

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 forms available on our website. 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 attorney 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:

<https://www.courts.oregon.gov/forms/Pages/fee-waiver.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 \$200 per hour.

Each party is responsible for submitting a \$400 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. Repayment of a party's portion of waived arbitration fees cannot exceed four hours at the standard Marion County arbitration compensation without prior approval and order of the court.

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:

<https://www.courts.oregon.gov/forms/Documents/MAR-ArbitratorCompensation.pdf>

VI. Setting the Hearing.

The hearing should take place as designated in Marion County Circuit Court SLR 13.095(1). 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 time period as designated in Marion County Circuit Court SLR 13.095(1) from the Presiding Judge, or the Presiding Judge's designee. Forms for this purpose are posted on the court's website at:

<https://www.courts.oregon.gov/courts/marion/resources/Pages/mediator-arbitrator.aspx>. Cases that are not heard within time period as designated in Marion County Circuit Court SLR 13.095(1) without permission from the court are subject to dismissal. See Marion County Circuit Court SLR 13.095(2).

Please note that all arbitrations should be held in Marion County unless the parties have waived that requirement in writing, or the hearing is conducted virtually. 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 (i.e., 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.

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 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 the 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.

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.