$2400 (forms, mailings)

SanBer: \$14,000 (rent, supplies, postage, phone, staff)

SAN: \$40,000 (phone, insurance, copying costs, printing, record storage, payroll, postage)

SGVLRs: Unknown

SJCBA: \$26,126.26 (salary, rent, insurance, office supplies, copies, postage, telephone)

SMCBA: Unknown

SBCBA: \$903.52 (office supplies, postage)

SCBA: None

SCCBA: \$70,530 (personnel, \$37,921; rent, \$10,427; supplies, equip, postage, \$10,572; misc. acct., taxes, telephone, \$11,608)

SOLANO: Unknown

SONOMA: \$5,000 (personnel, postage, copying)

TCBA: Unknown

UT: Unknown

VCBA: \$17,500 (all operating expenses)

VT: None (all volunteer)

WA: \$69,900 (telephone, travel, supplies, overhead, salaries)

WI: \$10,252 (staff and overhead)

12. What is the source of funding for your fee arbitration program?

Filing fees: **CA, NJ, WA, WI** and ALAM (also state bar reimbursement), ACBA, BHBA, BUTTE, CCCBA, ICBA (also, state bar pays \$24 per case); LCBA, Marin, MCBA, MONT, PCBA (also state bar reimbursement), RCBA, SaCBA, SanBer, SAN, SJCBA (also state bar reimbursement), SMCBA, SBCBA, SCCBA (also state bar reimbursement and bar general fund), SOLANO, SONOMA, TCBA, VCBA

Attorney Registration Fees: **FL, ME, NJ, NC**

Bar Association Dues: **AL, AZ, CA, CT, DC, HI, MS, MO, MT, NV, NM, ND, OR, RI, UT, WA, WI** and BAMSL, BCBA, BUTTE, CHESTER, KCMBA, LCBA, PHIL, SMCBA, SONOMA (to cover what filing fees do not), VCBA

Lawyer Referral Service: SGVLRs

Risk management funding from endorsed insurers: **MO**

Voluntary services of past presidents of bar association: SCBA

Voluntary service of bar members: LBBA

13. Has your entity produced public service announcements about the fee arbitration program and/or its procedures?

- a. Yes: **DE, FL, ME, MS, MO, NH**, and BAMSL, ICBA, PHIL, PCBA
- b. No: **AL, AZ, CA, HI, MN, MT, NV, NJ, NM, NC, ND, OR, RI, UT, VT, WA, WI** and ALAM, ACBA, BCBA, BERKS, BHBA, BUTTE, CHESTER, CT, CCCBA, FCBA, KCMBA, LCBA, LBBA, LCBA, Marin, MCBA, MON, MONT, Perry, RCBA, SaCBA, SanBer, SAN, SGVLRs, SJCBA, SMCBA, SBCBA, SCBA, SCCBA, SOLANO, SONOMA, TCBA, VCBA

14. Does your program have rules with respect to the confidentiality of its records and proceedings?

A majority of programs have rules to provide confidentiality. Nineteen jurisdictions have such rules (AL, CA, DE, DC, FL, HI, ME, MS, MO, NV, NH, NJ, NC, ND, OR, RI, UT, WA and WI). Only five jurisdictions do not have such rules (AZ, CT, MN, NM and VT). The confidentiality provisions adopted by some jurisdictions, such as California, permit an arbitrator to refer possible lawyer misconduct to the lawyer disciplinary agency.

- a. Yes: **AL, CA, DE, DC, FL, HI, ME, MS, MO, NV, NH, NJ, NC, ND, OR, RI, UT, WA, WI** and ALAM, ACBA, BAMSL, BCBA, BERKS, BHBA, BUTTE, CHESTER, CCCBA, ICBA, KCMBA, LBBA, LCBA, Marin, MCBA, MONT, PHIL, PCBA, RCBA, SaCBA, SanBer, SAN, SGVLRs, SJCBA, SMCBA, SBCBA, SCBA, SCCBA, SOLANO, SONOMA, VCBA,
- b. No: **AZ, CT, MN, NM, VT** and FCBA, LCBA, MON, Perry

15. What is the most common problem experienced by your program?

Each jurisdiction was asked what the most common problems encountered by its fee arbitration program. The responses, predictably, are very diverse. They include such factors as having lawyers in voluntary programs agree to fee arbitration, excessive paperwork, getting clients to follow the rules, and finding a sufficient number of lawyers to serve as arbitrators.

1. Lack of participation by lawyer against whom a client has a dispute: **CT, FL, HI, MN , RI, UT, WI** and BAMSL KCMBA, Perry, PHIL
2. Fee arbitration program administration (e.g. scheduling, paperwork, etc.): **DC, NJ, ND, WA** and ACBA, BCBA, CCBA, SBCBA, TCBA, VCBA
3. Need for additional volunteer arbitrators (especially in area of family law) and conflicts of interest for arbitrators: **MT, NM, ND** and ALAM, BHBA, BUTTE, ICBA, LBBA, MCBA RCBA, SaCBA, SanBer, SAN, SONOMA
4. No authority to enforce arbitration awards/no ability to enforce awards: **NC** and BAMSL
5. Lack of communication between client and lawyer/lack of fee agreement: **ME, NM, VT** and BERKS, CHESTER
6. Delay in fee arbitration process/failure to read fee arbitration procedural rules/need for arbitrators to exercise authority: **AZ, CA, MO, NV, NH, NC** and BHBA, CCCBA, KCMBA, SGVLRs, SJCBA, SBCBA
7. Distinguishing between fee dispute and professional misconduct: **DE, HI**
8. Clients not aware of fee arbitration program/perception of partiality toward lawyers: LCBA, Marin, MON, Perry, SCCBA

C. Conclusion

Fee arbitration programs can be an integral part of the lawyer regulation system. Clients appreciate that their disputes over fees, often involving very modest sums, can be resolved promptly and without great expense. Lawyers also appreciate that these disputes can be quickly resolved, usually much more rapidly than a court system could resolve the dispute. These disputes are removed from court systems, which typically have limited resources to resolve more pressing criminal and civil disputes. In short, fee disputes lend themselves quite well to all of the advantages of alternative dispute resolution.

At the same time, the survey reveals that significant obstacles remain to the establishment and implementation of successful fee arbitration programs in many jurisdictions. These obstacles include having a voluntary as opposed to a mandatory fee arbitration program, the lack of enforcement mechanisms, the lack of confidentiality rules and the failure to use non-lawyer arbitrators in certain jurisdictions.

The ABA Standing Committee on Client Protection represents a resource available to all jurisdictions to assist in the establishment and implementation of successful fee arbitration programs. This survey, hopefully the first of a series, is an example of how the Committee can serve as a resource to all jurisdictions in this expanding area of client protection.

James E. Towery, Chair
Standing Committee on Client Protection
July 2000

II. Guide to Fee Arbitration Programs Responding to the Survey (Number of lawyers within jurisdiction of entity)

State Bar Associations

1.	AL = Alabama State Bar	(14,000)
2.	AZ = State Bar of Arizona	(15,000)
3.	AR = Arkansas Supreme Court Committee on Professional Conduct	
4.	CA = State Bar of California	(134,200)
5.	CT = Connecticut Bar Association	(17,000)
6.	DE = Delaware State Bar Association	(2500)
7.	DC = The Attorney Client Arbitration Board of the District of Columbia Bar	(71,448)
8.	FL = The Florida Bar	(59,329)
9.	HI = Hawaii State Bar Association	(4042)
10.	ME = Maine, Fee Arbitration Commission of the Board of Overseers of the Bar	(3245)
11.	MN = Minnesota State Bar Association	(21,000)
12.	MS = The Mississippi Bar	(5960)
13.	MO = The Missouri Bar Fee Dispute Resolution Program	(24,000)
14.	MT = State Bar of Montana	(2500)
15.	NV = State Bar of Nevada	(4700)

16.	NH = New Hampshire Bar Association	(3000)
17.	NJ = New Jersey Office of Attorney Ethics	(67,840)
18.	NM = State Bar of New Mexico	(5424)
20.	NC = The North Carolina State Bar	(18,000)
21.	ND = State Bar Association of North Dakota	(1400)
22.	OR = Oregon State Bar	(13,000)
23.	RI = Rhode Island Bar Association	(5000)
24.	UT = Utah State Bar	(6,000)
25.	VT = Vermont Fee Dispute Committee	(all in VT)
26.	WA = Washington State Bar Association	(18,000)
27.	WI = State Bar of Wisconsin	(12,801)

Local Bar Associations

1.	ALAM = Alameda County Bar Association, Oakland, CA	(7000)
2.	ACBA = Antelope County Bar Association, Lancaster, CA	(60)
3.	BAMSL = Bar Association of Metropolitan St. Louis, St. Louis, MO	(6,000)
4.	BCBA = Beaver County Bar Association, Beaver Falls, PA	(212)
5.	BERKS = Berks County Bar Association, Reading, PA	(585)
6.	BHBA = Beverly Hills Bar Association, Beverly Hills, California	(50,000)
7.	BUTTE = Butte County Bar Association, Chico, CA	(300)
8.	CHESTER = Chester County Bar Association, West Chester, PA	(900)
9.	CCCBA = Contra Costa County Bar Association	(2700)
10.	FCBA = Franklin County Bar Association, Chambersburg, PA	(110)

11.	ICBA = Inyo County Bar Association, Inyo County, California	(50)
12.	KCMBA = Kansas City Metropolitan Bar Association	(7000)
13.	LCBA = Lebanon County Bar Association, Lebanon, PA	(90)
14.	LBBA = Long Beach Bar Association	(450-500)
15.	LACB = Los Angeles County Bar Association	(?)
16.	Marin = Marin County Bar Association, San Rafael, CA	(1500)
17.	MCBA = Merced County Bar Association, Merced, California	(160)
18.	MON = Monroe County Bar Association, Stroudsburg, PA	(150)
19.	MONT = Monterey County Bar Association, Monterey, CA	(400)
20.	Perry = Perry County Bar Association, New Bloomfield, PA	(22)
21.	PHIL = Philadelphia Bar Association	(14,000)
22.	PCBA = Placer County Bar Association, Roseville, CA	(Unknown)
23.	RCBA = Riverside County Bar Association, Riverside, CA	(1500)
24.	SaCBA= Sacramento County Bar Association, Sacramento, CA	(6000)
25.	SanBer = San Bernardino County Bar Association, San Bernardino, CA	(2000)
26.	SAN = San Diego County Bar Association, San Diego, CA	(10,500)
27.	SGVLRs = San Gabriel Valley Lawyer Referral Service	N/A
28.	SJCBA = San Joaquin County Bar Association, Stockton, CA	(600)
29.	SMCBA = San Mateo County Bar Association, Redwood City, CA	(1250)
30.	SBCBA = Santa Barbara County Bar Association, CA	(900)
31.	SCBA = Schuylkill County Bar Association, Pottsville, PA	(200)
32.	SCCBA = Santa Clara County Bar Association, San Jose, CA	(7000)
33.	SOLANO = Solano County Bar Association, Fairfield, CA	(450)

34. SONOMA = Sonoma County Bar Association, Santa Rosa, CA (1400)
35. TCBA = Tulare County Bar Association, Visalia, CA (250)
36. VCBA = Ventura County Bar Association, Ventura, CA (1500)