

Arbitrator Instructions and Forms

I. Introduction.

This packet is designed to provide you with an explanation of local forms and policies that are used in Marion County Circuit Court's arbitration program. In addition to this information, you should know the provisions of UTCR Chapter 13 and ORS 36.400 to .425. Throughout these instructions, references are made to the attached forms. Please use them as indicated in the instructions.

II. Panels.

The court has three arbitration panels: Domestic Relations, Personal Injury and Commercial/Real Estate. The third category is essentially a catch all, and includes all civil cases that aren't in the other two categories.

III. Cases Subject to Arbitration.

All civil cases involving money damages of \$50,000 or less (exclusive of attorneys fees and costs) and domestic relations cases involving property division or disposition are subject to mandatory arbitration. The parties may also be referred to arbitration if: (1) they stipulate to the process, (2) parties asserting damages greater than \$50,000 waive the amounts above \$50,000 for purposes of arbitration under ORS 36.415(1), or (3) a judge finds that no objectively reasonable juror could return a verdict in favor of the claimant over \$50,000 in accordance with ORS 36.415(2).

IV. Selection of Arbitrator.

Once a case is referred to arbitration, the parties are sent the entire list of arbitrators for their case category. The parties can either agree on an arbitrator, or the arbitration coordinator will pick an arbitrator. The parties are also free to stipulate to an arbitrator that isn't on the court panel.

V. Compensation of Arbitrator.

The parties are required to submit their share of your fee within fourteen days of your appointment. UTCR 13.120(2). The fee should be submitted directly to you, and not through the court. If a party can't afford to pay your fee, he or she may apply to the court for a fee deferral. Forms for requesting the deferral are available on the court's website at:

<http://courts.oregon.gov/Marion/MaterialsAndResources/pages/civilforms.aspx>, and through the information window at the Courthouse. At the conclusion of the arbitration, you should submit that party's portion of the bill to the Arbitration Coordinator at the Courthouse.

The Court strongly encourages you to discuss the fee arrangements before you conduct the arbitration. In the absence of a fee agreement, the presumptive fee is \$125 per hour, with the following parameters that vary according to the amount in controversy.

1. Cases \$7,500 or under.

The parties are responsible for paying the arbitrator a \$250 flat fee, based on the assumption the case will only take two hours.

2. Cases over \$7,500.

The parties are responsible for submitting a \$500 deposit prior to the arbitration. You may charge up to an additional four hours if the arbitration lasts longer than the initial four hours. For arbitrations lasting longer than a total of eight hours, you need to make fee arrangements with the parties in the absence of a prior agreement.

At the conclusion of the arbitration, the court may enter judgment in favor of the arbitrator against any party who does not pay in accordance with the arbitrator compensation schedule set forth above. See UTCR 13.120(6). Any unused portion of your fee should be refunded to the parties. To review the schedule in its entirety, visit: <http://courts.oregon.gov/Marion/docs/services/arbitratorcompensationschedule.pdf>

VI. Setting the Hearing.

The hearing should take place not sooner than 14 days, or later than 77 days, from the date of your appointment. Marion County Circuit Court SLR 13.095(2). Your letter to the parties confirming the hearing time and date should be copied to the arbitration coordinator. The parties may request a continuance beyond the 77 day period from the Presiding Judge, or his designee, which is currently Judge Prall. Forms for this purpose are posted on the court's website at: <http://courts.oregon.gov/Marion/MaterialsAndResources/pages/barupdates.aspx>. Cases that are not heard within 77 days without permission from the court are subject to dismissal. See Marion County Circuit Court SLR 13.095(3).

At first blush, one might conclude that increasing the deadline for completion of arbitration from 49 days to 77 days is an attempt to relax and extend the time in which arbitrations are completed. However, this extension is an attempt to be pragmatic and in response to our own local arbitrators and their representatives on the Marion County Dispute Resolution Commission who positioned that we could expect that virtually all arbitrations could be completed within 77 days rather than 49 days, and less work would thereby be necessary by the arbitrators in requesting extensions, and by the Court handling those requests. Please make very effort to set and conclude arbitrations within the 77 days of the rule.

Please note that all arbitrations should be held in Marion County unless the parties have

waived that requirement in writing. Failure to comply with this rule may result in your removal from the arbitration panel.

VII. Pleadings and Prehearing Statement of Proof.

The parties are required to provide you with a prehearing statement of proof at least 14 days prior to hearing. UTCR 13.170. Each party also has the responsibility to provide you with copies of pleadings that are necessary for determination of the case.

VIII. Motions.

Once a case is referred to arbitration, all motions against the pleadings, including motions for summary judgment (or award), are to be decided by the arbitrator. The only exception to this rule are motions relating to arbitrability or the qualification of an arbitrator, which should be referred to the Court for consideration. UTCR 13.100 (1).

IX. Cases that “Become” Inappropriate for Arbitration.

After your assignment, a case may “become” inappropriate for arbitration. If you decide the case is inappropriate (ie., a counterclaim is filed which exceeds the arbitration limit), you must notify the Court of your recommendation to return the case to the active trial docket. The case will be returned to the active trial docket upon judicial approval. At this point, you may bill the parties for whatever time you have expended on the case.

X. Settlement.

You may submit a notice of settlement one of two ways. You may use the arbitration award form if the parties agree that the case should be dismissed. Or, if the settlement involves the exchange of money or property and the parties want a money judgment entered, you should notify the arbitration coordinator the case is settled in writing, and instruct the parties to submit a stipulated judgment. This is particularly important in domestic relations cases where there is no reconciliation.

XI. Award.

Your award should be drafted in accordance with the Court’s approved form. The prevailing party is usually responsible for submitting the judgment to the court if no appeal is filed. You should note on the award which party is responsible for submitting the judgment.

In dissolution cases, the arbitrator should direct a party to submit a form of judgment to the arbitrator before the award is sent to the Court. UTCR 13.210(6). The parties have a right to be

heard on the form of judgment. The arbitrator is responsible for approving the form of judgment and sending it to the Court along with the award.

The award, together with proof of service, should be sent to the arbitration coordinator within 14 days of the hearing, unless the case is a dissolution, in which case you have 21 days. UTCR 13.220(1). The Court doesn't need a statement of your time utilized on the case.

XII. Attorney Fees and Costs¹.

Prior to the time you file the award with the Court, you should discuss a procedure with the parties for determining fees and costs. UTCR 13.210 (5). If you haven't determined the fee and cost issue prior to the time your award is due, you may submit a supplemental award containing information only on the fee and cost issue. See attached Supplemental Arbitration Award/Money Judgment Form. Please don't include the amounts you awarded in the original award, or the parties will end up with duplicative judgments. If one of the parties had his or her fees deferred and you intend on billing the Court for your time, please make sure you fill out the section giving the State of Oregon a judgment for those fees.

With respect to prevailing party fees, the Marion County Court has recognized that a prevailing party in arbitration is generally entitled to a prevailing party fee under ORS 20.190, applicable to a case "[w]hen judgment is given without trial of an issue of law or fact..." ORS 20.190(7) has been interpreted to prevent recovery of a prevailing party fee applicable after trial of an issue of law or fact.

Changes in the substantive award must be done by an amendment in accordance with UTCR 13.220(3).

¹ See ORS 82.010 for statutory interest information.