

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

IN THE MATTER OF THE)
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ARBITRATION COMMISSION)
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ORDER REGARDING:
(1) ARBITRATOR REQUESTS FOR
EXCESS FEES
(2) NOTICE REQUIRED BEFORE
ARBITRATOR'S EXTENDED
ABSENCE OR RETIREMENT

(1) Arbitrator Requests for Excess Fees

Pursuant to UTCR 13.120(1), the Arbitration Commission established a compensation schedule for Clackamas County arbitrators. SLR 13.121 provides for the preliminary payment that parties must tender to the arbitrator within 14 days of appointment. A footnote to that Supplementary Local Rule sets the hourly rate arbitrators may charge, and caps the total cost allowed for court ordered arbitrations. The cap may only be exceeded after a showing of extraordinary conditions and with either the concurrence of both parties, or judicial approval.

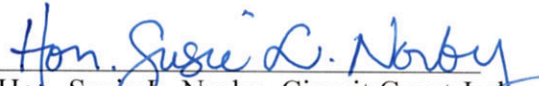
Requests for excess fees are relatively rare, and evidence of arbitrators serving unexpectedly long hours without pay in the pursuit of justice for parties in arbitrations is manifold. But, notable recent excess fee requests spotlight the need to identify best practices for arbitrators regarding excess fee requests. The following best practices are therefore recommended conditions precedent to such requests:

1. In introductory letters that arbitrators send to parties, arbitrators should state how many hours of arbitrator time the maximum allowable arbitration fee will cover, and state whether all contacts from parties before and after the arbitration are tracked as part of the arbitrator's total time commitment. The letter should encourage parties to be efficient in presenting their cases, and judicious in using the arbitrator's time.
2. If an arbitration appears likely to require a significantly greater time commitment than the arbitrator deems reasonably covered by the arbitrator fee cap, the parties' concurrence regarding a potential excess fee request should be sought as early as possible in the process. It is never proper to request the parties' concurrence in a request for excess fees near the conclusion of a hearing when a decision on the merits is imminent.

(2) Notice Required Before Arbitrator's Extended Absence or Retirement

Proper administration of the arbitration program requires that the court have advance notice of any court approved arbitrator's extended absence from service as an arbitrator, including notice of impending retirement or the risk of bar disciplinary action. Henceforward, arbitrators are required to notify the Arbitration Coordinator of any expected change in availability to serve as an arbitrator six (6) months prior to the projected effective date of the arbitrator's change in availability, or immediately upon learning of the approaching unavailability of the arbitrator if less than six (6) months.

IT IS SO ORDERED this 18th day of March, 2015.


Hon. Susie L. Norby, Circuit Court Judge
Chair, Arbitration Commission