

## About the 2007 Fee Arbitration Report Card

**H**ALT's 2007 Fee Arbitration Report Card is the nation's first comprehensive, state-by-state evaluation of the out-of-court programs that settle lawyer-client fee disputes. HALT interviewed fee arbitration administrators, analyzed statistics compiled by the American Bar Association's 2006 Survey of Fee Arbitration Programs, reviewed state bar Web sites and brochures, and assessed the rules governing each state fee arbitration system. In determining grades, HALT considered the following factors:

**Mandatory and Binding for Lawyers**—Clients are never required to participate in fee arbitration, but the most effective programs are mandatory for lawyers. In those states, a lawyer must submit to arbitration when a client files a claim. Voluntary fee arbitration programs, by contrast, will not proceed unless both parties agree to participate. If the attorney refuses, the client must bring the case to court, which can be time-consuming and costly. A few voluntary programs will issue an advisory opinion even when the lawyer refuses to participate. Binding arbitration provides parties with a final ruling that can only be challenged if a procedural error was made.

**Ease of Filing Claim**—Consumer-friendly fee arbitration programs respond to information and form requests on the telephone, offer a downloadable online form and provide clear and comprehensive resources about the fee arbitration process.

**Publicity of System**—One of the most critical problems facing state fee arbitration forums is that so few consumers know they exist. To achieve visibility, these systems should advertise their programs in the local telephone directory, community publications and public venues, such as county courthouses.

**Access to Non-Lawyer Arbitrators**—Arbitrators ruling in lawyer-client fee disputes are usually lawyers themselves. If the money at stake exceeds a specified amount, however, a panel that includes at least one non-lawyer typically decides the case. The best systems are those that use lay arbitrators to help resolve most disputes.

**Mediation Option**—Mediation is a process in which a moderator does not issue a ruling but helps guide clients and lawyers toward a non-binding resolution. States should offer mediation as an alternative to arbitration but should not require parties to mediate.

**Enforcement Methods**—The fee arbitration process is most valuable when the system uses formal methods to enforce awards. The most successful forums hold the disputed amount in an escrow account pending the arbitration ruling and impose disciplinary sanctions when a lawyer fails to abide by the arbitrator's decision.

## About HALT

**HALT—An Organization of Americans for Legal Reform** pursues an aggressive education and advocacy program that challenges the legal establishment to expand access and increase accountability in the civil justice system. For more information, go to [www.halt.org](http://www.halt.org).

## GRADING SCALE

The following are the grading criteria for each category. The number in brackets is that category's percentage of the state's overall grade.

### **Mandatory and Binding for Lawyers** [30%]

*Is it mandatory for a lawyer to participate in fee arbitration at the client's request?*

*Is the arbitrator's decision binding?*

A = mandatory for lawyers and binding statewide

B = mandatory for lawyers and binding in most counties

C = voluntary but advisory opinion issued if lawyer won't participate

D = voluntary but binding if parties agree to participate

F = voluntary and always non-binding (or mediation only)

### **Ease of Filing Claim** [20%]\*

*Can a claim form be requested over the telephone? Is the form available for download?*

*Are there comprehensive online resources about the state's fee arbitration system? Is the Web site easy to find and clear?*

A = 4 of above B = 3 of above C = 2 of above

D = 1 of above F = Almost no resources

### **Publicity of System** [20%]\*\*

*Does the fee arbitration program publicize its services in general circulation local newspapers, courthouses, a local telephone directory, neighborhood legal clinics, local bar associations, state bar publications, legal periodicals and the state's lawyer discipline agency?*

A = all of the above B = 6-7 of above

C = 4-5 of above D = 2-3 of above

F = 1 or none of above

### **Access to Non-Lawyer Arbitrators** [15%]\*

*How much money must the client and attorney dispute for a non-lawyer to be allowed to serve on an arbitration panel?*

A = non-lawyer representation for almost all disputes

B = non-lawyer representation for most disputes

C = non-lawyer representation for some disputes

D = non-lawyer representation for few disputes

F = non-lawyers not allowed to arbitrate fee disputes

### **Mediation Option** [5%]

*Is mediation offered as an alternative to arbitration? Is it required before arbitration?*

A = mediation offered but not required

B = most counties offer mediation

C = mediation unavailable

D = mediation required before arbitration

F = only mediation is offered; arbitration unavailable

### **Enforcement Methods** [10%]\*\*

*If an attorney fails to comply with an arbitration ruling, how does the system help the client to enforce the award?*

A = disputed amount held in escrow pending resolution

B = system helps client go to court to enforce award and suspends lawyer's license

C = bar suspends lawyer's license

D = bar puts lawyer on inactive status

F = no formal method

\* Detailed grading criteria available upon request.

\*\* Data based on American Bar Association's 2006 Survey of Fee Arbitration Programs.

# HALT

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