Fresno County Bar Association
1221 Van Ness Avenue, Suite 300 – Fresno, CA 93721-1720

Fee Arbitration Program
bobbielee@fresnocountybar.org
Ph: (559) 264-2619
Fax: (559) 264-8726

Thank you for requesting a fee arbitration application with Fresno County Bar Association Mandatory Fee Arbitration program. For your information, we are providing the enclosed:

1) **Request for Arbitration of a Fee Dispute** ***(form)***
2) **Instructions and Information for a Client Requesting Fee Arbitration**
3) **What Can the Mandatory Fee Arbitration Program Do for Me?** ***(brochure)***
4) **Excerpt from the California State Bar Act** ***(Bus. & Prof. Code, § 6200-6206; § 6146-6149.5)***
5) **Rules of Procedures for the Hearing of Fee Arbitration by Fresno County Bar Association**

Please be aware that if the attorney has served you with a Notice of Client's Right to Arbitration, and you wish to initiate arbitration, you must file a written application for arbitration **within 30 days from receipt of the notice**. Your failure to do so waives your right to arbitration.

If your fee dispute involves $1,000 or less, the arbitration will be decided by the Committee Chair without a hearing. At the time of the request or consent to arbitrate, each party is required to submit all supporting documents and a complete statement of the reasons for the dispute, under penalty of perjury. (See rule 21.3 of the enclosed Fresno County Bar Association Rules of Procedures for Fee Arbitration for more detailed information.)

Please carefully follow the Instructions and Information for Requesting Fee Arbitration sheet that is attached to the Request for Arbitration of a Fee Dispute form. **Do not attach any original supporting documents** to your request form. All attachments must be photocopies.

Once your request form is complete, and the required filing fee has been submitted, your request will be filed and processed in the order it is received. A copy of your completed request will be served on the attorney. This office will provide you with a photocopy of any reply by the attorney to your request. If you have any questions regarding the above, contact our office at (559) 264-2619.

Sincerely,

Mandatory Fee Arbitration Program

Instructions and Information for a Client Requesting Fee Arbitration

1. **READ** the *Rules of Procedures for Fee Arbitration by Fresno County Bar Association.*

2. **COMPLETE** all pages of the *Request for Arbitration of a Fee Dispute* form. If necessary, include additional pages to describe the fee dispute. **Sign and date the form. An incomplete form will be returned to you.** If you are initiating the fee dispute because you received a *Notice of Client's Right to Arbitration* from the attorney, **a returned form will effect your filing date.** The filing date is the day that our office receives your completed form. If you do not file by the 30-day deadline as stated in the notice, you will have waived your right to arbitration, thereby allowing the attorney to sue you to collect the fees. If you do not understand any part of the form or if you need help in completing it, please telephone our office and speak to a staff member who can help you.

3. **MAIL** the **completed original** *Request for Arbitration of a Fee Dispute* (Request) form and any supporting documents that you wish to submit, accompanied by an additional: **two (2) copies if the disputed amount is $10,000.00 or less** or **four (4) copies if the disputed amount is more than $10,000.00 and two (2) additional copies if either of the following applies: If you filled-out number 1.(c) Person Who Paid Attorney's Fees and/or number 2. If you are, or will be, represented by an attorney.**

   You must also include a money order for payment of the filing fee (Please see page 2 of the Request number 15). Mail the request form and your supporting documents, the photocopies, and payment of the filing fee to:

   Fresno County Bar Association
   Fee Arbitration Program
   1221 Van Ness Avenue, Suite 300
   Fresno, CA 93721-1720

Other Information

1. **HEARINGS –** Fee disputes involving $1,000.00 or less are decided without a hearing by the Committee Chair or designee based on the pleadings. Each party must submit all supporting documents and a complete written statement of the reasons for the dispute under penalty of perjury. If the amount in controversy is less than $1,000.00 but more than $500.00, any party may request that the parties appear at a hearing, either in person or telephonically, before the Committee Chair or designee assigned to the matter in addition to providing the written information required (Rule 21.3)

2. **WHO CAN REQUEST ARBITRTION** – The client or person who is not the client but who may be liable for or entitled to a refund or entity represented by the attorney can request arbitration. (Rule 14.4 and 14.5).

3. **STAY OF PROCEEDINGS** – If you have been sued, the attorney must stay the action by filing a *Notice of Automatic Stay* form with a copy of the completed request for arbitration with the court and parties (Rule 9.0). This form will be provided to the attorney along with your Request.

4. **WAIVER OF PERSONAL APPEARANCE** – If you cannot attend the hearing, you may waive your personal appearance (Rule 27.0) and have the matter decided on the documents submitted or participate by telephone or have someone appear for you. If you wish to waive your personal appearance or if you want someone else to appear for you, you must complete a *Waiver of Personal Appearance* form. Please contact this office and ask that one be mailed to you.

Case No. _____

Request for Arbitration of a Fee Dispute

Fresno County Bar Association fee arbitration matters are governed by Fresno County Bar Association rules of procedure for fee arbitrations which were sent to you with this form. If you do not have a copy of the rules of procedure, contact this office IMMEDIATELY or download the rules from the website: www.fresnocountybar.org. You should read the rules carefully and if you still have questions after you have done so, contact this office for additional information.

Mail this form with the filing fee and requisite number of copies to:

The Fresno County Bar Association
Mandatory Fee Arbitration Program
1221 Van Ness Ave., Ste. 300
Fresno, CA 93721-1720
Telephone (559) 264-2619
Fax No. (559) 264-8726

Please print or type.

1. (a) **CLIENT**

Name

P.O. Box or street address

City State Zip Code

( )
Area Code Telephone Number

(c) **PERSON WHO PAID ATTORNEY'S FEES**:
(If different from (a) above)

Name

P.O. Box or street address

City State Zip Code

( )
Area Code Telephone Number

(b) **NAME OF ATTORNEY** (with whom there is a fee dispute)

Attorney Name

Name of Firm, if any

P.O. Box or street address

City State Zip Code

( )
Area Code Telephone Number

2. If you are, or will be, represented by an attorney in the arbitration, provide the name, address and telephone number:

Attorney Name

Address State Zip Code

( )
Area Code Telephone Number

3. The hearing in this matter will take place in the county where most of the legal services were provided. In what county were most of the services provided?

_____
County

4. (a) When did the client first hire the attorney?

_____/_____/_____
Month Day Year

(b) When did the attorney stop representing the client or provide a final bill (whichever is later)?

_____/_____/_____
Month Day Year

5. What type of case was the attorney handling for the client (divorce, criminal, etc.)?

_____

6. (a) Is there a written fee agreement? (If yes, **attach a copy**.) ☐ Yes ☐ No

(b) Is there a written agreement that fee a disputes will be submitted to a Mandatory Fee Arbitration Program? (If other than the written fee agreement, **attach a copy**.) ☐ Yes ☐ No

7. (a) Did the attorney give the client or person responsible for payment of the fees a written Notice Clients Right to Mandatory Fee Arbitration? ☐ Yes ☐ No
(If yes, **attach a copy of the notice**.)

(b) If yes, when was the written notice received? _____/_____/_____

8. (a) Has a lawsuit been filed to collect the fees or costs? ☐ Yes ☐ No
(If yes, **attach a copy of the complaint**.)

(b) If a lawsuit has been filed, has the lawsuit been answered? ☐ Yes ☐ No
(If yes, **attach a copy of the answer**.)

9. Were the attorney's fees ordered by the court or set by law? ☐ Yes ☐ No
(If yes, explain on a separate sheet.)

10. Amount the client already paid the attorney $ _____

11. Additional amount, if any, the attorney says is still owed $ _____

12. Add lines 10 and 11 $ _____

13. Total amount the client or person responsible for fees says the attorney should be paid $_____

14. Subtract line 13 from line 12. **This is the disputed amount**. $ _____

15. Filing Fee based on the amount shown on line 14:

$50.00 for disputes up to and including $500.00
$75.00 for disputes over $500.00 and up to and including $1,000.00
$100.00 for disputes over $1,000.00 and up to and including $5,000.00 or
$250.00 for disputes over $5,000.00 and up to and including $10,000.00
$750.00 for disputes over $10,000.00

$ _____

WE DO NOT ACCEPT CASH OR PERSONAL CHECKS. Please make your **cashiers check or money order** payable to the **Fresno County Bar Association**.

16. Provide a summary description of the fee dispute. **Attach additional sheets if necessary**.

17. If the fee dispute is for $10,000 or less, it is heard by one (1) arbitrator. If it is for more than $10,000, it is heard by three (3) arbitrators. If all parties agree, you can have the dispute heard by one (1) arbitrator even if the dispute is for more than $10,000. Select one only. **If you request an arbitration hearing with one (1) arbitrator please submit the original Request plus two (2) copies, if three arbitrators, submit the original Request plus four (4) copies. Please add two (2) additional copies if either of the following applies: If you filled-out number 1.(c) Person Who Paid Attorney's Fees and/or number 2. If you are, or will be, represented by an attorney.**

    ☐ The dispute is for $10,000 or less, or

    ☐ The dispute is for more than $10,000 and you agree to one (1) arbitrator.

    ☐ The dispute is for more than $10,000 and you **DO NOT** agree to one (1) arbitrator.

18. Unless both parties agree in writing to BINDING ARBITRATION after the fee dispute arises, this arbitration is NON-BINDING. Non-binding arbitration means that if either party is unhappy with the award, either party has the right to ask for a trial in a *civil court.* Requesting a trial after arbitration will require filing documents with the appropriate court within 30 days from the date the award is mailed, even if damages are not sought from the other party. Unless a party requests a trial after arbitration within 30 days, the award *automatically* becomes *final* and *binding*.

    If both parties agree in writing to make the arbitration BINDING, a new trial may *not* be requested and the award will *immediately* become final and binding on both parties with limited rights to challenge the award in civil court.

    Do you agree to binding arbitration? ☐ Yes ☐ No

19. If you are the client and the attorney represented you in a civil matter, you are entitled to choose an arbitrator who practices civil law. If your attorney represented you in a criminal matter, you are entitled to choose an arbitrator who practices criminal law. Please indicate your choice below.

    ☐ I do not have a preference.

    ☐ I want an attorney who practices civil law as an arbitrator.

    ☐ I want an attorney who practices criminal law as an arbitrator.

I declare under penalty of perjury under the laws of the State of California that my statements on this request and any attachments are true and correct.

Print here: _____ Date: _____/_____/_____
Month Day Year

Sign here: _____

Sign below if more than one person is requesting arbitration

Print here: _____ Date: _____/_____/_____
Month Day Year

Sign here: _____

ARTICLE 13

ARBITRATION OF ATTORNEYS' FEES

§ 6200. Establishment of system and procedure; arbitration and mediation; application of article; voluntary or mandatory nature; rules; immunity of arbitrator and mediator; powers of arbitrator; confidentiality of mediation

(a) The board of governors shall, by rule, establish, maintain, and administer a system and procedure for the arbitration, and may establish, maintain, and administer a system and procedure for mediation of disputes concerning fees, costs, or both, charged for professional services by members of the State Bar or by members of the bar of other jurisdictions. The rules may include provision for a filing fee in such amount as the board may, from time to time, determine.

(b) This article shall not apply to any of the following:

(1) Disputes where a member of the State Bar of California is also admitted to practice in another jurisdiction or where an attorney is only admitted to practice in another jurisdiction, and he or she maintains no office in the State of California, and no material portion of the services were rendered in the State of California.

(2) Claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct, except as provided in subdivision (a) of Section 6203.

(3) Disputes where the fee or cost to be paid by the client or on his or her behalf has been determined pursuant to statute or court order.

(c) Unless the client has agreed in writing to arbitration under this article of all disputes concerning fees, costs, or both, arbitration under this article shall be voluntary for a client and shall be mandatory for an attorney if commenced by a client. Mediation under this article shall be voluntary for an attorney and a client.

(d) The board of governors shall adopt rules to allow arbitration and mediation of attorney fee and cost disputes under this article to proceed under arbitration and mediation systems sponsored by local bar associations in this state. Rules of procedure promulgated by local bar associations are subject to review by the board or a committee designated by the board to insure that they provide for a fair, impartial, and speedy hearing and award.

(e) In adopting or reviewing rules of arbitration under this section the board shall provide that the panel shall include one attorney member whose area of practice is either, at the option of the client, civil law, if the attorney's representation involved civil law, or criminal law, if the attorney's representation involved criminal law, as follows:

(1) If the panel is composed of three members the panel shall include one attorney member whose area of practice is either, at the option of the client, civil or criminal law, and shall include one lay member.

(2) If the panel is composed of one member, that member shall be an attorney whose area of practice is either, at the option of the client, civil or criminal law.

(f) In any arbitration or mediation conducted pursuant to this article by the State Bar or by a local bar association, pursuant to rules of procedure approved by the board of governors, an arbitrator or mediator, as well as the arbitrating association and its directors, officers, and employees, shall have the same immunity which attaches in judicial proceedings.

(g) In the conduct of arbitrations under this article the arbitrator or arbitrators may do all of the following:

(1) Take and hear evidence pertaining to the proceeding.

(2) Administer oaths and affirmations.

(3) Issue subpoenas for the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding.

(h) Participation in mediation is a voluntary consensual process, based on direct negotiations between the attorney and his or her client, and is an extension of the negotiated settlement process. All discussions and offers of settlement are confidential and may not be disclosed in any subsequent arbitration or other proceedings. (Added by Stats. 1978, ch. 719. Amended by Stats. 1984, ch. 825; Stats. 1989, ch. 1416; Stats. 1990, ch. 483; Stats. 1990, ch. 1020; Stats. 1993, ch. 1262; Stats. 1994, ch. 479; Stats. 1996, ch. 1104; Stats. 2009, ch. 54.)

§ 6201. Notice to client and state bar; stay of action; right to arbitration; waiver by client

(a) The rules adopted by the board of governors shall provide that an attorney shall forward a written notice to the client prior to or at the time of service of summons or claim in an action against the client, or prior to or at the commencement of any other proceeding against the client under a contract between attorney and client which provides for an alternative to arbitration under this article, for recovery of fees, costs, or both. The written notice shall be in the form that the board of governors prescribes, and shall include a statement of the client's right to arbitration under this article. Failure to give this notice shall be a ground for the dismissal of the action or other proceeding. The notice shall not be required, however, prior to initiating mediation of the dispute.

The rules adopted by the board of governors shall provide that the client's failure to request arbitration within 30 days after receipt of notice from the attorney shall be deemed a waiver of the client's right to arbitration under the provisions of this article.

(b) If an attorney, or the attorney's assignee, commences an action in any court or any other proceeding and the client is entitled to maintain arbitration under this article, and the dispute is not one to which subdivision (b) of Section 6200 applies, the client may stay the action or other proceeding by serving and filing a request for arbitration in accordance with the rules established by the board of governors pursuant to subdivision (a) of Section 6200. The request for arbitration shall be served and filed prior to the filing of an answer in the action or equivalent response in the other proceeding; failure to so request arbitration prior to the filing of an answer or equivalent response shall be deemed a waiver of the client's right to arbitration under the provisions of this article if notice of the client's right to arbitration was given pursuant to subdivision (a).

(c) Upon filing and service of the request for arbitration, the action or other proceeding shall be automatically stayed until the award of the arbitrators is issued or the arbitration is otherwise terminated. The stay may be vacated in whole or in part, after a hearing duly noticed by any party or the court, if and to the extent the court finds that the matter is not appropriate for arbitration under the provisions of this article. The action or other proceeding may thereafter proceed subject to the provisions of Section 6204.

(d) A client's right to request or maintain arbitration under the provisions of this article is waived by the client commencing an action or filing any pleading seeking either of the following:

(1) Judicial resolution of a fee dispute to which this article applies.

(2) Affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct.

(e) If the client waives the right to arbitration under this article, the parties may stipulate to set aside the waiver and to proceed with arbitration. (Added by Stats. 1978, ch. 719. Amended by Stats. 1979, ch. 878; Stats. 1982, ch. 979; Stats. 1984, ch. 825; Stats. 1989, ch. 1416; Stats. 1990, ch. 483; Stats. 1993, ch. 1262; Stats. 1994, ch. 479; Stats. 1996, ch. 1104.)

§ 6202. Disclosure of attorney-client communication or attorney's work product; limitation

The provisions of Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code shall not prohibit the disclosure of any relevant communication, nor shall the provisions of Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure be construed to prohibit the disclosure of any relevant work product of the attorney in connection with: (a) an arbitration hearing or mediation pursuant to this article; (b) a trial after arbitration; or (c) judicial confirmation, correction, or vacation of an arbitration award. In no event shall such disclosure be deemed a waiver of the confidential character of such matters for any other purpose. (Added by Stats. 1978, ch. 719. Amended by Stats. 1982, ch. 979; Stats. 1984, ch. 825; Stats. 1996, ch. 1104; Stats. 2004, ch 182)

§ 6203. Award; contents; damages and offset; fees and costs; finality of award; appellate fees and costs; attorney inactive status and penalties

(a) The award shall be in writing and signed by the arbitrators concurring therein. It shall include a determination of all the questions submitted to the arbitrators, the decision of which is necessary in order to determine the controversy. 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 proceeding, notwithstanding any contract between the parties providing for such an award of costs or attorney's fees. However, the filing fee paid may be allocated

between the parties by the arbitrators. This section shall not preclude an award of costs or attorney's fees to either party by a court pursuant to subdivision (c) of this section or of subdivision (d) of Section 6204. The State Bar, or the local bar association delegated by the State Bar to conduct the arbitration, shall deliver to each of the parties with the award, an original declaration of service of the 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 is entitled. The arbitrators shall not award affirmative relief, in the form of damages or offset or otherwise, for injuries underlying any such claim. Nothing in this section shall be construed to prevent the arbitrators from awarding the client a refund of unearned fees, costs, or both previously paid to the attorney.

(b) Even if the parties to the arbitration have not agreed in writing to be bound, the arbitration award shall become binding upon the passage of 30 days after service of notice of the award, unless a party has, within the 30 days, sought a trial after arbitration pursuant to Section 6204. If an action has previously been filed in any court, any petition to confirm, correct, or vacate the award shall be to the court in which the action is pending, and may be served by mail on any party who has appeared, as provided in Chapter 4 (commencing with Section 1003) of Title 14 of Part 2 of the Code of Civil Procedure; otherwise it shall be in the same manner as provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure. If no action is pending in any court, the award may be confirmed, corrected, or vacated by petition to the court having jurisdiction over the amount of the arbitration award, but otherwise in the same manner as provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.

(c) Neither party to the arbitration may recover costs or attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding with the exception of the filing fee paid pursuant to subdivision (a) of this section. However, a court confirming, correcting, or vacating an award under this section may award to the prevailing party reasonable fees and costs incurred in obtaining confirmation, correction, or vacation of the award including, if applicable, fees and costs on appeal. The party obtaining judgment confirming, correcting, or vacating the award shall be the prevailing party except that, without regard to consideration of who the prevailing party may be, if a party did not appear at the arbitration hearing in the manner provided by the rules adopted by the board of governors, that party shall not be entitled to attorney's fees or costs upon confirmation, correction, or vacation of the award.

(d) (1) In any matter arbitrated under this article in which the award is binding or has become binding by operation of law or has become a judgment either after confirmation under subdivision (c) or after a trial after arbitration under Section 6204, or in any matter mediated under this article if: (A) the award, judgment, or agreement reached after mediation includes a refund of fees or costs or both, to the client and (B) the attorney has not complied with that award, judgment, or agreement the State Bar shall enforce the award, judgment, or agreement by placing the attorney on involuntary inactive status until the refund has been paid.

(2) The State Bar shall provide for an administrative procedure to determine whether an award, judgment, or agreement should be enforced pursuant to this subdivision. An award, judgment, or agreement shall be so enforced if:

(A) The State Bar shows that the attorney has failed to comply with a binding fee arbitration award, judgment, or agreement rendered pursuant to this article.

(B) The attorney has not proposed a payment plan acceptable to the client or the State Bar.

However, the award, judgment, or agreement shall not be so enforced if the attorney has demonstrated that he or she (i) is not personally responsible for making or ensuring payment of the refund, or (ii) is unable to pay the refund.

(3) An attorney who has failed to comply with a binding award, judgment, or agreement shall pay administrative penalties or reasonable costs, or both, as directed by the State Bar. Penalties imposed shall not exceed 20 percent of the amount to be refunded to the client or one thousand dollars ($1,000), whichever is greater. Any penalties or costs, or both, that are not paid shall be added to the membership fee of the attorney for the next calendar year.

(4) The board shall terminate the inactive enrollment upon proof that the attorney has complied with the award, judgment or agreement and upon payment of any costs or penalties, or both, assessed as a result of the attorney's failure to comply.

(5) A request for enforcement under this subdivision shall be made within four years from the date (A) the arbitration award was mailed, (B) the judgment was entered, or (C) the date the agreement was signed. In an arbitrated matter, however, in no event shall a request be made prior to 100 days from the date of the service of a signed copy of the award. In cases where the award is appealed, a request shall not be made prior to 100 days from the date the award has become final as set forth in this section. (Added by Stats. 1978, ch. 719. Amended by Stats. 1982, ch. 979; Stats. 1984, ch. 825; Stats. 1989, ch. 1416; Stats. 1990, ch. 483; Stats. 1992, ch. 1265; Stats. 1993, ch. 1262, Stats. 1996. ch. 1104; Stats. 2009, ch. 54.)

§ 6204. Agreement to be bound by award of arbitrator; trial after arbitration in absence of agreement; commencement of proceeding; prevailing party; effect of award and determination

(a) The parties may agree in writing to be bound by the award of arbitrators appointed pursuant to this article at any time after the dispute over fees, costs, or both, has arisen. In the absence of such an agreement, either party shall be entitled to a trial after arbitration if sought within 30 days, pursuant to subdivisions (b) and (c), except that if either party willfully fails to appear at the arbitration hearing in the manner provided by the rules adopted by the board of governors, that party shall not be entitled to a trial after arbitration. The determination of willfulness shall be made by the court. The party who failed to appear at the arbitration shall have the burden of proving that the failure to appear was not willful. In making its determination, the court may consider any findings made by the arbitrators on the subject of a party's failure to appear.

(b) If there is an action pending, the trial after arbitration shall be initiated by filing a rejection of arbitration award and request for trial after arbitration in that action within 30 days after service of notice of the award. If the rejection of arbitration award has been filed by the plaintiff in the pending action, all defendants shall file a responsive pleading within 30 days following service upon the defendant of the rejection of arbitration award and request for trial after arbitration. If the rejection of arbitration award has been filed by the defendant in the pending action, all defendants shall file a responsive pleading within 30 days after the filing of the rejection of arbitration award and request for trial after arbitration. Service may be made by mail on any party who has appeared; otherwise service shall be made in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure. Upon service and filing of the rejection of arbitration award, any stay entered pursuant to Section 6201 shall be vacated, without the necessity of a court order.

(c) If no action is pending, the trial after arbitration shall be initiated by the commencement of an action in the court having jurisdiction over the amount of money in controversy within 30 days after service of notice of the award. After the filing of such an action, the action shall proceed in accordance with the provisions of Part 2 (commencing with Section 307) of the Code of Civil Procedure, concerning civil actions generally.

(d) The party seeking a trial after arbitration shall be the prevailing party if that party obtains a judgment more favorable than that provided by the arbitration award, and in all other cases the other party shall be the prevailing party. The prevailing party may, in the discretion of the court, be entitled to an allowance for reasonable attorneys' fees and costs incurred in the trial after arbitration, which allowance shall be fixed by the court. In fixing the attorneys' fees, the court shall consider the award and determinations of the arbitrators, in addition to any other relevant evidence.

(e) Except as provided in this section, the award and determinations of the arbitrators shall not be admissible nor operate as collateral estoppel or res judicata in any action or proceeding. (Added by Stats. 1978, ch. 719. Amended by Stats. 1979, ch. 878; Stats. 1982, ch. 979; Stats. 1984, ch. 825; Stats. 1992, ch. 1265; Stats. 1996. ch. 1104; Stats. 1998, ch. 798; Stats. 2009, ch. 54.)

§ 6204.5 Disqualification of arbitrator or mediator; notice of right to judicial relief

(a) The State Bar shall provide by rule for an appropriate procedure to disqualify an arbitrator or mediator upon request of either party.

(b) The State Bar, or the local bar association delegated by the State Bar to conduct the arbitration, shall deliver a notice to the parties advising them of their rights to judicial relief subsequent to the arbitration proceeding. (Added by Stats. 1986, ch. 475; Stats. 1996, ch. 1104.)

§ 6205. Repealed by Stats. 1996, ch. 1104 § 18

§ 6206. Limitation of actions; judicial resolution of arbitration dispute

The time for filing a civil action seeking judicial resolution of a dispute subject to arbitration under this article shall be tolled from the time an arbitration is initiated in accordance with the rules adopted by the board of governors until (a) 30 days after receipt of notice of the award of the arbitrators, or (b) receipt of notice that the arbitration is otherwise terminated, whichever comes first. Arbitration may not be commenced under this article if a civil action requesting the same relief would be barred by any provision of Title 2 (commencing with section 312) of Part 2 of the Code of Civil Procedure; provided that this limitation shall not apply to a request for arbitration by a client, pursuant to the provisions of subdivision (b) of section 6201, following the filing of a civil action by the attorney. (Added by Stats. 1978, ch. 719. Amended by Stats. 1984, ch. 825.)

January, 2010

Article 8.5 - Fee Agreements(6146-6149.5)

§6146. Limitations; Periodic Payments; Definitions

a. An attorney shall not contract for or collect a contingency fee for representing any person seeking damages in connection with an action for injury or damage against a health care provider based upon such person's alleged professional negligence in excess of the following limits:
    1. Forty percent of the first fifty thousand dollars ($50,000) recovered.
    2. Thirty-three and one-third percent of the next fifty thousand dollars ($50,000) recovered.
    3. Twenty-five percent of the next five hundred thousand dollars ($500,000) recovered.
    4. Fifteen percent of any amount on which the recovery exceeds six hundred thousand dollars ($600,000).

    The limitations shall apply regardless of whether the recovery is by settlement, arbitration, or judgment, or whether the person for whom the recovery is made is a responsible adult, an infant, or a person of unsound mind.

b. If periodic payments are awarded to the plaintiff pursuant to section 667.7 of the Code of Civil Procedure, the court shall place a total value on these payments based upon the projected life expectancy of the plaintiff and include this amount in computing the total award from which attorney's fees are calculated under this section.

c. For purposes of this section:
    1. "Recovered" means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim. Costs of medical care incurred by the plaintiff and the attorney's office-overhead costs or charges are not deductible disbursements or costs for such purpose.
    2. "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Health care provider" includes the legal representatives of a health care provider.
    3. "Professional negligence" is a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that the services are within the scope of services for

which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital. (Added by Stats. 1975, 2nd Ex. Sess., ch. 1; Amended by Stats. 1975, 2nd Ex. Sess., ch. 2, effective September 24, 1975, operative December 12, 1975; Stats. 1981, ch. 714; Stats. 1987, ch. 1498.)

§6147. (Added by Stats. 1982, ch. 415. Amended by Stats. 1996, ch. 1104.

Repealed by its own provisions, Stats. 1996, ch. 1104, effective January 1, 2000.)

§6147. Contingency Fee Contract: Contents; Effect of Noncompliance;

Application to Contracts for Recovery of Workers' Compensation Benefits

a. An attorney who contracts to represent a client on a contingency fee basis shall, at the time the contract is entered into, provide a duplicate copy of the contract, signed by both the attorney and the client, or the client's guardian or representative, to the plaintiff, or to the client's guardian or representative. The contract shall be in writing and shall include, but is not limited to, all of the following:
    1. A statement of the contingency fee rate that the client and attorney have agreed upon.
    2. A statement as to how disbursements and costs incurred in connection with the prosecution or settlement of the claim will affect the contingency fee and the client's recovery.
    3. A statement as to what extent, if any, the client could be required to pay any compensation to the attorney for related matters that arise out of their relationship not covered by their contingency fee contract. This may include any amounts collected for the plaintiff by the attorney.
    4. Unless the claim is subject to the provisions of Section 6146, a statement that the fee is not set by law but is negotiable between attorney and client.
    5. If the claim is subject to the provisions of Section 6146, a statement that the rates set forth in that section are the maximum limits for the contingency fee agreement, and that the attorney and client may negotiate a lower rate.
b. Failure to comply with any provision of this section renders the agreement voidable at the option of the plaintiff, and the attorney shall thereupon be entitled to collect a reasonable fee.
c. This section shall not apply to contingency fee contracts for the recovery of

workers' compensation benefits.

d. This section shall become operative on January 1, 2000. (Added by Stats. 1993, ch. 982. Amended by Stats. 1994, ch. 479; Stats. 1996, ch. 1104, operative January 1, 2000.)

§6147.5 Contingency Fee Contracts; Recovery of Claims between Merchants

a. Sections 6147 and 6148 shall not apply to contingency fee contracts for the recovery of claims between merchants as defined in Section 2104 of the Commercial Code, arising from the sale or lease of goods or services rendered, or money loaned for use, in the conduct of a business or profession if the merchant contracting for legal services employs 10 or more individuals.

b.
    1. In the instances in which no written contract for legal services exists as permitted by subdivision (a), an attorney shall not contract for or collect a contingency fee in excess of the following limits:
        A. Twenty percent (20%) of the first three hundred dollars ($300) collected.
        B. Eighteen percent (18%) of the next one thousand seven hundred dollars ($1,700) collected.
        C. Thirteen percent (13%) of sums collected in excess of two thousand dollars ($2,000).
    2. However, the following minimum charges may be charged and collected:
        A. Twenty-five dollars ($25) in collections of seventy-five dollars ($75) to one hundred twenty-five dollars ($125).
        B. Thirty-three and one-third percent of collections less than seventy-five dollars ($75). (Added by Stats. 1990, ch. 713.)

§6148. (Added by Stats. 1986, ch. 475. Amended by Stats. 1996, ch. 1104.

Repealed by its own provisions, Stats. 1996, ch. 1104, effective January 1, 2000.)

§6148. Written Fee Contract: Contents; Effect of Noncompliance

a. In any case not coming within Section 6147 in which it is reasonably foreseeable that total expense to a client, including attorney fees, will exceed one thousand dollars ($1,000), the contract for services in the case shall be in

writing. At the time the contract is entered into, the attorney shall provide a duplicate copy of the contract signed by both the attorney and the client, or the client's guardian or representative, to the client or to the client's guardian or representative. The written contract shall contain all of the following:

1. Any basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the case.
2. The general nature of the legal services to be provided to the client.
3. The respective responsibilities of the attorney and the client as to the performance of the contract.

b. All bills rendered by an attorney to a client shall clearly state the basis thereof. Bills for the fee portion of the bill shall include the amount, rate, basis for calculation, or other method of determination of the attorney's fees and costs. Bills for the cost and expense portion of the bill shall clearly identify the costs and expenses incurred and the amount of the costs and expenses. Upon request by the client, the attorney shall provide a bill to the client no later than 10 days following the request unless the attorney has provided a bill to the client within 31 days prior to the request, in which case the attorney may provide a bill to the client no later than 31 days following the date the most recent bill was provided. The client is entitled to make similar requests at intervals of no less than 30 days following the initial request. In providing responses to client requests for billing information, the attorney may use billing data that is currently effective on the date of the request, or, if any fees or costs to that date cannot be accurately determined, they shall be described and estimated.

c. Failure to comply with any provision of this section renders the agreement voidable at the option of the client, and the attorney shall, upon the agreement being voided, be entitled to collect a reasonable fee.

d. This section shall not apply to any of the following:

1. Services rendered in an emergency to avoid foreseeable prejudice to the rights or interests of the client or where a writing is otherwise impractical.
2. An arrangement as to the fee implied by the fact that the attorney's services are of the same general kind as previously rendered to and paid for by the client.
3. If the client knowingly states in writing, after full disclosure of this section, that a writing concerning fees is not required.
4. If the client is a corporation.

e. This section applies prospectively only to fee agreements following its operative date.

f. This section shall become operative on January 1, 2000. (Added by Stats. 1993, ch. 982. Amended by Stats. 1994, ch. 479; Stats. 1996, ch 1104, operative January 1, 2000.)

§6149. Written Fee Contract Confidential Communication

A written fee contract shall be deemed to be a confidential communication within the meaning of subdivision (e) of Section 6068 and of Section 952 of the Evidence Code.

(Added by Stats. 1986, ch. 475.)

§6149.5 Insurer Notification to Claimant of Settlement Payment Delivered to Claimant's Attorney

a. Upon the payment of one hundred dollars ($100) or more in settlement of any third-party liability claim the insurer shall provide written notice to the claimant if both of the following apply:
    1. The claimant is a natural person.
    2. The payment is delivered to the claimant's lawyer or other representative by draft, check, or otherwise.
b. For purposes of this section, "written notice" includes providing to the claimant a copy of the cover letter sent to the claimant's attorney or other representative that accompanied the settlement payment.
c. This section shall not create any cause of action for any person against the insurer based upon the insurer's failure to provide the notice to a claimant required by this section. This section shall not create a defense for any party to any cause of action based upon the insurer's failure to provide this notice.
(Added by Stats. 1994, ch. 479.)

How Do I Request Fee Arbitration?

To initiate fee arbitration, you must complete a fee arbitration request form from the appropriate bar association and submit the filing fee set by the particular program. Attach copies of any documents requested on the form. You will have an opportunity to present additional information at the arbitration hearing. You should include information that specifically relates to the attorney's fees and costs and explain why you believe the attorney's fees are excessive or that no additional fees are owed.

What Is My Deadline For Requesting Fee Arbitration?

If you received a *Notice of Client's Right to Arbitration* form from the attorney, you have 30 days from the date of its receipt to submit your arbitration request form to the program. If you do not file the request form with the program within that time period, you will lose your right to arbitrate your fee dispute. A telephone call or letter to the program requesting arbitration will not protect that right. You must be sure that the request form is completely filled out, and that you have included any filing fee that may be required.

If the attorney has already filed a lawsuit against you for unpaid fees, you may elect to either respond to the lawsuit or request fee arbitration. If you file a response to the lawsuit, you will lose your right to arbitrate the fee dispute. If you request arbitration, the lawsuit will be stayed; but you should file the appropriate notice of automatic stay with the court. To preserve your right to arbitrate, you should file a request for arbitration promptly.

When Do I Receive the Arbitration Decision?

Unless the parties reach a settlement agreement, a decision (the "Findings and Award") will not be made at the hearing. Within the time set by the program, the arbitrator's Findings and Award will be mailed to you following the hearing. You will also receive a *Notice Of Your Rights After Arbitration* form.

The award may provide for a refund of fees and costs from the attorney to you, an amount of outstanding fees owed to the attorney, or a determination that no money is owing to either party. The arbitrator may also allocate payment of the program filing fees to either party.

For further information about the fee arbitration process, please contact this program at the address below:

The Mandatory Fee Arbitration Program
The State Bar of California
180 Howard Street, 6th floor
San Francisco, CA 94105
(415) 538-2020

The State Bar of California

What Can The Mandatory Fee Arbitration Program Do For Me?

Prepared by the
State Bar Committee on
Mandatory Fee Arbitration
October 28, 2004

What is the Mandatory Fee Arbitration Program?

Clients have the right to have a neutral party–"an arbitrator"–hear fee disputes with their attorneys. The arbitrator determines whether the fees and costs charged by the attorney are reasonable for the services provided. The Mandatory Fee Arbitration Program provides an opportunity to have a volunteer arbitrator resolve attorney fee and cost disputes between clients and attorneys through an informal, low-cost alternative to the court system.

Do I Need an Attorney to Assist Me?

You do not need an attorney to represent you in a fee arbitration. You may choose to hire an attorney at your own expense, but you should be aware that the arbitration award cannot include the attorney's fees incurred for the preparation or appearance for the arbitration hearing.

How Does the Program Work?

After you submit a completed arbitration request form and the required filing fee to the program, the program will send a copy of your request to the attorney for a written response. You will receive a copy of any response received. A sole arbitrator or a panel of three arbitrators (depending on the amount in dispute) will be assigned to listen to both you and the attorney to determine whether the attorney's fees and costs were reasonable. If it is determined that you paid the attorney more than the arbitrator decides is reasonable, you may be awarded a refund of attorney's fees or costs. Alternatively, it may also be determined that no refund is owed or that you owe fees to the attorney.

Depending on the circumstances, the arbitrator(s) will consider a number of factors in making this decision. These may include: whether there was a written fee agreement; the reasonable value of the attorney's services; the amount of time the attorney spent on your case; and whether any misconduct or incompetency by the attorney affected the value of the services. The arbitrator(s) will decide the matter based only upon the evidence presented at the hearing.

If I Believe That The Attorney Engaged in Misconduct or Malpractice, Will Fee Arbitration Be Able To Help Me?

The Mandatory Fee Arbitration Program cannot help you recover damages or offset expenses incurred for attorney malpractice or misconduct.

If the arbitrator determines that the attorney's malpractice or professional misconduct reduced the value of the attorney's services, the arbitrator can reduce the attorney's fees accordingly. By law, however, the arbitrator(s) cannot offset the fee or order the attorney to pay you for any damages the attorney's conduct may have caused. If you believe that you have a separate claim for attorney malpractice, you should discuss the matter with an independent attorney.

What If I Believe The Attorney's Conduct Should Be Reported?

The Mandatory Fee Arbitration Program does not have authority to discipline attorneys for professional misconduct.

If you wish to file a disciplinary complaint with the State Bar of California about your attorney's conduct, you may call the State Bar's toll-free number: (800)843-9053. You may also ask the State Bar for a copy of the pamphlet "What Can I Do If I Have A Problem With My Lawyer?" The pamphlet may be accessed from its website: www.calbar.ca.gov.

Keep in mind that a discipline complaint and a request to arbitrate a fee dispute are separate matters. Filing a complaint may result in disciplinary action against the attorney; however, the result may or may not require the attorney to make a refund.

Should I Agree To Binding Arbitration?

Fee arbitrations are non-binding unless the parties agree in writing to binding arbitration after the dispute arises but prior to the hearing. If the arbitration is binding, the award is final and neither you nor the attorney may request a new trial in court. A binding award can only be corrected or vacated for very limited reasons.

If the award is non-binding, a party has 30 days from the date of service of the award to file an action in court requesting a trial. If a trial is not requested within the 30 days, the award automatically becomes binding.