

FEE ARBITRATION PROGRAM
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FEE ARBITRATION PROGRAM

RULES OF PROCEDURE FOR FEE ARBITRATIONS

1.0 PURPOSE

1.1 PURPOSE - The purpose of the Fee Arbitration Program of the Sonoma County Bar Association is to arbitrate disputes between attorneys and clients with regard to fees charged for professional services.

1.2 CHAIRPERSON - The President of the Association shall appoint a Chairperson to oversee the Fee Arbitration Program who shall serve at the pleasure of the President. The Chairperson shall exercise the powers and responsibilities set forth in these rules and such other powers and responsibilities as may be necessary to carry out the functions of the Program.

1.3 ARBITRATORS - The list of Arbitrators shall be composed of both attorney members and lay members.

Attorney arbitrators shall be members in good standing of the State Bar of California who possess the qualities necessary to effectively function as arbitrators and have been admitted to the State Bar for at least five years. Attorneys who have been admitted to the State Bar for at least one year and less than five years may serve on a three-person panel of arbitrators.

Lay Members of a three-person panel shall be individuals who are not licensed to practice law and who are not associated with the legal community and who are not now or have ever been employed in any capacity in the legal profession in California or any other state. They are individuals who work or reside in Sonoma County and who possess the qualities necessary to effectively function as arbitrators.

2.0 MANDATORY ARBITRATION ALTERNATIVES

2.1 MANDATORY ARBITRATION FOR ATTORNEYS - Arbitration under these rules is voluntary for a client, unless the client previously agreed in writing to arbitrate and mandatory for an attorney if requested by a client. In the event an attorney or a client who previously agreed in writing to arbitrate, fails to respond to a request for arbitration or refuses to participate in the arbitration, a hearing will proceed in conformance with the procedures and based upon the evidence.

2.2 NOTICE OF CLIENT'S RIGHT TO ARBITRATE - The attorney must, prior to or at the time of Service of Summons in an action or prior to or at the commencement of any other arbitration proceeding, against the client for the recovery of fees, serve upon the client, personally or by first class mail, the State Bar-approved "Notice of Client's Right to Arbitration" pursuant to Business and Professions Code section 6201. Failure to give this notice shall be grounds for dismissal of the action or other proceeding.

2.3 STAY OF PROCEEDINGS - If the attorney files an action or other arbitration for fee collection, the client may suspend the court action or other proceeding by filing a written Request for Arbitration with the Sonoma County Bar Association and Notice of Automatic Stay with the Court. The request for Fee Arbitration must be filed within thirty (30) days of receipt of the Notice of Client's Right to Arbitrate.

2.4 WAIVER OF RIGHT TO REQUEST OR MAINTAIN ARBITRATION - The client's right to request or maintain arbitration is waived if:

- The client answers a complaint in a civil action or an equivalent response in another proceeding, before filing a request for arbitration, provided notice of the right to arbitrate was given pursuant to Business and Professions Code section 6201; or
- The client commences an action or files any pleading seeking judicial resolution of a fee dispute or seeking affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct; or
- The client fails to request arbitration within thirty (30) days after receipt of notice of client's right to arbitrate.

2.5 STIPULATION TO SET ASIDE WAIVER - If the client waives the right to request or maintain arbitration, the parties may stipulate to set aside the waiver and proceed with arbitration.

3.0 DISPUTES SUBJECT TO ARBITRATION

3.1 FEES FOR PROFESSIONAL SERVICES - Disputes concerning fees charged for professional services by an attorney are subject to arbitration under these rules **EXCEPT** for:

- Disputes where the attorney is also admitted to practice in another state, but he/she maintains no office in Sonoma County, and no material portion of the services were rendered in Sonoma County;
- Disputes where the client seeks affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct; or
- Disputes where the fee to be paid by the client or on his/her behalf has been determined pursuant to a statute or court order.

3.2 JURISDICTION - The Sonoma County Bar Association will exercise jurisdiction to arbitrate fee disputes in matters where an attorney had an office for the practice of law located within Sonoma County **at the time** the attorney provided legal services to the client.

3.3 DETERMINATION OF JURISDICTION - No arbitration shall be initiated until there is submitted a completely filled out "Client's Request for Arbitration of a Fee Dispute" form by the client. If it appears that the tendered dispute is outside the jurisdiction of the procedures established by these rules, the parties will be notified. This determination of jurisdiction shall be determined by the Bar Association and will be FINAL and non-appealable as to all parties.

4.0 INITIATION OF PROCEEDINGS

4.1 REQUEST FOR ARBITRATION - Arbitration is initiated by the client filing a completed Request for Arbitration form with the Sonoma County Bar Association and paying the appropriate filing fee. **The fee is non-refundable once the form is submitted.**

For good cause shown, the client may include, as a party to the arbitration, any person who is not the client of the attorney but who may be liable for or entitled to a refund of the attorney's fees and/or costs. The request for arbitration must be signed by the client and any other party included by the client.

4.2 BINDING ARBITRATION - Arbitration is not binding unless all parties agree in writing after the dispute has arisen that it will be binding. If any party does not agree, the arbitration will be non-binding and any party, pursuant to Business and Professions Code section 6204, may request a trial after arbitration in a civil court (referred to as a trial de novo) within thirty (30) days after the arbitration award has been served upon the parties by the Bar Association (please refer to the **date of service**). If a trial after arbitration is not requested, the award **automatically** becomes binding thirty (30) days after the award has been served upon the parties by the Bar Association. If the parties agree to binding arbitration, the parties have one hundred (100) days after the award is served upon the parties by the Bar Association to petition the court to vacate or correct the award. If any party willfully fails to appear at the hearing as provided for under these rules, that party shall not be entitled to a trial after arbitration. The decision as to whether the non-appearance was willful will be made by the court. The party who failed to appear at the hearing shall have the burden of proving that the failure to appear was not willful.

4.3 ATTORNEY'S REPLY - Within seven (7) days of receipt of the request form, the Bar Association shall serve upon the attorney a copy of the "Client's Request for Arbitration of a Fee Dispute", copies of those documents which accompanied the "Client's Request...", and a blank copy of the "Reply to Client's Request for Arbitration". The attorney shall file the Reply form, completely filled out, within seven (7) days of receipt of the blank form. In the event the attorney fails to respond in a timely manner, the arbitration will proceed in the normal course. At the time of service of the request on the attorney, the Sonoma County Bar Association shall also serve a copy of the State Bar- approved "Notice of Attorney Responsibility" form.

Any reply which designates another attorney as the person responsible for a refund to the client shall be served upon the designated attorney by the Bar Association, together with a copy of the "Client's Request..." document and any attachments submitted by the client. The designated attorney shall be added as a party to the arbitration and shall file a response no later than seven (7) days from the date of service of notification that the attorney has been added as a party.

5.0 ARBITRATION PANELS

5.1 APPOINTMENT OF PANELS - For each dispute a panel shall be appointed from those members of the Sonoma County Bar Association who have voluntarily agreed to serve in this regard **and** who are without conflicts with the parties. The panel shall consist of one (1) arbitrator for disputes in which the amount in controversy is less than \$10,000 and three (3) arbitrators for disputes in which the amount in controversy is \$10,000 or more, one of whom shall be designated as Panel Chairperson. If the amount in controversy is \$10,000 or more, the parties may agree to have the matter heard by a single arbitrator. Any vacancy, by way of disqualification or inability to serve, shall be filled by the Bar Association.

Upon the client's request, the Bar Association shall assign a sole arbitrator, or in the case of a three-person panel, one of the attorney-arbitrators, whose area of practice is civil or criminal law. Any such designation made by the client shall be of an arbitrator who practices in the same area of law as the matter for which the attorney was retained by the client. The designation may be made by checking the appropriate box on the "Client's

Request..." document. As a general rule, the Bar Association will make every effort to assign those attorney-arbitrators whose area of practice is the same as that of the dispute.

5.2 NOTICE OF APPOINTMENT OF PANEL - The panel shall be appointed by the Bar Association and a notice identifying the panel ("Notice of Appointment of Panel") shall be mailed to the parties within twenty (20) days of the receipt of the Request form.

5.3 USE OF LAY ARBITRATORS - In all cases assigned to a three (3) member arbitration panel, one of the arbitrators will be a lay person, i.e. a non-lawyer who has volunteered to serve the Sonoma County legal community in this capacity.

5.4 CHALLENGE TO AND/OR DISQUALIFICATION OF ARBITRATORS - An arbitrator who for any reason may not be impartial shall disqualify himself/herself. Each party may disqualify one arbitrator without cause and shall have unlimited challenges for cause. **Any disqualification or challenge of an arbitrator shall be ineffective unless made in writing and served on the other party and the Bar Association within ten (10) days of the mailing of the "Notice of Appointment of Panel".** The challenge or disqualification shall be heard and decided by the Bar Association. A client or an attorney who believes that he/she cannot obtain a fair and impartial hearing under these rules shall be entitled to a State Bar hearing upon request.

5.5 ARBITRATION IN ABSENCE OF A PANEL MEMBER - If one of the panel members fails to appear, upon written stipulation of both parties, the hearing may proceed with the panel chairperson acting as the sole arbitrator. **Under no circumstances will the hearing proceed with two arbitrators.** If the parties cannot agree to this, the hearing will be rescheduled. The panel chairperson shall submit an amended "Notice of Hearing" to the Bar Association as soon as a new date has been agreed upon.

6.0 THE HEARING

6.1 COMMENCEMENT OF HEARING - The hearing shall commence within forty-five (45) days from the date of the "Notice of Appointment of Panel", unless there has been a disqualification or allowed challenge, in which case there shall be a fifteen (15) day extension. If a delay becomes necessary, it is the responsibility of the Panel Chairperson (or sole arbitrator) to notify all parties, including the Bar Association. The Panel Chairperson, or sole Arbitrator, shall serve written "Notice of Hearing" by first class mail with proof of service attached upon each party and the Bar Association no less than fifteen (15) days prior to the hearing date. Appearance by a party at a scheduled hearing shall constitute waiver by said party of any deficiency with respect to the giving of Notice of Hearing. If either party fails to attend, the hearing shall proceed as scheduled and a decision made on the basis of the evidence. If neither party attends, the panel may terminate the arbitration by making an award that neither party is entitled to any relief.

6.2 CONTINUANCE OF HEARING - Any party requesting a continuance shall obtain the agreement of all parties and the arbitrator(s), and shall confirm the new date of hearing in writing, but if no agreement can be obtained, continuances may be granted by the arbitrator(s) and/or Panel Chairperson upon good cause shown in writing by any party. Such writing is to be submitted directly to the arbitrator or panel chairperson. If a continuance is granted, the arbitrator or panel chairperson shall serve an amended "Notice of Hearing" on the parties and the Bar Association.

6.3 SUBPOENAS - The single arbitrator or Panel Chairperson may, **upon written request with a copy of the request sent to the opposing party**, issue subpoenas directing the attendance of witnesses or production of

relevant documents at the hearing. The requesting party must show, in **writing and addressed to the arbitrator or chairperson**, that good cause exists for the necessity of such an issuance. If good cause is found, the arbitrator or panel chairperson shall notify the Bar Association as soon as possible. The Bar Association will

send the arbitrator or panel chairperson the subpoena forms to be signed and dated by him/her and returned to the Bar Association. The Bar Association will then forward them to the party requesting the issuance as soon as a "Notice of Hearing" from the arbitrator or panel chairperson is received by the Bar Association. It will be the responsibility of the requesting party to serve the subpoenas upon the desired witnesses.

Pursuant to Code of Civil Procedure section 1987 and Government Code 68093, a subpoenaed witness is entitled to receive FROM THE REQUESTING PARTY, witness fees of \$35.00 per day plus \$00.20 per mile actually traveled IF demanded by the witness at the time of service of the subpoena upon him/her. The demand must be made directly to the party who requested issuance of the subpoena.

6.4 RIGHT TO COUNSEL - Either party, at his/her own expense, may be represented by an attorney. HOWEVER, for that attorney to be notified of any arbitration procedure, hearing date, or any other relevant matter, the party MUST NOTIFY the Bar Association IN WRITING of that attorney's name, address, and phone as soon as the attorney is retained.

6.5 EVIDENCE - Any relevant evidence shall be admitted if it is the sort of evidence of which responsible persons are accustomed to rely upon in the conduct of serious affairs, regardless of the existence of any common law or statutory rule to the contrary.

6.6 OATHS - Testimony of the witnesses shall be given under oath, to be administered by the Panel Chairperson or single arbitrator.

6.7 WAIVER OF PERSONAL APPEARANCE - Any party who lives one hundred and fifty (150) miles or more from the site of the hearing may waive personal appearance and submit to the panel testimony and exhibits by written declarations under penalty of perjury. For good cause shown the panel may waive personal appearance at the hearing. Stipulations and admissions dispensing with formal proof or of facts not in dispute are encouraged. Submission of testimony pursuant to this rule by written declaration constitutes an appearance.

6.8 MANNER OF PROOF -The parties shall present their proof in a manner determined by the panel.

6.9 TRANSCRIPTS - Any party may provide for the attendance of a certified shorthand reporter at the party's expense. Every party to the arbitration shall be entitled to a copy of said reporter's transcript of the testimony upon written request and payment of expense thereof.

6.10 INTERPRETER - Any party may provide for the attendance of a person to interpret at the party's own expense.

6.11 ADJOURNMENT -The panel may adjourn from time to time as is necessary at its discretion for good cause shown at the request of either party.

6.12 NO DISCOVERY - There shall be no discovery permitted in the proceedings conducted under these rules.

7.0 THE AWARD

The panel shall determine its findings and make its award within fifteen (15) days of the close of the hearing. At the conclusion of oral evidence, the Panel Chairperson may designate a specific period of time, not to exceed

ten (10) days after the conclusion of oral evidence, for the submission of additional evidence or briefing before closing the hearing.

The award shall be in writing specifically utilizing the Sonoma County Bar Association's **FINDINGS AND AWARD** form, which substantially complies with minimum standard number 13 of the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration programs. It shall include a determination of all questions submitted to the panel, the decision of which is necessary in order to determine the controversy

and render an appropriate award. The award shall also include the name of the responsible attorney(s) if different from the attorney-party. Arbitrators are encouraged, where appropriate, to file findings of fact with their awards. In the discretion of the arbitrators, the award may also include findings as to the willfulness of any party's non-attendance at the hearing.

Whenever there are two or more arbitrators, a majority vote shall be sufficient for all decisions of the arbitrators, including the award.

The award may include an order requiring a party to reimburse the other for all or part of the filing fee and the fee paid by the client for filing a stay of proceedings with the court. Neither party may recover any other costs or attorney's fees incurred in the course of the fee arbitration. The arbitrator(s), in their discretion, shall have the authority to award to the prevailing parties, in addition to the fees and costs due, an amount which represents interest on the unpaid balance in accordance with State Law. The award shall not include any award to either party for costs or attorney's fees incurred in preparation for, or in the course of, the fee arbitration, notwithstanding any contract between the parties providing for such an award.

Evidence relating to claims of malpractice and professional misconduct shall be admissible **only to the extent** that those claims bear upon the fees, costs, or both, to which the attorney may be entitled. The panel **SHALL NOT** award affirmative relief, in the form of damages or offset or otherwise. Rather the panel shall concern itself with the sole issue of the **reasonableness** of the fees and/or costs of the attorney-party's representation of the client-party.

The Sonoma County Bar Association is authorized by the State Bar of California to **administer** the Fee Arbitration Program in this county. However, it is the State Bar of California itself which is authorized to **enforce** fee arbitration awards in which the client is awarded a refund of fees and/or costs by placing the attorney on **temporary inactive status** until he or she complies with the award.

The original Award shall be returned to the Bar Association. The Bar Association will mail a copy of the Award to all parties including a Proof of Service and the State Bar approved Notice of Your Rights After Fee Arbitration publication, which outlines post-arbitration remedies available after binding and non-binding arbitration.

8.0 GENERAL

8.1 DEATH OR INCOMPETENCE OF A PARTY - In the event of death or incompetence of a party prior to the close of the hearing, the personal representative of the deceased party or the guardian or conservator of the incompetent party may be substituted.

8.2 CONFIDENTIALITY - All hearings shall be CLOSED to the public. The Committee files shall be confidential except that copies of the documents therein shall be made available to:

- Any party to the arbitration;
- Any attorney for the party(s) to the arbitration, with written authority of such party;
- The Bar Association files shall be destroyed five (5) years after the date of the Award.

8.3 SERVICE - Unless otherwise specifically stated in these rules, service shall be by personal delivery or by deposit in the United States Mail, postage paid, addressed to the person on whom it is to be served, at his/her office address as last given on any document which has been filed in the arbitration and served on the party making service by mail, otherwise at his/her place of residence. The service is complete at the time of deposit. The time for performing any act shall commence on the date service is completed and shall not be extended by reason of service by mail.

8.4 FEES - The filing fee schedule is as follows:

<u>Amount in Controversy</u>	<u>Base Fee</u>	<u>Plus Percentage</u>
\$1 to \$5,000	\$250	5%
\$5001 to \$9,999	\$500	5%
\$10,000 and above	\$500	7%

The maximum amount to be charged on cases above \$10,000 will be \$7,500

The amount in controversy is defined as the difference between the amount of attorney's fees charged, claimed or collected by the attorney and the amount which the client has indicated to be the reasonable value of the legal services received. This will be the amount listed as Amount C on the Client Request Form.

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