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By Justin Lawrence

## Legal Fee Arbitration — Knowing Your Rights as a Lawyer

The Kentucky Supreme Court Rules, at SCR 3.810, provide for fee arbitration between an attorney and a client with a fee dispute, or between two attorneys with a fee dispute. Although many attorneys, fortunately, have never taken part in this system, it provides an alternative resolution tool for thorny situations. Therefore, all attorneys should understand the rules of this system to best use it, should they find themselves in an intractable fee dispute.

### Why Use Legal Fee Arbitration?

SCR 3.810(10) expressly states that this rule applies to disputes between attorneys, although the remainder of the rule has language that generally references attorney/client fee disputes. Astute observers will immediately note that SCR 3.810(1) states the following purpose to the rule: "...to establish a procedure whereby fee disputes arising from attorney and client relationships *may* be resolved by submission to binding arbitration," while SCR 3.810(3) states that all parties must agree in writing to be bound by SCR 3.810 and the arbitration panel's decision. In other words, this rule is permissive—why use it at all?

First, the legal fee arbitration process is private. SCR 3.810(8) states that, in most disputes, an award by the arbitration panel can be made public but that everything else associated with the arbitration "...shall not be open to the public or to any person not involved with the dispute..." Hearings held and documents produced in the course of arbitration are not part of the public record. If an attorney is at the point of engaging in any form of litigation over a fee with another attorney or (worse) with a former client, the details of the attorney's journey might be embarrassing or worse. The KBA's fee arbitration system is the commonwealth's only codified, confidential resolution panel for such disputes.

Second, the legal fee arbitration process is fast. Where personal injury suits are concerned, an attorney often works for months or years for no pay while seeking justice for a cli-

ent. Where a fee dispute disrupts the personal injury suit—for example, when a disagreement causes a client to seek out counsel mid-case—the process may take even longer. If the KBA's fee arbitration rules are being considered, you obviously believe you are entitled to the fee and waited a long time for it. SCR 3.810 provides for results in months or even weeks, rather than years.

Third, the legal fee arbitration process is free. SCR 3.810(11) makes clear there is no charge of any kind to either party in arbitration. There is no need to spend hundreds or thousands of dollars to claim money you already earned.

### How Does Legal Fee Arbitration Work?

First, the petitioner must file an Arbitration Petition Agreement, which is provided by the Kentucky Bar Association. SCR 3.810(4) allows the Director of the Kentucky Bar Association to review the dispute filed and make an initial and non-appealable decision on whether a legitimate dispute exists under the rules. Assuming the Director finds that a legitimate dispute exists, the Petition is forwarded to the respondent for signature. The respondent must sign within twenty days. If both parties sign, the applicable statute of limitations is tolled through the pendency of the arbitration, pursuant to SCR 3.810(4)(G).

For disputes concerning \$10,000 or less, one arbitrator is appointed. SCR 3.810(5) requires that the arbitrator is a practicing attorney. An arbitration panel consisting of two practicing attorneys and one non-lawyer must hear disputes more than \$10,000. The Chief Circuit Judge of the county in which the attorney involved in the arbitration practices law appoints the non-lawyer. If two attorneys are involved in the arbitration, then the petitioner's county judge appoints the non-lawyer. Any appointed arbitrator may be objected to under SCR 3.810(5)(B). Rules concerning *ex parte* communication apply to the arbitration panel.

SCR 3.810(6)(D)(i) removes the arbitration from civil discovery rules, so exchanges of documents are permissive

rather than compulsory. However, the panel may accept negative factual inferences created by a party's failure to produce documents so a heavy bludgeon is available to punish any party who does not offer good faith participation in discovery. Further, SCR 3.810(F) requires that witnesses be placed under oath during the hearing so a witness may be questioned about any failure to produce documents. Briefs or legal memoranda are not required under the rules but may be requested by the arbitration panel.

An arbitration panel is required to render its award within 15 days after the close of the final hearing pursuant to SCR 3.810(7)(A). However, at the time of this writing, the KBA's website incorrectly states that deadline as 30 days from the hearing. SCR 3.810(7)(B) allows for an appeal to the Director to determine whether "significant factual or accounting errors or omissions" exist, but specifically prohibits attorneys from arguing new facts or to re-argue the merits of the dispute. KRS 417.180 determines the effect and enforcement of awards.

KJA opposes mandatory commercial arbitration clauses that are pre-dispute. However, this is an example of permissive and agreed to arbitration post dispute, which gives an option should the parties agree to participate.



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The advertisement features a green background with a white central panel. On the left, a blue speech bubble contains the text: "We recognize the VALUE of STRUCTURED SETTLEMENTS". Below it, another blue speech bubble says: "But LIFE CHANGES...". A third blue speech bubble at the bottom left reads: "And some annuitants NEED to SELL PAYMENTS". The central white panel contains the Strategic Capital logo (a globe) and the text "Strategic Capital HELPS". At the bottom of the white panel, it lists the phone number "1.866.256.0088" and the website "www.StrategicCapital.com". At the very bottom of the green background, there is contact information: "For more information or to refer a case please contact Cam Mears at Cam.Mears@StrategicCapital.com or 1-866-241-6111".

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