

**COMMITTEE ON MANDATORY FEE ARBITRATION  
THE STATE BAR OF CALIFORNIA**

**AGENDA**

**Friday, November 2, 2018  
10:00 a.m. – 3:00 p.m.**

The State Bar of California  
180 Howard Street  
Conference Room 4D, 4<sup>th</sup> Floor  
San Francisco, CA 94105

Questions regarding any agenda item should be directed to Isabel Liou, Committee Staff Liaison, at **(415) 538-2573** or **180 Howard Street, San Francisco, CA 94105**.

*The order of business is approximate and subject to change.*

**OPEN SESSION**

- I. Call for Public Comment (Walsh)  
*Members of the public may speak to any item on the agenda. The Chair reserves the right to limit the duration of public comment.*
- II. Approval of September 14, 2018 Meeting Minutes (Attachment 1, pp. 1-4) (All)
- III. Chair's Report (Walsh)
- IV. Report from Presiding Arbitrator (Bacon)
- V. Report from State Bar Staff (Staff)
  - A. Office Statistics (Attachment 2, p. 5)
  - B. Schedule of Events
  - C. Recent Developments
- VI. Business
  - A. San Mateo County Bar Association: Review Proposed Fee Mediation Rules (Attachment 3, pp. 6-23) (Duesdieker)
  - B. Discuss Impact of New Rules of Professional Conduct on MFA Program Materials (Attachment 4, pp. 24-73) (Walsh, Zukerman)

- C. Discuss Contra Costa County Bar Association's Partnership Proposal to the State Bar MFA Program Where the CCCBA Handles Fee Mediation Only and Refers Unsettled Cases to the State Bar MFA Program (Attachment 5, pp. 74-75) (TBD)

Next committee meeting:

*No future meetings are scheduled at this time.*

*In compliance with the Americans with Disabilities Act, those requiring accommodation at this meeting should notify Isabel Liou at (415) 538-2573. Please provide notification at least 72 hours prior to the meeting to allow sufficient time to make arrangements for accommodations at this meeting.*

**COMMITTEE ON MANDATORY FEE ARBITRATION  
THE STATE BAR OF CALIFORNIA**

**MINUTES**

**Friday, September 14, 2018  
10:00 a.m. – 3:00 p.m.**

San Diego County Bar Association  
401 West "A" Street  
Bayview Room, 11<sup>th</sup> Floor  
San Diego, CA 92101

**Members Present (14):** Lorraine Walsh (Chair), Ken Bacon (Presiding Arbitrator), Clark Stone (Vice Chair), Lee Straus (Vice Chair), Anahid Agemian, Carole Buckner, George Duesdieker, Michael Fish, Jobi Halper, Patrick Maloney, Joel Mark, John McDougall, Nick Migliaccio, Roy Zukerman.

**Not Present (1):** Sharron McLawyer.

**Staff Present:** Attorney Regulation and Consumer Resources Program Director Dina DiLoreto, MFA Staff Attorney Isabel Liou.

Chair Lorraine Walsh called the meeting to order at 10:06 a.m.

**I. Call for Public Comment**

There were no requests for public comment.

**II. Approval of July 13, 2018 Meeting Minutes**

The minutes were approved as attached.

**III. Chair's Report**

Lorraine commented on the recent Supreme Court *Sheppard Mullin* decision and its implications for attorney's fees litigation where advance conflict waivers are used. She also discussed the first presentation of the new Advanced Fee Arbitrator training which took place at the San Diego County Bar Association the previous night (September 13<sup>th</sup>) for an audience of approximately 20 seasoned fee arbitrators. Lastly, Lorraine discussed the Appendix I study which culminated in the Board of Trustees' September 13<sup>th</sup> vote to eliminate the CMFA.

**IV. Report from Presiding Arbitrator**

Ken discussed ongoing enforcement matters.

## V. Report from State Bar Staff

### A. Office Statistics

Updated statistics were handed out and discussed.

### B. Schedule of Events

An updated events calendar was distributed. In the month of September, various CMFA members participated in the Monterey and Bakersfield basic trainings, as well as the new advanced training in San Diego. Isabel will follow up with San Luis Obispo Bar Association regarding the venue for the October 25<sup>th</sup> basic fee arbitrator training and will be in touch with the presenters.

### C. Other Business

The Board's recent decision to end the CMFA was discussed at length. Dina explained that this will require transitioning from a 16-member committee of volunteers to a staff-driven MFA program with volunteers serving as the Presiding Arbitrator and Assistant Presiding Arbitrators. In addition, there will be at least two positions on the Committee on Professional Responsibility and Conduct (COPRAC) reserved for members with MFA experience.

Relatedly, Dina mentioned that the Board also voted to extend the terms of the current Committee Chair and two Vice Chairs through the end of 2018. Unfortunately, any members whose terms end in 2018 who are not already serving as Chair or Vice Chair will not be extended because no new appointments were considered in light of the Board's vote to end the CMFA; as a result, the September 2018 meeting is the last meeting for members Carole Buckner and Michael Fish, both of whose terms end in 2018.

Dina explained that the next step will be for staff to craft a transition plan to carry out the Board's decisions regarding the State Bar's subentities. Although the Board of Trustees voted to eliminate the CMFA, there is no definite end date set. Some possible scenarios include the CMFA ending with the 2018 calendar year, allowing the CMFA to exist as long as it takes for all members to complete their appointed terms (sometime in Fall 2020), or however long it takes to fully transition towards an integrated committee structure with COPRAC. What is certain is that all currently scheduled trainings and projects should go forward until further notice. Staff responsible for drafting the post-Appendix I transition plan will do so in time to present it at the November 2018 Board of Trustees meeting.

Based on this information, the CMFA decided to schedule its next meeting for Friday, November 2, 2018, at the San Francisco State Bar offices, from 10:00 a.m. to 3:00 p. m. Isabel will provide the meeting location as soon as a conference room is reserved.

## VI. Business

### A. Arbitration Advisory on Interest

This item was discussed and further revisions were made. Joel made a motion to table further discussion of this arbitration advisory but only three of the fourteen members present voted in favor of this motion (Buckner, Mark, Migliaccio) so discussion continued.

In the end, the Committee voted to approve the current draft for posting, subject to the agreed upon edits. The votes were as follows:

Yay (10): Agemian, Duesdieker, Fish, Halper, Maloney, McDougall, Stone, Straus, Walsh, Zukerman.

Nay (0):

Abstain (4): Bacon, Buckner, Mark, Migliaccio.

Isabel will incorporate the approved edits and prepare the advisory for posting on the website.

### B. Arbitration Advisory on Costs

This item was discussed and additional revisions were made. The Committee, less Michael Fish's abstention, voted to approve this advisory for posting, subject to the agreed upon edits. Isabel will incorporate the edits and prepare this advisory for posting on the website.

### C. San Mateo County Bar Association's Proposed Revised Filing Fee Schedule and Fee Mediation Rules

Based on the additional information provided, SMCBA's revised filing fee schedule was approved as submitted. Isabel will notify the SMCBA that its proposed filing fee schedule is approved.

Next, SMCBA's proposed fee mediation rules were discussed. Members were concerned about the removal of required model fee mediation rule language on the issue of confidentiality and other sections that state current law and would like to understand why the required language was removed. Isabel will communicate these concerns to the SMCBA and will also suggest adopting the model fee mediation rules as they have already been vetted by the CMFA.

### D. Impact of New Rules of Professional Conduct on MFA Materials

For this item, Roy presented his findings regarding the Arbitration Advisories, while Carole discussed her analysis of the sample fee agreements.

For the Arbitration Advisories, the Committee discussed how to update the rule references without changing the substance of the advisory. For most

rule references, the old rule number could be replaced with the new rule number and marked with a footnote stating the effective dates of the old/new rule, but at least one rule (old rule 3-310) may require references to several new rules.

For the sample fee contracts, the Committee adopted Carole's proposed language for the flat fee contract.

Since Carole's term on the CMFA ends with the September meeting, Lorraine was added to this agenda item with Roy for the November meeting. For November, Lorraine will review the sample fee agreement instructions while Roy will analyze the sample fee agreements.

- E. Tulare County Bar Association's Proposed Rules of Procedure  
These rules were discussed and approved as submitted, with a correction to a typo. Isabel will communicate this information to the Tulare County Bar Association.
  
- F. Proposed Program Advisory: How to Proceed with Arbitration Requests Involving Attorneys Who Hold Leadership Positions in the Same Bar Association  
This item was discussed. The Committee decided that a Program Advisory on this topic was not necessary, because these types of issues are generally handled as Fair Hearing requests.

The meeting adjourned at 2:52 p.m.

Next committee meeting:

DATE: Friday, November 2, 2018  
TIME: 10:00 a.m. – 3:00 p.m.  
LOCATION: The State Bar of California  
180 Howard Street, 4<sup>th</sup> Floor  
Conference Room 4D  
San Francisco, CA 94105

**State Bar of California  
Mandatory Fee Arbitration Program  
2018**

**Arbitration**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Year-To-Date	Year End 2017
Cases Open (Beginning of Month)	15	23	23	24	29	26	28	29	35	39				15
Fee Arbitration Requests	10	2	2	8	3	4	4	4	5				42	43
Arbitration Cases Closed	3	2	1	2	6	2	4	1	1				22	56
<i>Findings &amp; Award Served</i>	2	0	0	1	4	2	4	1	0				14	35
<i>Cases Closed, No Award</i>	1	2	1	1	2	0	0	0	1				8	21
Cases Open (End of Month)	22	23	24	30	26	28	29	34	39					15
Phone Calls Handled	317	231	379	548	494	491	439	541	459				3899	3262

**Enforcement**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Year-To-Date	Year End 2017
Cases Open (Beginning of Month)	51	50	51	51	52	50	50	48	48	45				50
Enforcement Requests Rec'd.	1	1	0	1	2	1	1	3	0				10	17
Orders Re Admin Penalties	1	0	0	1	0	0	0	0	0				2	4
Admin Penalties Imposed	0	1	0	0	1	0	0	0	0				2	4
Inactive Enrollment Motions Filed	0	0	0	0	0	0	1	0	0				1	4
Attorney Enrolled Inactive	0	0	0	0	0	0	0	0	0				0	5
Enforcement Cases Closed	2	0	0	0	4	1	3	3	3				16	29
<i>Cases Paid and Closed</i>	0	0	0	0	1	1	2	2	3				9	19
<i>Cases Closed (Other)</i>	2	0	0	0	3	0	1	1	0				7	10
Cases Open (End of Month)	50	51	51	52	50	50	48	48	45					51

STATE BAR OF CALIFORNIA

Voluntary Mediation of Fee Disputes Program

MODEL RULES FOR

VOLUNTARY FEE MEDIATION

1. ESTABLISHMENT AND PURPOSE OF A MEDIATION PROGRAM

It is the policy of the Board of Trustees of the State Bar of California (“State Bar”) and the State Bar Mandatory Fee Arbitration Committee (the “Committee”) to promote the consensual resolution of attorney/client fee disputes and to avoid the unnecessary arbitration of these disputes. The State Bar believes that mediation is a desirable alternative to the fee arbitration program provided by the State Bar pursuant to Business and Profession Code Sections 6200 et seq. The State Bar recommends to the local bar Mandatory Fee Arbitration programs (“Program”) the establishment of a Mediation of Fee Disputes Program governed by these Model Rules for Voluntary Fee Mediation (“Rules”).

2. JURISDICTION

A. The mediation program is for consensual mediation of fee disputes. Participation is voluntary. No party to any fee dispute will be required to engage in mediation through this program, and any party may terminate the mediation at any stage.

B. The Programs administer the mediation program of attorney/client fee disputes under Business and Professions Code §§6200 et seq.

3. APPOINTMENTS AND QUALIFICATION OF MEDIATORS

The Program will appoint a pool of volunteer Mediators, both lawyers and non-lawyers, who meet the qualifications established by the State Bar in Guidelines and Minimum Standards for Operation of Mediation Programs, including a requirement of at least 40 hours of mediator training, and any additional experience that Programs may require.

4. THE PROCESS

A. Commencement of Mediation

Mediation will commence only if all parties indicate on the Request for Fee Arbitration and Reply forms or otherwise agree in writing that they wish to mediate the fee dispute. If all parties do not wish to mediate, the fee dispute will proceed to arbitration under the Rules of Procedure for Fee Arbitrations.

B. Assignment of Mediator

The Program will notify the parties of the assignment of a Mediator within fifteen (15) calendar days after receipt of a Request and a Reply indicating the willingness to mediate the fee dispute.

### C. Disqualification of Mediator

1. As part of the assignment process, the Program will inform the prospective Mediator of the names of the parties and the nature of the fee dispute. A Mediator who has any personal bias regarding the parties or the subject matter, or who feels that the perception of bias could exist, will not serve as the Mediator in the fee dispute.
2. Any party may challenge the Mediator with cause at any time in writing within three (3) calendar days upon discovering a basis for such challenge. The Program will determine the validity of a for-cause challenge where it is disputed. Any party may challenge up to one Mediator without cause, in writing to the Program, within five (5) calendar days after receipt of the notice of Mediator Assignment. The challenging party must provide a copy of the challenge to the other party.
3. Upon the withdrawal or disqualification of the Mediator, the Program will reassign the matter and notify the parties of the new Mediator within five (5) calendar days.

### D. Compensation of Mediator

The filing fee initially paid to the Program for the Request for Arbitration includes all administrative costs for mediation and arbitration. The first four (4) hours of the Mediator's services are provided without any fee to the parties. If more than four (4) hours of mediation are required after the initial period is completed, the parties and Mediator may agree to schedule additional or longer sessions. The Mediator may charge compensation from the parties for such additional or longer sessions subject to the restrictions in this paragraph. The Mediator may charge compensation in an amount of no more than \$150.00 per hour. The parties and the Mediator must agree upon the rate in writing before any additional or longer sessions commence. The Mediator's fee will be shared by the parties equally or as otherwise agreed by the parties and the Mediator in writing. Parties granted a waiver of the Program's filing fee are not entitled to waived or reduced Mediator fees after the four hour initial mediation, absent written agreement by the Mediator and the other party. If the parties do not agree to compensate the Mediator, and the Mediator does not agree to proceed without compensation, the Mediation will terminate.

### E. Mediation Session Date

Within five (5) calendar days after the time to challenge a Mediator other than for cause has expired, the Mediator must attempt to arrange a mediation date to take place within forty-five (45) calendar days after the date of the notice of Mediator Assignment. If the Mediation cannot proceed within forty-five (45) calendar days of the assignment, absent approval by the Program, the ability to mediate will be lost and the matter will proceed to arbitration. The Mediator must promptly send to the Program and to the parties a Notice of Mediation, which must include the location, date, and time of the mediation session. The Notice must also include a statement that the attorney attending the mediation session is the person responsible to pay or receive any sum, or has the written authority of the firm to do so (the "Responsible Attorney"). Before the commencement of the Mediation, the Mediator will secure an Agreement to Mediate from the Parties in

the form provided by the Program and that substantially complies with the State Bar of California's approved form.

#### F. Mediation Session Date Continuance

A party may ask the Mediator for a continuance of the mediation session date. Any continuance is at the discretion of the Mediator. If the other party objects to the continuance request, the requesting party may either attend the mediation session on the date set or inform the Mediator and other party that he or she will proceed directly to mandatory fee arbitration without utilizing the Program's mediation service. The Mediator must promptly notify the Program in writing of any continuance of the mediation session date or the parties' election to proceed with mandatory fee arbitration.

#### G. Preparation for the Mediation Session

Not less than five (5) calendar days before the mediation session, and not more than ten (10) calendar days after the date of the Notice of Mediation, the attorney must provide copies of all detailed billing records relating to the fee dispute to the Mediator and the other party. The parties may, by agreement, exchange other documents containing information relevant to the fee dispute. Either party may provide both the Mediator and the other party with a brief written statement outlining any information not contained in the Request for Arbitration.

#### H. The Mediation Session

1. Mediation sessions will normally be scheduled for four hours. Additional or longer sessions are permitted as necessary, subject to Section 4 (D) above. Section 4 (D) and these Rules will govern any additional or longer sessions.
2. The parties and their attorney(s) or other advisor(s), if any, and the Mediator will attend the mediation sessions. The Mediator has the discretion to determine if other persons may attend the mediation sessions.

Nothing in these Rules prevents the Mediator from meeting or communicating with the parties or their advisors separately during the mediation sessions. The Mediator may conduct part or all of the mediation sessions by telephone.

3. If a party fails to attend the mediation sessions, the Mediator may reschedule or terminate the mediation. If the mediation is terminated, the fee dispute will proceed to mandatory fee arbitration. The Mediator must report any such action taken to the Program.

### 5. THE OUTCOME

#### A. Resolution

If the parties resolve their fee dispute and wish to have the ability to enforce the terms of their agreement under the State Bar Rules, all points of the agreement must be immediately reduced to writing at the mediation session. All parties must sign the

agreement and receive a copy. Signing the agreement constitutes consent to the terms of the agreement. The Mediator may not draft any release or provide legal advice concerning the agreement. The Mediator must promptly notify the Program in writing that the fee dispute is resolved. The Program will close the file and provide the parties with a copy of the State Bar of California's Notice of Your Rights After Mediation. The Mediator will file the original of this agreement with the Program.

B. Written Agreement Requirements:

1. Responsible Attorney

The Notice of Mediation must state that the attorney attending the mediation session is the person responsible to pay any sum to, or receive any sum from, the Client and has the authority of the law firm (if any) to do so. If the parties wish to have the ability to enforce the agreement under the State Bar Rules, the agreement must include the name of the individual attorney(s) responsible for making the refund, even if a law firm will make the refund.

2. Required Language

For any settlement agreement reached during a mediation session to be enforced under Business & Professions Code §§6200, et seq., the agreement must be in writing, signed by the Clients and Responsible Attorney(s), and substantially must include the following:

The following agreement is made:

(1) The parties agree that the arbitration/mediation filing fee of \$\_\_\_\_\_ is apportioned as follows:

[Client] [Non-Client] pays \$\_\_\_\_\_

and

Attorney pays \$\_\_\_\_\_.

(2) Select one:

The parties agree that [Client] [Non-Client] [Attorney]\_\_\_\_\_ will pay/refund \$\_\_\_\_\_ to [Client] [Non-Client] [Attorney] \_\_\_\_\_

who will accept such payment in full settlement of the issues as noted above.

(If payment is to be made by a law firm, the agreement must name an individual attorney who will have primary responsibility for making the payment.)

or

\_\_\_\_\_ Nothing further will be paid by either attorney or client:

(3) If a lawsuit is pending,

(A)\_\_\_ Judgment may be entered immediately based on this agreement

Or

(B)\_\_\_ Judgment may be entered if there is a breach of any terms.

(4) Complete, final and binding agreement:

**THIS AGREEMENT IS BINDING AND ENFORCEABLE AND, IF NECESSARY FOR ITS ENFORCEMENT, IS ADMISSIBLE IN EVIDENCE OR OTHERWISE SUBJECT TO DISCLOSURE.** The parties agree that they have reached a full and final settlement of all disputes between these parties regarding fees or costs. This Agreement is binding and contains the material terms of the agreement between the parties and, if necessary for enforcement, will be exempt from confidentiality. For purposes of enforcement a copy of this agreement can be used with the same force and effect as the original. If a lawsuit is pending, this agreement may be enforced under Code of Civil Procedure §664.6. To the extent required to enforce this agreement, pursuant to Evidence Code §1123(a), the parties agree that this Settlement Agreement is exempt from the confidentiality provisions of Evidence Code §1119 and is admissible in evidence to enforce the settlement.

#### C. No Resolution

If the parties cannot resolve the dispute through mediation, the Mediator must notify the Program in writing within five (5) calendar days, and the fee dispute will proceed to mandatory fee arbitration under the Rules of Arbitration. The Mediator may not serve as the arbitrator.

## 6. CONFIDENTIALITY

- A. All communications, negotiations, and discussions during the mediation process are confidential except for the purposes of enforcing any written agreement reached through the mediation, in which case, the waiver provisions of paragraph 5 (B)(4) apply.
- B. The mediation session(s) and any documents prepared for or during mediation are confidential, under California Evidence Code §§1115-1128, except the agreement itself may be admitted to enforce it as provided in paragraph 5(B)(4).
- C. The Mediator, Program staff and Committee members are deemed ineligible to testify in any civil judicial or quasi-judicial proceeding, including arbitration, as to any statements made at or in connection with the mediation.

**ARTICLE X.  
MEDIATION RULES OF PROCEDURE**

**RULE 44.0 Appointment and Responsibilities**

It is the policy of The San Mateo County Bar Association to promote the consensual resolution of Attorney/Client Fee Disputes and to avoid the necessity of Arbitration of these disputes when agreeable to the parties. Therefore, the Association finds that a Mediation alternative to the Arbitration Program currently offered by the Association, in accordance with Business and Professions Code Section 6200 regulating Attorney/Client Fee Disputes, is desirable and authorizes the institution of a Mediation of Fee Disputes Program regulated by these Rules of Mediation. The Association hereby delegates to the Client Relations Committee the authority and responsibility to appoint and maintain a Panel of qualified Mediators in accordance with the Rules of Procedure for Fee Arbitration and these Mediation Rules.

**RULE 45.0 Jurisdiction**

- 45.1 The mediation program is for consensual mediation of fee disputes. Participation is voluntary. No party to any fee dispute will be required to engage in mediation through this program, and any party may terminate the mediation at any stage.
- 45.2 The Program shall have jurisdiction to perform Mediation of Attorney/Client Fee Disputes under the authority of Business and Professions Code Section 6200.

**RULE 46.0 Appointment/Qualification of Mediators**

The Program will appoint a pool of volunteer Mediators, both lawyers and non-lawyers, who meet the qualifications established by the State Bar in Guidelines and Minimum Standards for Operation of Mediation Programs, including a requirement of at least 40 hours of mediator training, and any additional experience that the Program may require.

**RULE 47.0 The Process**

- 47.1 Mediation will commence only if all parties indicate on the Request for Fee Arbitration and Reply forms or otherwise agree in writing that they wish to mediate the fee dispute. If all parties do not wish to mediate, the fee dispute will proceed to arbitration under the Rules and Procedure for Fee Arbitrations.
- 47.2 The Program will notify the parties of the assignment of a Mediator within fifteen (15) calendar days after receipt of a Request and a Reply indicating the willingness to mediate the fee dispute.

**RULE 48.0 Disqualification of Mediator**

- 48.1 As part of the assignment process, the Program will inform the prospective Mediator of the names of the parties and the nature of the fee dispute. A Mediator who has any personal bias regarding the parties or the subject matter, or who feels that the perception of bias could exist, will not serve as the Mediator in the fee dispute.
- 48.2 Any party may challenge the Mediator with cause at any time in writing within three (3) calendar days

upon discovering a basis for such challenge. The Program will determine the validity of a for-cause challenge where it is disputed. Any party may challenge up to one Mediator without cause, in writing to the Program, within five (5) calendar days after receipt of the notice of Mediator Assignment. The challenging party must provide a copy of the challenge to the other party.

- 48.3 Upon the withdrawal or removal of the Mediator in response to a challenge for *cause*, the Program shall reassign the matter and notify the parties of the new Mediator within ten (10) calendar days.

#### **RULE 49.0 The Mediation Session**

- 49.1 The filing fee already paid to the Program for the filing of the Request for Fee Arbitration includes up to four (4) mediation hours, and administrative costs. Upon agreement of the parties and concurrence of the Mediator, additional or longer sessions may be scheduled. Mediator compensation for additional Mediator time and sessions shall be at an amount to be agreed upon by the parties and the Mediator but shall not exceed \$150 per hour notwithstanding that a Client may have been granted a waiver of the Program filing fee. If the Client is unable to pay for Mediator time beyond the first four (4) hours, the session shall conclude or other arrangements can be made between the Mediator and the parties. Such additional, or longer, sessions shall be governed by these Rules.
- 49.2 The parties and their attorney(s) or other advisor(s), if any, and the Mediator will attend the mediation sessions. The Mediator has the discretion to determine if other persons may attend the mediation sessions. Nothing in these Rules prevents the Mediator from meeting or communicating with the parties or their advisors separately during the mediation sessions. The Mediator may conduct part or all of the mediation sessions by telephone.
- 49.3 If a party fails to appear, the Mediator shall have the option of rescheduling the mediation or terminating the mediation. If the mediation is terminated, the fee dispute will proceed to mandatory fee arbitration. The Mediator must report any such action taken to the Program.

#### **RULE 50.0 Mediation Session Date**

- 50.1 Within five (5) calendar days after the time to challenge a Mediator other than for cause has expired, the Mediator must attempt to arrange a mediation date to take place within forty-five (45) calendar days after the date of the notice of Mediator Assignment. If the Mediation cannot proceed within forty-five (45) calendar days of the assignment, absent approval by the Program, the ability to mediate will be lost and the matter will proceed to arbitration. The Mediator must promptly send to the Program and to the parties a Notice of Mediation, which must include the location, date, and time of the mediation session. The Notice must also include a statement that the attorney attending the mediation session is the person responsible to pay or receive any sum, or has the written authority of the firm to do so (the “Responsible Attorney”). Before the commencement of the Mediation, the Mediator will secure an Agreement to Mediate from the Parties in the form provided by the Program and that substantially complies with the State Bar of California’s approved form.
- 50.2 A party may ask the Mediator for a continuance of the mediation session date. Any continuance is at the discretion of the Mediator. If the other party objects to the continuance request, the requesting party may either attend the mediation session on the date set or inform the Mediator and other party that he or she will proceed directly to mandatory fee arbitration without utilizing the Program’s mediation service. The

Mediator must promptly notify the Program in writing of any continuance of the mediation session date or the parties' election to proceed with mandatory fee arbitration.

- 50.3 Not less than five (5) calendar days before the mediation session, and not more than ten (10) calendar days after the date of the Notice of Mediation, the attorney must provide copies of all detailed billing records relating to the fee dispute to the Mediator and the other party. The parties may, by agreement, exchange other documents containing information relevant to the fee dispute. Either party may provide both the Mediator and the other party with a brief written statement outlining any information not contained in the Request for Arbitration.

### **RULE 51.0 Settlement before Session**

Should the parties settle the dispute on their own before the mediation session, a written confirmation of the settlement should be sent to the Program with a copy to the Mediator and the other side. Filing fee refunds will be issued in accordance with Rule 19.3.

### **RULE 52.0 The Outcome**

- 52.1 If the parties resolve their fee dispute and wish to have the ability to enforce the terms of their agreement under the State Bar Rules, all points of the agreement must be immediately reduced to writing at the mediation session. All parties must sign the agreement and receive a copy. Signing the agreement constitutes consent to the terms of the agreement. The Mediator may not draft any release or provide legal advice concerning the agreement. The Mediator must promptly notify the Program in writing that the fee dispute is resolved. The Program will close the file and provide the parties with a copy of the State Bar of California's Notice of Your Rights After Mediation. The Mediator will file the original of this agreement with the Program.

#### **(a) Written Agreement Requirements**

##### **i. Responsible Attorney**

The Notice of Mediation must state that the attorney attending the mediation session is the person responsible to pay any sum to, or receive any sum from, the Client and has the authority of the law firm (if any) to do so. If the parties wish to have the ability to enforce the agreement under the State Bar Rules, the agreement must include the name of the individual attorney(s) responsible for making the refund, even if a law firm will make the refund.

##### **ii. Required Language**

For any settlement agreement reached during a mediation session to be enforced under Business & Professions Code §§6200, et seq., the agreement must be in writing, signed by the Clients and Responsible Attorney(s), and substantially must include the following:

The following agreement is made (using full names):

(1) The parties agree that the arbitration/mediation filing fee of \$\_\_\_\_\_ is apportioned as follows:

[Client] [Non-Client] pays \$\_\_\_\_\_

and Attorney pays \$\_\_\_\_\_.

(2) Select one:

The parties agree that [Client] [Non-Client] [Attorney]\_\_\_\_\_ will pay/refund

\$\_\_\_\_\_ to [Client] [Non-Client] [Attorney] \_\_\_\_\_

who will accept such payment in full settlement of the issues as noted above.

(If payment is to be made by a law firm, the agreement must name an individual attorney who will have primary responsibility for making the payment.)

or

\_\_\_\_\_Nothing further will be paid by either attorney or client:

(3) If a lawsuit is pending,

(A)\_\_\_ Judgment may be entered immediately based on this agreement

Or

(B)\_\_\_ Judgment may be entered if there is a breach of any terms.

(4) Complete, final and binding agreement:

**THIS AGREEMENT IS BINDING AND ENFORCEABLE AND, IF NECESSARY FOR ITS ENFORCEMENT, IS ADMISSIBLE IN EVIDENCE OR OTHERWISE SUBJECT TO DISCLOSURE.** The parties agree that they have reached a full and final settlement of all disputes between these parties regarding fees or costs. This Agreement is binding and contains the material terms of the agreement between the parties and, if necessary for enforcement, will be exempt from confidentiality. For purposes of enforcement, a copy of this agreement can be used with the same force and effect as the original. If a lawsuit is pending, this agreement may be enforced under Code of Civil Procedure §664.6. To the extent required to enforce this agreement, pursuant to Evidence Code §1123(a),

the parties agree that this Settlement Agreement is exempt from the confidentiality provisions of Evidence Code §1119 and is admissible in evidence to enforce the settlement.

- 52.2 If the parties are unable to resolve the dispute through mediation, the Mediator shall notify the Committee in writing within five (5) calendar days and the matter will proceed to arbitration in accordance with the Rules of Procedure of Fee Arbitration.

### **RULE 53.0 Confidentiality**

- 53.1 All communications, negotiations, and discussions during the mediation process are confidential except for the purposes of enforcing any written agreement reached through the mediation, in which case, the waiver provisions of paragraph 5 (B)(4) apply.
- 53.2 The mediation session(s) and any documents prepared for or during mediation are confidential, under California Evidence Code §§1115-1128, except the agreement itself may be admitted to enforce it as provided in paragraph 5(B)(4).
- 53.3 The Mediator, Program staff and Committee members are deemed ineligible to testify in any civil judicial or quasi-judicial proceeding, including arbitration, as to any statements made at or in connection with the mediation.

STATE BAR OF CALIFORNIA

Voluntary Mediation of Fee Disputes Program

MODEL RULES FOR

~~VOLUNTARY FEE-~~**ARTICLE X.**  
**MEDIATION RULES OF PROCEDURE**

~~1. ESTABLISHMENT AND PURPOSE OF A MEDIATION PROGRAM~~

**RULE 44.0 Appointment and Responsibilities**

It is the policy of ~~the Board of Trustees of the State~~The San Mateo County Bar of California (“State Bar”) and ~~the State Bar Mandatory Fee Arbitration Committee (the “Committee”)~~Association to promote the consensual resolution of ~~attorney/client fee disputes~~Attorney/Client Fee Disputes and to avoid the ~~unnecessary arbitration necessity of Arbitration~~ of these disputes. ~~The State Bar believes when agreeable to the parties.~~ Therefore, ~~the Association finds~~ that ~~mediation is a desirable~~Mediation alternative to the ~~fee arbitration program provided by the State Bar pursuant to Arbitration Program~~ currently offered by the Association, in accordance with ~~Business and Profession~~Professions Code ~~Sections~~Section 6200 et seq. ~~The State Bar recommends to the local bar Mandatory Fee Arbitration programs (“Program”) the establishment~~regulating Attorney/Client Fee Disputes, is desirable and authorizes the institution of a Mediation of Fee Disputes Program ~~governed~~regulated by these ~~Model Rules for Voluntary Fee of Mediation (“~~ The Association hereby delegates to the Client Relations Committee the authority and responsibility to appoint and maintain a Panel of qualified Mediators in accordance with the Rules”)- ~~of Procedure for Fee Arbitration and these Mediation Rules.~~

~~2. JURISDICTION~~

**RULE 45.0 Jurisdiction**

- A- 45.1 The mediation program is for consensual mediation of fee disputes. Participation is voluntary. No party to any fee dispute will be required to engage in mediation through this program, and any party may terminate the mediation at any stage.
- B- 45.2 ~~The Programs administer the mediation program~~Program shall have jurisdiction to perform Mediation of ~~attorney/client fee disputes~~Attorney/Client Fee Disputes under the authority of Business and Professions Code ~~§§~~Section 6200 ~~et seq.~~

~~3. APPOINTMENTS AND QUALIFICATION OF MEDIATORS~~

**RULE 46.0 Appointment/Qualification of Mediators**

The Program will appoint a pool of volunteer Mediators, both lawyers and non-lawyers, who meet the

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qualifications established by the State Bar in Guidelines and Minimum Standards for Operation of Mediation Programs, including a requirement of at least 40 hours of mediator training, and any additional experience that ~~Programs~~the Program may require.

#### ~~4. THE PROCESS~~

##### ~~A. Commencement of Mediation~~

#### RULE 47.0 The Process

47.1 Mediation will commence only if all parties indicate on the Request for Fee Arbitration and Reply forms or otherwise agree in writing that they wish to mediate the fee dispute. If all parties do not wish to mediate, the fee dispute will proceed to arbitration under the Rules ~~of~~and Procedure for Fee Arbitrations.

##### ~~B. Assignment of Mediator~~

47.2 The Program will notify the parties of the assignment of a Mediator within fifteen (15) calendar days after receipt of a Request and a Reply indicating the willingness to mediate the fee dispute.

#### ~~C.~~ RULE 48.0 Disqualification of Mediator

~~1.~~ 48.1 As part of the assignment process, the Program will inform the prospective Mediator of the names of the parties and the nature of the fee dispute. A Mediator who has any personal bias regarding the parties or the subject matter, or who feels that the perception of bias could exist, will not serve as the Mediator in the fee dispute.

~~2.~~ 48.2 Any party may challenge the Mediator with cause at any time in writing within three (3) calendar days upon discovering a basis for such challenge. The Program will determine the validity of a for-cause challenge where it is disputed. Any party may challenge up to one Mediator without cause, in writing to the Program, within five (5) calendar days after receipt of the notice of Mediator Assignment. The challenging party must provide a copy of the challenge to the other party.

~~3.~~ 48.3 Upon the withdrawal or ~~disqualification~~removal of the Mediator in response to a challenge for cause,

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the Program ~~will~~shall reassign the matter and notify the parties of the new Mediator within ~~five (5)~~ten (10) calendar days.

#### ~~D. Compensation of Mediator~~

### **RULE 49.0 The Mediation Session**

49.1 The filing fee ~~initially~~already paid to the Program for the filing of the Request for Fee Arbitration includes ~~all up to four (4) mediation hours, and administrative costs for mediation and arbitration. The first four (4) hours of the Mediator's services are provided without any fee to the parties. If more than four (4) hours of mediation are required after the initial period is completed, the~~ Upon agreement of the parties and concurrence of the Mediator ~~may agree to schedule,~~ additional or longer sessions. The ~~may be scheduled.~~ Mediator ~~may charge~~ compensation ~~from the parties for such additional or longer Mediator time and sessions subject to the restrictions in this paragraph. The Mediator may charge compensation in~~ shall be at an amount of ~~no more than \$150.00 per hour. The parties and the Mediator must agree upon the rate in writing before any additional or longer sessions commence. The Mediator's fee will be shared by the parties equally or as otherwise to be~~ agreed upon by the parties and the Mediator ~~in writing. Parties but shall not exceed \$150 per hour notwithstanding that a Client may have been~~ granted a waiver of the Program's ~~Program~~ filing fee ~~are not entitled. If the Client is unable to waived or reduced pay for Mediator fees after time beyond the first four hour initial mediation, absent written agreement by (4) hours, the session shall conclude or other arrangements can be made between~~ the Mediator and the parties. Such additional, or longer, sessions shall be governed by these Rules.

49.2 The parties and their attorney(s) or other advisor(s), if any, and the Mediator will attend the mediation sessions. The Mediator has the discretion to determine if other persons may attend the mediation sessions.

Nothing in these Rules prevents the Mediator from meeting or communicating with the parties or their advisors separately during the mediation sessions. The Mediator may conduct part or all of the mediation sessions by telephone.

~~other~~49.3 If a party ~~if the parties do not agree to compensate the Mediator, and the Mediator does not agree fails to appear, the Mediator shall have the option of rescheduling the mediation or terminating the mediation. If the mediation is terminated, the fee dispute will proceed to mandatory fee arbitration. The Mediator must report any such action taken to the Program.~~

~~proceed without compensation, the Mediation will terminate.~~

#### ~~E.~~ **RULE 50.0 Mediation Session Date**

50.1 Within five (5) calendar days after the time to challenge a Mediator other than for cause has expired, the Mediator must attempt to arrange a mediation date to take place within forty-five (45) calendar days after the date of the notice of Mediator Assignment. If the Mediation cannot proceed within forty-five (45) calendar days of the assignment, absent approval by the Program, the ability to mediate will be lost and

the matter will proceed to arbitration. The Mediator must promptly send to the Program and to the parties a Notice of Mediation, which must include the location, date, and time of the mediation session. The Notice must also include a statement that the attorney attending the mediation session is the person responsible to pay or receive any sum, or has the written authority of the firm to do so (the “Responsible Attorney”). Before the commencement of the Mediation, the Mediator will secure an Agreement to Mediate from the Parties in the form provided by the Program and that substantially complies with the State Bar of California’s approved form.

~~F. Mediation Session Date Continuance~~

50.2 A party may ask the Mediator for a continuance of the mediation session date. Any continuance is at the discretion of the Mediator. If the other party objects to the continuance request, the requesting party may either attend the mediation session on the date set or inform the Mediator and other party that he or she will proceed directly to mandatory fee arbitration without utilizing the Program’s mediation service. The Mediator must promptly notify the Program in writing of any continuance of the mediation session date or the parties’ election to proceed with mandatory fee arbitration.

~~G. Preparation for the Mediation Session~~

50.3 Not less than five (5) calendar days before the mediation session, and not more than ten (10) calendar days after the date of the Notice of Mediation, the attorney must provide copies of all detailed billing records relating to the fee dispute to the Mediator and the other party. The parties may, by agreement, exchange other documents containing information relevant to the fee dispute. Either party may provide both the Mediator and the other party with a brief written statement outlining any information not contained in the Request for Arbitration.

The Mediation

~~H. **RULE 51.0 Settlement before Session**~~

~~1. Mediation sessions will normally be scheduled for four hours. Additional or longer sessions are permitted as necessary, subject to Section 4 (D) above. Section 4 (D) and these Rules will govern any additional or longer sessions.~~

~~2. The parties and their attorney(s) or other advisor(s), if any, and the Mediator will attend the mediation sessions. The Mediator has the discretion to determine if other persons may attend the mediation sessions.~~

~~Nothing in these Rules prevents the Mediator from meeting or communicating with the parties or their advisors separately during the mediation sessions. The Mediator may conduct part or all of the mediation sessions by telephone.~~

~~3. If a party fails to attend the mediation sessions, the Mediator may reschedule or terminate the mediation. If the mediation is terminated, the fee dispute will proceed to mandatory fee arbitration. The Mediator must report any such action taken to the Program.~~

~~5. THE OUTCOME~~

~~I. Resolution~~

Should the parties settle the dispute on their own before the mediation session, a written confirmation of the settlement should be sent to the Program with a copy to the Mediator and the other side. Filing fee refunds will be issued in accordance with Rule 19.3.

**RULE 52.0 The Outcome**

**52.1** If the parties resolve their fee dispute and wish to have the ability to enforce the terms of their agreement under the State Bar Rules, all points of the agreement must be immediately reduced to writing at the mediation session. All parties must sign the agreement and receive a copy. Signing the agreement constitutes consent to the terms of the agreement. The Mediator may not draft any release or provide legal advice concerning the agreement. The Mediator must promptly notify the Program in writing that the fee dispute is resolved. The Program will close the file and provide the parties with a copy of the State Bar of California's Notice of Your Rights After Mediation. The Mediator will file the original of this agreement with the Program.

~~I. (a) Written Agreement Requirements:~~

~~I. i. Responsible Attorney~~

The Notice of Mediation must state that the attorney attending the mediation session is the person responsible to pay any sum to, or receive any sum from, the Client and has the authority of the law firm (if any) to do so. If the parties wish to have the ability to enforce the agreement under the State Bar Rules, the agreement must include the name of the individual attorney(s) responsible for making the refund, even if a law firm will make the refund.

~~2.~~

ii. Required Language

For any settlement agreement reached during a mediation session to be enforced under Business & Professions Code §§6200, et seq., the agreement must be in writing, signed by the Clients and Responsible Attorney(s), and substantially must include the following:

The following agreement is made: (using full names):

(1) The parties agree that the arbitration/mediation filing fee of \$\_\_\_\_\_ is apportioned as follows:

[Client] [Non-Client] pays \$\_\_\_\_\_

and

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Attorney pays \$\_\_\_\_\_.

~~(2)~~

(2) Select one:

The parties agree that [Client] [Non-Client] [Attorney]\_\_\_\_\_ will pay/refund  
\$\_\_\_\_\_ to [Client] [Non-Client] [Attorney] \_\_\_\_\_

who will accept such payment in full settlement of the issues as noted above.

(If payment is to be made by a law firm, the agreement must name an individual attorney who will have  
primary responsibility for making the payment.)\_\_\_\_\_

or

\_\_\_\_\_Nothing further will be paid by either attorney or client:

(3) If a lawsuit is pending,

(A)\_\_\_ Judgment may be entered immediately based on this agreement

Or

(B)\_\_\_ Judgment may be entered if there is a breach of any terms.

(4) Complete, final and binding agreement:

**THIS AGREEMENT IS BINDING AND ENFORCEABLE AND, IF NECESSARY FOR ITS ENFORCEMENT, IS ADMISSIBLE IN EVIDENCE OR OTHERWISE SUBJECT TO DISCLOSURE.** The parties agree that they have reached a full and final settlement of all disputes between these parties regarding fees or costs. This Agreement is binding and contains the material terms of the agreement between the parties and, if necessary for enforcement, will be exempt from confidentiality. For purposes of enforcement, a copy of this agreement can be used with the same force and effect as the original. If a lawsuit is pending, this agreement may be enforced under Code of Civil Procedure §664.6. To the extent required to enforce this agreement, pursuant to Evidence Code §1123(a), the parties agree that this Settlement Agreement is exempt from the confidentiality provisions of Evidence

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Code §1119 and is admissible in evidence to enforce the settlement.

~~K. No Resolution~~

~~52.2~~ If the parties ~~cannot~~are unable to resolve the dispute through mediation, the Mediator ~~must~~shall notify the ~~Program~~Committee in writing within five (5) calendar days; and the ~~fee dispute~~matter will proceed to ~~mandatory fee~~arbitration ~~under~~in accordance with the Rules of Procedure of Fee Arbitration. ~~The Mediator may not serve as the arbitrator.~~

~~6. CONFIDENTIALITY~~

**RULE 53.0 Confidentiality**

~~A.~~ 53.1 All communications, negotiations, and discussions during the mediation process are confidential except for the purposes of enforcing any written agreement reached through the mediation, in which case, the waiver provisions of paragraph 5 (B)(4) apply.

~~B.~~ 53.2 The mediation session(s) and any documents prepared for or during mediation are confidential, under California Evidence Code §§1115-1128, except the agreement itself may be admitted to enforce it as provided in paragraph 5(B)(4).

53.3 The Mediator, Program staff and Committee members are deemed ineligible to testify in any civil judicial or quasi-judicial proceeding, including arbitration, as to any statements made at or in connection with the mediation.

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**Cross-Reference Chart of the Current California Rules to the New Rules**

**Sorted by the Current California Rule Number**

<b>Current Rules of Professional Conduct</b> <i>Operative until October 31, 2018</i> (Rule Number and Title)	<b>New Rules of Professional Conduct</b> <i>Effective on November 1, 2018</i> (Rule Number and Title)
<b>1-100(A)</b> [Rules of Professional Conduct, in General]	<b>1.0</b> Purpose and Function of the Rules of Professional Conduct
<b>1-100(B)</b>	<b>1.0.1</b> Terminology
<b>1-100(D)</b>	<b>8.5</b> Disciplinary Authority; Choice of Law
<b>1-110</b> Disciplinary Authority of the State Bar	<b>8.1.1</b> Compliance with Conditions of Discipline and Agreements in Lieu of Discipline
<b>1-120</b> Assisting, Soliciting, or Inducing Violations	<b>8.4</b> Misconduct
<b>1-200</b> False Statement Regarding Admission to the State Bar	<b>8.1</b> False Statement Regarding Application for Admission to Practice Law
<b>1-300</b> Unauthorized Practice of Law	<b>5.5</b> Unauthorized Practice of Law; Multijurisdictional Practice of Law
<b>1-310</b> Forming a Partnership With a Non-Lawyer	<b>5.4</b> Financial and Similar Arrangements with Nonlawyers
<b>1-311</b> Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Members	<b>5.3.1</b> Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyer
<b>1-320(A)</b>	<b>5.4</b> Financial and Similar Arrangements with Nonlawyers
<b>1-320(A)(4) &amp; (B)-(C)</b> [Financial Arrangements With Non-Lawyer]	<b>7.2(b)</b> Advertising
<b>1-400</b> Advertising and Solicitation	<b>7.1</b> Communications Concerning a Lawyer's Services <b>7.2</b> Advertising <b>7.3</b> Solicitation of Clients <b>7.4</b> Communication of Fields of Practice and Specialization <b>7.5</b> Firm Names and Trade Names
<b>1-500</b> Agreements Restricting a Member's Practice	<b>5.6</b> Restrictions on a Lawyer's Right to Practice
<b>1-600</b> Legal Service Programs	<b>5.4</b> Financial and Similar Arrangements with Nonlawyers
<b>1-650</b> Limited Legal Service Programs	<b>6.5</b> Limited Legal Services Programs
<b>1-700</b> Member as Candidate for Judicial Office	<b>8.2</b> Judicial Officials
<b>1-710</b> Member as Temporary Judge, Referee, or Court-Appointed Arbitrator	<b>2.4.1</b> Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator
<b>2-100</b> Communication With a Represented Party	<b>4.2</b> Communication with a Represented Person
<b>2-200(A)</b> Financial Arrangements Among Lawyers	<b>1.5.1</b> Fee Divisions Among Lawyers
<b>2-200(B)</b>	<b>7.2(b)</b> Advertising
<b>2-300</b> Sale or Purchase of a Law Practice of a Member, Living or Deceased	<b>1.17</b> Sale of a Law Practice
<b>2-400</b> Prohibited Discriminatory Conduct in a Law Practice	<b>8.4.1</b> Prohibited Discrimination, Harassment and Retaliation
<b>3-100</b> Confidential Information of a Client	<b>1.6</b> Confidential Information of a Client
<b>3-110</b> Failing to Act Competently	<b>1.1</b> Competence
<b>3-110(B)</b>	<b>1.3</b> Diligence

**Cross-Reference Chart of the Current California Rules to the New Rules**

**Sorted by the Current California Rule Number**

<b>Current Rules of Professional Conduct</b> <i>Operative until October 31, 2018</i> (Rule Number and Title)	<b>New Rules of Professional Conduct</b> <i>Effective on November 1, 2018</i> (Rule Number and Title)
<b>3-110, Discussion ¶.1</b>	<b>Rule 5.1</b> Responsibilities of Managerial and Supervisory Lawyers <b>Rule 5.2</b> Responsibilities of a Subordinate Lawyer <b>Rule 5.3</b> Responsibilities Regarding Nonlawyer Assistants
<b>3-120</b> Sexual Relations With Client	<b>1.8.10</b> Sexual Relations with Current Client
<b>3-200</b> Prohibited Objectives of Employment	<b>3.1</b> Meritorious Claims and Contentions
<b>3-210</b> Advising the Violation of Law	<b>1.2.1</b> Advising or Assisting the Violation of Law
<b>3-300</b> Avoiding Interests Adverse to a Client	<b>1.8.1</b> Business Transactions with a Client and Pecuniary Interests Adverse to the Client
<b>3-310(B), (C)</b> Avoiding the Representation of Adverse Interests	<b>1.7</b> Conflict of Interest: Current Clients
<b>3-310(D)</b>	<b>1.8.7</b> Aggregate Settlements
<b>3-310(E)</b>	<b>1.9</b> Duties To Former Clients
<b>3-310(F)</b>	<b>1.8.6</b> Compensation from One Other than Client
<b>3-320</b> Relationship With Other Party's Lawyer	<b>1.7(c)(2)</b> Conflict of Interest: Current Clients
<b>3-400</b> Limiting Liability to Client	<b>1.8.8</b> Limiting Liability to Client
<b>3-410</b> Disclosure of Professional Liability Insurance	<b>1.4.2</b> Disclosure of Professional Liability Insurance
<b>3-500</b> Communication	<b>1.4</b> Communication with Clients
<b>3-510</b> Communication of Settlement Offer	<b>1.4.1</b> Communication of Settlement Offers
<b>3-600</b> Organization as Client	<b>1.13</b> Organization as Client
<b>3-700</b> Termination of Employment	<b>1.16</b> Declining or Terminating Representation
<b>4-100</b> Preserving Identity of Funds and Property of a Client	<b>1.15</b> Safekeeping Funds and Property of Clients and Other Persons
<b>4-200</b> Fees for Legal Services	<b>1.5</b> Fees for Legal Services
<b>4-210</b> Payment of Personal or Business Expenses Incurred by or for a Client	<b>1.8.5</b> Payment of Personal or Business Expenses Incurred by or for a Client
<b>4-300</b> Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review	<b>1.8.9</b> Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review
<b>4-400</b> Gifts From Client	<b>1.8.3</b> Gifts from Client
<b>5-100</b> Threatening Criminal, Administrative, or Disciplinary Charges	<b>3.10</b> Threatening Criminal, Administrative, or Disciplinary Charges
<b>5-110</b> Performing the Duty of Member in Government Service ( <b>Note:</b> Rule 5-110 recently was revised effective November 2, 2017.)	<b>3.8</b> Special Responsibilities of a Prosecutor
<b>5-120</b> Trial Publicity	<b>3.6</b> Trial Publicity
<b>5-200(A)-(D)</b> Trial Conduct	<b>3.3</b> Candor Toward the Tribunal
<b>5-200(E)</b> Trial Conduct	<b>3.4</b> Fairness to Opposing Party and Counsel
<b>5-210</b> Member as Witness	<b>3.7</b> Lawyer as Witness
<b>5-220</b> Suppression of Evidence	<b>3.4</b> Fairness to Opposing Party and Counsel ( <b>Note:</b> See also Rule 3.8(d) regarding the duties

**Cross-Reference Chart of the Current California Rules to the New Rules**

**Sorted by the Current California Rule Number**

<b>Current Rules of Professional Conduct</b> <i>Operative until October 31, 2018</i> (Rule Number and Title)	<b>New Rules of Professional Conduct</b> <i>Effective on November 1, 2018</i> (Rule Number and Title)
<b>(Note:</b> Rule 5-220 recently was revised effective May 1, 2017.)	of a prosecutor.)
<b>5-300</b> Contact With Officials	<b>3.5</b> Contact with Judges, Officials, Employees, and Jurors
<b>5-310</b> Prohibited Contact With Witnesses	<b>3.4</b> Fairness to Opposing Party and Counsel
<b>5-320</b> Contact With Jurors	<b>3.5</b> Contact with Judges, Officials, Employees, and Jurors

**New Rules With No California Counterpart**

Rule 1.2 Scope of Representation and Allocation of Authority

Rule 1.8.2 Use of Current Client's Information<sup>1</sup>

Rule 1.8.11 Imputation of Prohibitions Under Rules 1.8.1 to 1.8.9

Rule 1.10 Imputation of Conflicts of Interest: General Rule

Rule 1.11 Special Conflicts of Interest for Former and Current Government Officials and Employees

Rule 1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

Rule 1.18 Duties to Prospective Client

Rule 2.1 Advisor

Rule 2.4 Lawyer as Third-Party Neutral

Rule 3.2 Delay of Litigation

Rule 3.9 Advocate in Non-adjudicative Proceedings

Rule 4.1 Truthfulness in Statements to Others

Rule 4.3 Communicating with an Unrepresented Person<sup>2</sup>

Rule 4.4 Duties Concerning Inadvertently Transmitted Writings

Rule 5.3 Responsibilities of a Subordinate Lawyer

Rule 6.3 Membership in Legal Services Organizations

<sup>1</sup> But see Bus. & Prof. Code § 6068(e).

<sup>2</sup> But see current rule 3-600(D) regarding similar duties in an organizational context.

**Cross-Reference Chart of the New Rules to the Current California Rules**

**Sorted by the New Rule Number**

<b>New Rules of Professional Conduct</b> <i>Effective on November 1, 2018</i> (Rule Number and Title)	<b>Current Rules of Professional Conduct</b> <i>Operative until October 31, 2018</i> (Rule Number and Title)
<b>1.0</b> Purpose and Function of the Rules of Professional Conduct	<b>1-100</b> Rules of Professional Conduct, in General
<b>1.0.1</b> Terminology	<b>1-100(B)</b>
<b>1.1</b> Competence	<b>3-110</b> Failing to Act Competently
<b>1.2</b> Scope of Representation and Allocation of Authority	<b>No California Rule Counterpart</b>
<b>1.2.1</b> Advising or Assisting the Violation of Law	<b>3-210</b> Advising the Violation of Law
<b>1.3</b> Diligence	<b>3-110(B)<sup>3</sup></b>
<b>1.4</b> Communication with Clients	<b>3-500</b> Communication
<b>1.4.1</b> Communication of Settlement Offers	<b>3-510</b> Communication of Settlement Offer
<b>1.4.2</b> Disclosure of Professional Liability Insurance	<b>3-410</b> Disclosure of Professional Liability Insurance
<b>1.5</b> Fees for Legal Services	<b>4-200</b> Fees for Legal Services
<b>1.5.1</b> Fee Divisions Among Lawyers	<b>2-200</b> Financial Arrangements Among Lawyers
<b>1.6</b> Confidential Information of a Client	<b>3-100</b> Confidential Information of a Client
<b>1.7</b> Conflict of Interest: Current Clients	<b>3-310(B),(C)</b> [Avoiding the Representation of Adverse Interests] <b>3-320</b> Relationship With Other Party's Lawyer
<b>1.8.1</b> Business Transactions with a Client and Pecuniary Interests Adverse to the Client	<b>3-300</b> Avoiding Interests Adverse to a Client
<b>1.8.2</b> Use of Current Client's Information	<b>No California Rule Counterpart<sup>4</sup></b>
<b>1.8.3</b> Gifts from Client	<b>4-400</b> Gifts From Client
<b>1.8.5</b> Payment of Personal or Business Expenses Incurred by or for a Client	<b>4-210</b> Payment of Personal or Business Expenses Incurred by or for a Client
<b>1.8.6</b> Compensation from One Other than Client	<b>3-310(F)</b>
<b>1.8.7</b> Aggregate Settlements	<b>3-310(D)</b>
<b>1.8.8</b> Limiting Liability to Client	<b>3-400</b> Limiting Liability to Client
<b>1.8.9</b> Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review	<b>4-300</b> Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review
<b>1.8.10</b> Sexual Relations with Current Client	<b>3-120</b> Sexual Relations With Client
<b>1.8.11</b> Imputation of Prohibitions Under Rules 1.8.1 to 1.8.9	<b>No California Rule Counterpart</b>
<b>1.9</b> Duties To Former Clients	<b>3-310(E)</b>
<b>1.10</b> Imputation of Conflicts of Interest: General Rule	<b>No California Rule Counterpart</b>
<b>1.11</b> Special Conflicts of Interest for Former and Current Government Officials and Employees	<b>No California Rule Counterpart</b>

<sup>3</sup> Rule 3-110(B) provides:

(B) For purposes of this rule, "competence" in any legal service shall mean to apply the 1) *diligence*, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service. (Emphasis added.)

<sup>4</sup> But see Cal. Bus. & Prof. Code § 6068(e)(1).

**Cross-Reference Chart of the New Rules to the Current California Rules**

**Sorted by the New Rule Number**

<b>New Rules of Professional Conduct</b> <i>Effective on November 1, 2018</i> (Rule Number and Title)	<b>Current Rules of Professional Conduct</b> <i>Operative until October 31, 2018</i> (Rule Number and Title)
<b>1.12</b> Former Judge, Arbitrator, Mediator or Other Third-Party Neutral	<b>No California Rule Counterpart</b>
<b>1.13</b> Organization as Client	<b>3-600</b> Organization as Client
<b>1.14</b> [Reserved] <sup>5</sup>	
<b>1.15</b> Safekeeping Funds and Property of Clients and Other Persons	<b>4-100</b> Preserving Identity of Funds and Property of a Client
<b>1.16</b> Declining or Terminating Representation	<b>3-700</b> Termination of Employment
<b>1.17</b> Sale of a Law Practice	<b>2-300</b> Sale or Purchase of a Law Practice of a Member, Living or Deceased
<b>1.18</b> Duties to Prospective Client	<b>No California Rule Counterpart</b>
<b>2.1</b> Advisor	<b>No California Rule Counterpart</b>
<b>2.3</b> [Reserved] <sup>6</sup>	
<b>2.4</b> Lawyer as Third-Party Neutral	<b>No California Rule Counterpart</b>
<b>2.4.1</b> Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator	<b>1-710</b> Member as Temporary Judge, Referee, or Court-Appointed Arbitrator
<b>3.1</b> Meritorious Claims and Contentions	<b>3-200</b> Prohibited Objectives of Employment
<b>3.2</b> Delay of Litigation	<b>No California Rule Counterpart</b>
<b>3.3</b> Candor Toward the Tribunal	<b>5-200(A)-(D)</b> Trial Conduct
<b>3.4</b> Fairness to Opposing Party and Counsel	<b>5-200(E)</b> [Trial Conduct] <b>5-220</b> Suppression of Evidence ( <b>Note:</b> Rule 5-220 recently was revised effective May 1, 2017.) <b>5-310</b> Prohibited Contact With Witnesses ( <b>Note:</b> See also Rule 5-110 that recently was revised effective November 2, 2017.)
<b>3.5</b> Contact with Judges, Officials, Employees, and Jurors	<b>5-300</b> Contact With Officials <b>5-320</b> Contact With Jurors
<b>3.6</b> Trial Publicity	<b>5-120</b> Trial Publicity
<b>3.7</b> Lawyer as Witness	<b>5-210</b> Member as Witness
<b>3.8</b> Special Responsibilities of a Prosecutor	<b>5-110</b> Performing the Duty of Member in Government Service ( <b>Note:</b> Rule 5-110 recently was revised effective November 2, 2017.)
<b>3.9</b> Advocate in Non-adjudicative Proceedings	<b>No California Rule Counterpart</b>
<b>3.10</b> Threatening Criminal, Administrative, or Disciplinary Charges	<b>5-100</b> Threatening Criminal, Administrative, or Disciplinary Charges
<b>4.1</b> Truthfulness in Statements to Others	<b>No California Rule Counterpart</b>
<b>4.2</b> Communication with a Represented Person	<b>2-100</b> Communication With a Represented Party
<b>4.3</b> Communicating with an Unrepresented Person	<b>No California Rule Counterpart</b>

<sup>5</sup> ABA Model Rule 1.14 (“Client With Diminished Capacity”) has not been adopted in California.

<sup>6</sup> ABA Model Rule 2.3 (“Evaluation For Use By Third Persons”) has not been adopted in California.

**Cross-Reference Chart of the New Rules to the Current California Rules**

**Sorted by the New Rule Number**

<b>New Rules of Professional Conduct</b> <i>Effective on November 1, 2018</i> (Rule Number and Title)	<b>Current Rules of Professional Conduct</b> <i>Operative until October 31, 2018</i> (Rule Number and Title)
<b>4.4</b> Duties Concerning Inadvertently Transmitted Writings	<b>No California Rule Counterpart</b>
<b>5.1</b> Responsibilities of Managerial and Supervisory Lawyers	<b>No California Rule Counterpart<sup>7</sup></b>
<b>5.2</b> Responsibilities of a Subordinate Lawyer	<b>No California Rule Counterpart</b>
<b>5.3</b> Responsibilities Regarding Nonlawyer Assistants	<b>No California Rule Counterpart<sup>8</sup></b>
<b>5.3.1</b> Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyer	<b>1-311</b> Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Members
<b>5.4</b> Financial and Similar Arrangements with Nonlawyers	<b>1-310</b> Forming a Partnership With a Non-Lawyer <b>1-320</b> Financial Arrangements With Non-Lawyer <b>1-600</b> Legal Service Programs
<b>5.5</b> Unauthorized Practice of Law; Multijurisdictional Practice of Law	<b>1-300</b> Unauthorized Practice of Law
<b>5.6</b> Restrictions on a Lawyer's Right to Practice	<b>1-500</b> Agreements Restricting a Member's Practice
<b>6.3</b> Membership in Legal Services Organizations	<b>No California Rule Counterpart</b>
<b>6.5</b> Limited Legal Services Programs	<b>1-650</b> Limited Legal Service Programs
<b>7.1</b> Communications Concerning a Lawyer's Services	<b>1-400</b> Advertising and Solicitation
<b>7.2</b> Advertising	<b>1-320(B)-(C) &amp; (A)(4)</b> [Financial Arrangements With Non-Lawyer] <b>1-400</b> Advertising and Solicitation <b>2-200</b> Financial Arrangements Among Lawyers
<b>7.3</b> Solicitation of Clients	<b>1-400</b> Advertising and Solicitation
<b>7.4</b> Communication of Fields of Practice and Specialization	<b>1-400</b> Advertising and Solicitation
<b>7.5</b> Firm Names and Trade Names	<b>1-400</b> Advertising and Solicitation
<b>7.6</b> [Reserved] <sup>9</sup>	
<b>8.1</b> False Statement Regarding Application for Admission to Practice Law	<b>1-200</b> False Statement Regarding Admission to the State Bar
<b>8.1.1</b> Compliance with Conditions of Discipline and Agreements in Lieu of Discipline	<b>1-110</b> Disciplinary Authority of the State Bar
<b>8.2</b> Judicial Officials	<b>1-700</b> Member as Candidate for Judicial Office
<b>8.3</b> [Reserved] <sup>10</sup>	
<b>8.4</b> Misconduct	<b>1-120</b> Assisting, Soliciting, or Inducing Violations
<b>8.4.1</b> Prohibited Discrimination, Harassment and Retaliation	<b>2-400</b> Prohibited Discriminatory Conduct in a Law Practice

<sup>7</sup> But see rule 3-110, Discussion ¶. 1.

<sup>8</sup> But see rule 3-110, Discussion ¶. 1.

<sup>9</sup> ABA Model Rule 7.6 ("Political Contributions To Obtain Legal Engagements Or Appointments By Judges") has not been adopted in California.

<sup>10</sup> ABA Model Rule 8.3 ("Reporting Professional Misconduct") has not been adopted in California.

**Cross-Reference Chart of the New Rules to the Current California Rules**

**Sorted by the New Rule Number**

<b>New Rules of Professional Conduct</b> <i>Effective on November 1, 2018</i> (Rule Number and Title)	<b>Current Rules of Professional Conduct</b> <i>Operative until October 31, 2018</i> (Rule Number and Title)
<b>8.5</b> Disciplinary Authority; Choice of Law	<b>1-100(D)</b> Rules of Professional Conduct, in General

**Cross-Reference Chart of the New Rules to the Current ABA Model Rules**

**Sorted by the New Rule Number**

<b>New Rules of Professional Conduct</b> <i>Effective on November 1, 2018</i> (Rule Number and Title)	<b>Current ABA Model Rules</b> (Rule Number and Title)
<b>1.0</b> Purpose and Function of the Rules of Professional Conduct	Preamble and Scope
<b>1.0.1</b> Terminology	<b>1.0</b> Terminology
<b>1.1</b> Competence	<b>1.1</b> Competence
<b>1.2</b> Scope of Representation and Allocation of Authority	<b>1.2(a)-(c)</b> Scope of Representation and Allocation of Authority Between Client and Lawyer
<b>1.2.1</b> Advising or Assisting the Violation of Law	<b>8.4(a)</b>
<b>1.3</b> Diligence	<b>1.3</b> Diligence
<b>1.4</b> Communication with Clients	<b>1.4</b> Communications
<b>1.4.1</b> Communication of Settlement Offers	<b>No ABA Model Rule Counterpart</b> <sup>11</sup>
<b>1.4.2</b> Disclosure of Professional Liability Insurance	<b>No ABA Model Rule Counterpart</b> <sup>12</sup>
<b>1.5</b> Fees for Legal Services	<b>1.5</b> Fees
<b>1.5.1</b> Fee Divisions Among Lawyers	<b>1.5(e)</b>
<b>1.6</b> Confidential Information of a Client	<b>1.6</b> Confidentiality of Information
<b>1.7</b> Conflict of Interest: Current Clients	<b>1.7</b> Conflict of Interest: Current Clients
	<b>1.8</b> Conflict of Interest: Current Clients: Specific Rules <sup>13</sup>
<b>1.8.1</b> Business Transactions with a Client and Pecuniary Interests Adverse to the Client	<b>1.8(a)</b>
<b>1.8.2</b> Use of Current Client's Information	<b>1.8(b)</b>
<b>1.8.3</b> Gifts from Client	<b>1.8(c)</b>
<b>No Rule Counterpart</b>	<b>1.8(d)</b> [Acquisition of client's literary or media rights]
<b>1.8.5</b> Payment of Personal or Business Expenses Incurred by or for a Client	<b>1.8(e)</b>
<b>1.8.6</b> Compensation from One Other than Client	<b>1.8(f)</b>
<b>1.8.7</b> Aggregate Settlements	<b>1.8(g)</b>
<b>1.8.8</b> Limiting Liability to Client	<b>1.8(h)</b>
<b>No Rule Counterpart</b>	<b>1.8(i)</b>

<sup>11</sup> But see Model Rule 1.4, Cmt. [2].

<sup>12</sup> Although there is no counterpart to new rule 1.4.2 in the ABA Model Rules of Professional Conduct, there is an ABA Model Court Rule on Insurance Disclosure. See [http://www.americanbar.org/content/dam/aba/migrated/cpr/clientpro/Model\\_Rule\\_InsuranceDisclosure.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/cpr/clientpro/Model_Rule_InsuranceDisclosure.authcheckdam.pdf) [Last accessed 3/15/17].

<sup>13</sup> Model Rule 1.8 is a collection of 11 rules that regulate specific conflicts involving current clients. Each rule is assigned a separate paragraph letter but is untitled.

**Cross-Reference Chart of the New Rules to the Current ABA Model Rules**

**Sorted by the New Rule Number**

<b>New Rules of Professional Conduct</b> <i>Effective on November 1, 2018</i> (Rule Number and Title)	<b>Current ABA Model Rules</b> (Rule Number and Title)
<b>1.8.9</b> Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review <sup>14</sup>	<b>No ABA Model Rule Counterpart</b>
<b>1.8.10</b> Sexual Relations with Current Client	<b>1.8(j)</b>
<b>1.8.11</b> Imputation of Prohibitions Under Rules 1.8.1 to 1.8.9	<b>1.8(k)</b>
<b>1.9</b> Duties to Former Clients	<b>1.9</b> Duties to Former Clients
<b>1.10</b> Imputation of Conflicts of Interest: General Rule	<b>1.10</b> Imputation of Conflicts of Interest: General Rule
<b>1.11</b> Special Conflicts of Interest for Former and Current Government Officials and Employees	<b>1.11</b> Special Conflicts of Interest for Former and Current Government Officers and Employees
<b>1.12</b> Former Judge, Arbitrator, Mediator or Other Third-Party Neutral	<b>1.12</b> Former Judge, Arbitrator, Mediator or Other Third-Party Neutral
<b>1.13</b> Organization as Client	<b>1.13</b> Organization as Client
<b>No Rule Counterpart</b>	<b>1.14</b> Client with Diminished Capacity
<b>1.15</b> Safekeeping Funds and Property of Clients and Other Persons	<b>1.15</b> Safekeeping Property
<b>1.16</b> Declining or Terminating Representation	<b>1.16</b> Declining or Terminating Representation
<b>1.17</b> Sale of a Law Practice	<b>1.17</b> Sale of Law Practice
<b>1.18</b> Duties to Prospective Client	<b>1.18</b> Duties to Prospective Client
<b>2.1</b> Advisor	<b>2.1</b> Advisor
	<b>2.2</b> [Deleted] <sup>15</sup>
<b>No Rule Counterpart</b>	<b>2.3</b> Evaluation for Use by Third Persons
<b>2.4</b> Lawyer as Third-Party Neutral	<b>2.4</b> Lawyer Serving as Third-Party Neutral
<b>2.4.1</b> Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator	<b>No ABA Model Rule Counterpart</b>
<b>3.1</b> Meritorious Claims and Contentions	<b>3.1</b> Meritorious Claims and Contentions
<b>3.2</b> Delay of Litigation	<b>3.2</b> Expediting Litigation
<b>3.3</b> Candor Toward the Tribunal	<b>3.3</b> Candor toward the Tribunal
<b>3.4</b> Fairness to Opposing Party and Counsel	<b>3.4</b> Fairness to Opposing Party and Counsel
<b>3.5</b> Contact with Judges, Officials, Employees, and Jurors	<b>3.5</b> Impartiality and Decorum of the Tribunal
<b>3.6</b> Trial Publicity	<b>3.6</b> Trial Publicity
<b>3.7</b> Lawyer as Witness	<b>3.7</b> Lawyer as Witness

<sup>14</sup> Although new rule 1.8.9 is not a direct counterpart to Model Rule 1.8(i), it has been assigned the number 1.8.9. Model Rule 1.8(i) provides:

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

- (1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and
- (2) contract with a client for a reasonable contingent fee in a civil case.

<sup>15</sup> There is no ABA Model Rule 2.2. Although the original Model Rules (1983) included Model Rule 2.2 ("Intermediary"), that rule was rejected by the ABA in 2002 and deleted.

**Cross-Reference Chart of the New Rules to the Current ABA Model Rules**

**Sorted by the New Rule Number**

<b>New Rules of Professional Conduct</b> <i>Effective on November 1, 2018</i> (Rule Number and Title)	<b>Current ABA Model Rules</b> (Rule Number and Title)
<b>3.8</b> Special Responsibilities of a Prosecutor	<b>3.8</b> Special Responsibilities of a Prosecutor
<b>3.9</b> Advocate in Non-adjudicative Proceedings	<b>3.9</b> Advocate in Nonadjudicative Proceedings
<b>3.10</b> Threatening Criminal, Administrative, or Disciplinary Charges	<b>No ABA Model Rule Counterpart</b>
<b>4.1</b> Truthfulness in Statements to Others	<b>4.1</b> Truthfulness in Statements to Others
<b>4.2</b> Communication with a Represented Person	<b>4.2</b> Communication with Person Represented by Counsel
<b>4.3</b> Communicating with an Unrepresented Person	<b>4.3</b> Dealing with Unrepresented Person
<b>4.4</b> Duties Concerning Inadvertently Transmitted Writings	<b>4.4(b)</b> Respect for Rights of Third Persons
<b>5.1</b> Responsibilities of Managerial and Supervisory Lawyers	<b>5.1</b> Responsibilities of a Partner or Supervisory Lawyer
<b>5.2</b> Responsibilities of a Subordinate Lawyer	<b>5.2</b> Responsibilities of a Subordinate Lawyer
<b>5.3</b> Responsibilities Regarding Nonlawyer Assistants	<b>5.3</b> Responsibilities Regarding Nonlawyer Assistance
<b>5.3.1</b> Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyer	<b>No ABA Model Rule Counterpart</b>
<b>5.4</b> Financial and Similar Arrangements with Nonlawyers	<b>5.4</b> Professional Independence of a Lawyer
<b>5.5</b> Unauthorized Practice of Law; Multijurisdictional Practice of Law	<b>5.5</b> Unauthorized Practice of Law; Multijurisdictional Practice of Law
<b>5.6</b> Restrictions on a Lawyer's Right to Practice	<b>5.6</b> Restrictions on Rights to Practice
<b>No Rule Counterpart</b>	<b>5.7</b> Responsibilities Regarding Law-related Services
<b>No Rule Counterpart</b> <sup>16</sup>	<b>6.1</b> Voluntary Pro Bono Publico Service
<b>No Rule Counterpart</b>	<b>6.2</b> Accepting Appointments
<b>6.3</b> Membership in Legal Services Organizations	<b>6.3</b> Membership in Legal Services Organizations
<b>No Rule Counterpart</b>	<b>6.4</b> Law Reform Activities Affecting Client Interests
<b>6.5</b> Limited Legal Services Programs	<b>6.5</b> Nonprofit and Court Annexed Limited Legal Services Programs
<b>7.1</b> Communications Concerning a Lawyer's Services	<b>7.1</b> Communications Concerning a Lawyer's Services
<b>7.2</b> Advertising	<b>7.2</b> Advertising
<b>7.3</b> Solicitation of Clients	<b>7.3</b> Solicitation of Clients
<b>7.4</b> Communication of Fields of Practice and Specialization	<b>7.4</b> Communication of Fields of Practice and Specialization
<b>7.5</b> Firm Names and Trade Names	<b>7.5</b> Firm Names and Letterhead
<b>No Rule Counterpart</b>	<b>7.6</b> Political Contributions to Obtain Legal Engagements or Appointments by Judges

<sup>16</sup> But see Rule 1.0, Cmt. [5].

**Cross-Reference Chart of the New Rules to the Current ABA Model Rules**

**Sorted by the New Rule Number**

<b>New Rules of Professional Conduct</b> <i>Effective on November 1, 2018</i> (Rule Number and Title)	<b>Current ABA Model Rules</b> (Rule Number and Title)
<b>8.1</b> False Statement Regarding Application for Admission to Practice Law	<b>8.1</b> Bar Admission and Disciplinary Matters
<b>8.1.1</b> Compliance with Conditions of Discipline and Agreements in Lieu of Discipline	<b>No ABA Model Rule Counterpart</b>
<b>8.2</b> Judicial Officials	<b>8.2</b> Judicial and Legal Officials
<b>No Rule Counterpart</b>	<b>8.3</b> Reporting Professional Misconduct
<b>8.4</b> Misconduct	<b>8.4</b> Misconduct
<b>8.4.1</b> Prohibited Discrimination, Harassment and Retaliation	<b>8.4(g)</b>
<b>8.5</b> Disciplinary Authority; Choice of Law	<b>8.5</b> Disciplinary Authority; Choice of Law

SAMPLE WRITTEN FEE AGREEMENTS FORMS  
INSTRUCTIONS AND COMMENTS

I. INTRODUCTION

The Committee on Mandatory Fee Arbitration of the State Bar has prepared three sample attorney client fee agreements which the Board of Trustees has approved. They are advisory only, are not required, and are not binding on the Courts, the State Bar of California, the Board of Trustees, any persons or tribunals charged with regulatory responsibility or any members of the State Bar.

The three attached agreements are: (1) an hourly litigation agreement (2) an hourly non-litigation agreement and (3) a contingency fee agreement. There is another document entitled “Optional Clauses and Disclosure Forms” which lists optional provisions and disclosure forms which an attorney may need to consider in certain situations.

II. OVERVIEW

A. Intended Purpose and Limitations

Attorneys who are admitted to practice in California may use the attached sample agreements but should also use their own independent legal and business judgment when creating their attorney-client fee agreement. The samples are prepared in a formal contract style but the provisions can be incorporated into a letter fee agreement if the attorney chooses to use that format. Attorneys are encouraged to modify the samples to fit their needs, provided such modifications do not conflict with Bus. & Prof. Code § 6146 *et. seq.* or the Rules of Professional Conduct.

B. Summary of Statutes and Rules of Professional Conduct

- Non-Contingent Fee Agreements—B&P §6148

Business and Professions Code Section 6148 governs non-contingent fee agreements. It requires attorneys to have a written agreement whenever it is reasonably foreseeable that the client’s total expense, including attorneys’ fees, will exceed \$1,000. A written fee agreement is not required when services are rendered in an emergency to avoid prejudice to the client or where the writing is otherwise impractical, when the client is a corporation, when the client, after full disclosure, makes a written waiver of the benefits of Section 6148, or when the fee agreement is implied in fact by prior services of the same general kind having been rendered to and paid for by the client.

The agreement must state: (a) any basis for compensation including, but not limited to hourly rates, statutory or flat fees and other standard, rates and charges; (b) the general nature of the legal services to be provided; and (c) the responsibilities of attorney and client under the agreement. The attorney is required to provide a fully executed copy of the agreement to the client at the time the contract is signed.

Section 6148(b) also requires attorneys to provide their clients with written bills. A client may request a bill at intervals of 30 days or greater. The attorney must provide the bill within 10 days after the demand. All bills must state the amount, rate and basis for calculation or other method of determining the attorney's fees and costs.

Finally, if an attorney fails to comply with any provision of the statute, the fee agreement becomes voidable at the client's option and the attorney is only entitled to a reasonable fee.

- Contingent Fee Agreements—B&P §6147

Business and Professions Code Section 6147 governs contingent fee agreements. It contains the same requirements as the Non-Contingent fee agreements discussed in the section above, and the following additional requirements:

- (a) A statement of the contingency fee percentage amount.
- (b) A statement as to how disbursements and costs will affect the contingency fee and the client's recovery.
- (c) 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 agreement. This may include any amounts collected for the client by the attorney.
- (d) Unless the claim is subject to the provisions of Business and Professions Code Section 6146 (Claim Against Health Care Provider) a statement that the fee is not set by law but is negotiable between the attorney and client.
- (e) If the claim is subject to Section 6146, a statement that the rates set forth for that section are the maximum limits for the contingency fee and that the attorney and client may negotiate a lower rate.

The attorney is required to provide a fully executed copy of the agreement to the client at the time the contract is signed.

Finally, if an attorney fails to comply with any provision of the statute, the fee agreement becomes voidable at the client's option and the attorney is only entitled to a reasonable fee.

- Disclosure Concerning Professional Liability Insurance—CPRC 3-410

California Rule of Professional Conduct (CPRC) 3-410 requires attorneys who know or should know that they do not have professional liability insurance to inform a client in writing at the time the client hires the attorney. The attorney must disclose he/she is not insured whenever it is foreseeable the representation will exceed four hours or when, during the course of representation, the attorney no longer carries professional liability insurance. In the sample agreements, there is a provision to disclose whether you have professional liability insurance or not.

### III. INSTRUCTIONS FOR USE OF FORMS

#### A. Form No. 1: Hourly Litigation

- Conditions (Par. 1) and Effective Date (Par. 17)

Paragraph 1 (Conditions) and paragraph 17 (Effective Date) work together and outline various conditions which must be met before the fee agreement is binding on the parties. If the conditions are not met, the agreement may not take effect but the attorney may still be entitled to recover a reasonable fee. (B&P 6148(a), 6148(c))

- Scope of Services and Attorney's Duties (Par. 2) and Client's Duties (Par. 3)

The attorney should fill in a detailed description of the services to be provided. This may be a statutory requirement. (B&P 6148(a)(2)) This paragraph excludes representation in an appeal, collection proceedings after judgment or proceedings regarding renewal of a judgment. It also provides that a separate written agreement is required for these services and any other services not provided in the description. Paragraph 3 lists all the duties the client must fulfill during the attorney-client relationship, which may be a statutory requirement. (B&P 6148(a)(3))

- Deposit (Par. 4)

Although a deposit is not required, if the attorney chooses to require a deposit, he or she should keep this clause in the agreement and fill in the amount of the initial deposit and the date it must be paid. Since an attorney cannot withdraw funds from the trust account without the client's authorization, an authorization is included in this paragraph. There is also a recitation that the deposit is not an estimate of the total fees and costs to be charged.

When the initial deposit is exhausted, the provision permits the attorney to require a further deposit and the attorney should fill in the amount. Finally, in the "Optional Clauses" document there is a provision for a "Replenishing Deposit" which permits the attorney to require the client replenish the deposit each month.

- Legal Fees (Par. 5)

Since Business & Professions Code Section 6148(a)(1) requires the attorney to list hourly rates, the attorney should fill in the rates for each attorney and the attorney's personnel. The provision also states that rates are subject to change on 30 days written notice to the client. The attorney may withdraw from the representation if the client declines to pay the increased rate and if permitted under the California Rules of Professional Conduct. The paragraph also contains a list of various tasks for which an attorney may charge the client. The agreement provides for a minimum charge of one-tenth of an hour. This list may be modified.

- Costs and Other Charges (Par. 6); Other Fees and Costs (Par. 7)

In paragraph 6 there is a list of common costs and expenses in a litigation matter. The attorney can add to or delete from the list and should fill in the rates for certain charges to comply with

the statute. (If applicable, B&P 6148(b)) The provision also allows the attorney to hire experts and consultants and to obtain the client's consent before a certain amount is incurred. The attorney should fill in the amount in subparagraph (d).

Paragraph 7 describes the situation where the Court awards attorney's fees and costs to another party after trial or arbitration and states it is the obligation of the client to pay these fees and costs. It also recites the client understands that any award for attorney's fees to the client does not affect the amount of fees and costs the client owes the attorney under the fee agreement.

- Bills (Par. 8)

Paragraph 8 complies with the statute regarding billing requirements. (B&P 6148(b)) The attorney should fill in when payment is due. It also highlights the client's obligation to review each bill and communicate any objections, questions or concerns so the issue can be resolved promptly.

- Client Approval for Settlement (Par. 9)

Paragraph 9 recites the client has the absolute right to accept or reject settlement and the attorney will not settle or compromise the client's claim without the client's consent.

- Discharge and Withdrawal (Par. 10)

California Rule of Professional Conduct 3-700 recites the circumstances in which an attorney can or must withdraw from the representation. Paragraph 10 lists these circumstances and whether the attorney may recover attorney fees and costs after withdrawal.

- Conclusion of Services (Par. 11)

This paragraph states that final payment is due on completion of the attorney services, when an attorney is discharged or withdraws. It also contains a description concerning return of the client's original file under CPRC 3-700(D)(1) and whether the file will be maintained or disposed of when the client does not request its return. The attorney should fill in the period the attorney will keep the file. If the client wants the file to be retained for a different period of time, the provision requires that agreement to be in writing and specify who will bear the cost of storage.

- Disclaimer of Guarantee (Par. 12)

This paragraph states the attorney makes no guarantee about the outcome of the client's matter and any statements the attorney makes should not be construed as a guarantee. It also provides that any client deposit or attorney statements about fees and costs are not a limitation on fees or any guarantee they will not exceed the deposit or estimate. Since this is an important provision, the attorney and client should initial it acknowledging their understanding and agreement.

- No Tax Advice (Par. 14)

Since many documents an attorney prepares may have significant tax implications, this paragraph provides the attorney has not been retained to give tax advice and the client should consult with tax advisors regarding the matter. This paragraph should be deleted when the client hires the attorney to provide tax advice.

- Construction Clauses (Par. 15-18)

Paragraphs 15-18 are standard provisions concerning the construction of the agreement.

#### B. Form No. 2: Hourly Non-Litigation

The Instructions and Comments concerning the Hourly Litigation Sample Agreement apply to the Hourly Non-Litigation Sample with the following exceptions:

- Scope of Services (Par. 2)  
The references to litigation services are deleted.
- Client's Duties (Par. 3)  
The references to legal proceedings are deleted.
- Deposit (Par. 4)  
The references to trial and arbitration are deleted.
- Legal Fees (Par. 5)  
The references to litigation fees are deleted.
- Costs and Other Charges (Par. 6)  
The references to litigation costs are deleted.
- Other Costs and Fees (Par. 7)  
The paragraph entitled "Other Costs and Fees" is deleted.

### C. Form No. 3: Contingency

The Instructions and Comments concerning the Hourly Litigation Sample Agreement apply to the Contingent Fee Agreement with the following exceptions:

- Scope of Services (Par. 2)

This paragraph excludes the defense of the client in any matter and the representation of the client on a cross-complaint or cross-claim.

- Legal Fees (Par. 4)

This paragraph complies with the statutory requirements of Business and Professions Code Section 6147, which governs contingent fee agreements. It also recites the attorney fee is based on the net recovery depending on the stage at which the settlement or judgment is reached. Since the amount of the fee is subject to negotiation, this provision can be changed. The optional clauses document contains other arrangements. The paragraph also addresses the situation where the Court orders another party to pay the client's attorney's fees and costs. It recites that the award is considered part of the client's recovery. Finally, the paragraph lists eleven (11) factors from Rule of Professional Conduct 4-200 that are considered when determining whether an attorney is entitled to a fee when the attorney fails to comply with the requirements of Section 6147, when the attorney is discharged or when the attorneys withdraws with justifiable cause.

- Negotiability of Legal Fees (Par. 5)

Business and Professions Code Section 6147 requires this provision.

- Costs and Litigation Expenses (Par. 6)

This paragraph requires the client to pay for the costs of litigation and lists various costs which can be charged. It also states that any award of fees and costs as a discovery or other sanction or under a contract or statute shall belong to the attorney. If the Court assesses monetary sanctions against the client for bad faith, this provision states the client must pay the sanction.

- Lien (Par. 10)

This paragraph provides the attorney has a lien on all claims that are the subject of the attorney's representation. While under current law an attorney's lien in a contingency fee agreement (in contrast to an hourly engagement or a combination of hourly and contingency) is not an adverse interest as defined in Rule of Professional Conduct 3-300, it is recommended that the paragraph

recite the client may wish to seek the advice of an independent attorney before agreeing to this provision. It is also recommended that both client and attorney should initial this paragraph to acknowledge their understanding.

#### IV. OPTIONAL CLAUSES AND DISCLOSURE FORMS

##### A. Optional Clauses

There are many additional clauses an attorney may include in the fee agreement. Below is a compilation of additional clauses which are all optional. In addition, there are several disclosure forms an attorney may need to consider included in this section.

##### 1. Arbitration Clause

An attorney may want to consult the firm's malpractice insurance carrier regarding its position on arbitration and particular arbitration provisions, including any award of attorney's fees.

The suggested clause is appropriate for binding arbitration of all claims other than fee disputes which are subject to non-binding arbitration under Business and Professions Code Sections 6200, *et seq.* The agreement provides for full disclosure to the client of the ramifications of those choices and the comparative advantages and disadvantages of other alternatives. This clause advises the client of the right to have an independent attorney review.

##### 2. Mediation Clause

This is an optional clause. Under Business and Professions Code Section 6200, a mediation option may be offered to the parties after the attorney or client files a request for fee arbitration with some local bar association or the State Bar fee arbitration programs.

The attorney may want to consider this in determining whether to include a pre-filing mediation clause such as the suggested clause.

##### 3. Interest Clause

It is legally and ethically proper to charge interest on fees. If the attorney elects to do so, this clause provides appropriate language. Please keep in mind that interest, if charged, must be reasonable so as not to violate either the prohibition against unconscionable fees nor the usury provisions of the California Constitution. A periodic interest rate that does not exceed 10% per annum simple interest should not violate California's usury law. Generally, interest should begin running only after a certain specified period, i.e., thirty, sixty or ninety days after the billing invoice is rendered, if not paid within that time.

#### 4. Replenishing Deposit

This is an alternative to Par. 4 in Forms 1 and 2, and provides for an automatically replenishing deposit.

#### 5. Attorneys' Fees

An attorneys' fees clause is permitted, except that attorneys' fees are not recoverable in fee arbitrations under Business and Professions Code Sections 6200, *et seq.* Further, an attorney may not usually recover fees for representing him or herself. If this clause and an arbitration clause are both used, the attorney's fee provisions should be the same. Inclusion of this clause should be cleared with the attorney's malpractice insurance carrier.

#### 6. Other Payor—Insurance

This clause may be used when an insurance company pays for some or all of the client's attorney fees. It also provides that if the insurance company refuses to pay the fees or only pays some of the fees, the client is still responsible for payment.

#### 7. Flat Fee

This clause is a suggested alternative to Paragraph 5 (Legal Fees and Billing Practices) where the work is being performed on a fixed fee basis.

#### 8. Division of Contingency Fees

This clause is required under California Rules of Professional Conduct 2-200 if the attorney wants to associate another attorney who is not a member of his or her firm and will split the contingency fee with the other attorney. The associated attorney should sign the fee agreement or other writing acknowledging the fee division.

#### 9. "Other Attorney"—Hourly

This clause is required under California Rules of Professional Conduct Rule 2-200. This clause may be appropriate where the attorney contemplates working with another attorney who is not a partner, associate or shareholder of the attorney. Charging associate counsel fees as a cost in an hourly fee case is appropriate, but is a suspect practice in contingency fee litigation. Separate sample clauses are therefore offered for hourly and contingency fee cases.

#### 10. Payment of Referral

This clause is required under California Rules of Professional Conduct 2-200 and provides that the payment of the referral fee to the referring attorney will not increase the client's legal fees.

#### 11. Lien—Hourly Fee Agreement

This clause satisfies the requirements set forth in the Supreme Court case, *Fletcher v. Davis* (2004) 33 Cal. 4th 61. In that case the court held an attorney who wishes to secure payment of

hourly legal fees and costs with a lien must comply with California Rules of Professional Conduct 3-300. That rule requires the attorney must advise the client in writing of the adverse consequences of the lien and advise the client of his or her right to obtain an independent attorney to review the lien provision before the client signs the fee agreement.

The attorney should have the client initial this clause.

#### 12. Excluded Services

An attorney may limit or exclude certain services in the fee agreement and this clause provides for the exclusion. Under *Nichols v. Keller* (1993) 15 Cal. App. 4th 1672 the attorney must alert the client of the possible need to employ other counsel to handle the excluded services. Pursuant to *Meighan v. Shore* (1995) 34 CA 4th 1025, an attorney also must alert the client's spouse of a possible claim for loss of consortium and whether the attorney will be handling the loss of consortium claim.

#### 13. Contingency Language Options

There are a variety of ways an attorney can represent a client in a contingent fee. These various clauses describe the various options including how the fee is paid, whether the client or the attorney advances cost and how it affects the client's recovery.

#### 14. Consent to Use of E-mail and Cloud Services

This clause informs the client that attorney will communicate with e-mail and store electronic documents using cloud computing services.

### B. Disclosure Forms

#### 1. Third Party Payor Forms

A Third Party Payor agreement is appended. It can be used when someone other than the client pays the client's attorney's fees and costs. There is a selection to be made when completing the form. One selection allows an attorney to share information regarding the representation with the Third Party payor and the other selection prohibits sharing information.

#### 2. Joint/Multiple Client Disclosure and Consent Form

This form may be appropriate for use when an attorney represents more than one individual/entity and wants to disclose potential conflicts of interest and obtain waivers.

### V. CONCLUSION

These forms are disseminated in the hope that they will be useful to attorneys in their practice. Attorneys are urged to make alterations to these forms so that they conform to the attorney's practice and the needs and requirements of the attorney and clients, subject always to satisfying the statutory requirements for fee agreements and the Rules of Professional Conduct.

**Form No. 1**  
**Sample Written Fee Agreement<sup>1</sup>**  
**Hourly Litigation**

**LAW FIRM**  
**ADDRESS**  
**CITY, STATE, ZIP**  
**PHONE NUMBER**

**(Date)**

**ATTORNEY-CLIENT FEE AGREEMENT**

[LAW FIRM OR ATTORNEY] (“Attorney”) and [CLIENT] (“Client”) hereby agree that Attorney will provide legal services to Client on the terms set forth below.

**1. CONDITIONS**

This Agreement will not take effect, and Attorney will have no obligation to provide legal services, until: (a) Client returns a signed copy of this Agreement; (b) Client pays the initial deposit called for under Paragraph 4; and (c) Attorney acknowledges acceptance of representation by counter-signing this Agreement and returning a fully executed copy to Client. Upon satisfaction of these conditions, this Agreement will be deemed to take effect as of [DATE].

**2. SCOPE OF SERVICES AND ATTORNEY’S DUTIES**

Client hires Attorney to provide legal services in the following matter: [PROVIDE DETAILED DESCRIPTION OF SERVICES TO BE PROVIDED]. Attorney will provide those legal services reasonably required to represent Client. Attorney will take reasonable steps to keep Client informed of progress and to respond to Client’s inquiries. If a court action is filed, Attorney will represent Client through trial and post-trial motions. This Agreement does not cover representation on appeal or in collection proceedings after judgment or proceedings regarding renewal of a judgment. A separate written agreement for these services or services in any other matter not described above will be required. Attorney is representing Client only in the matter described above.

**3. CLIENT’S DUTIES**

Client agrees to be truthful with Attorney and not withhold information. Further Client agrees to cooperate, to keep Attorney informed of any information or developments which may come to Client’s attention, to abide by this Agreement, to pay Attorney’s bills on time, and to keep Attorney advised of Client’s address, telephone number and whereabouts. Client will assist Attorney by timely providing necessary information and documents. Client agrees to appear at all legal proceedings when Attorney deems it necessary, and generally to

<sup>1</sup> This sample written fee agreement form is intended to satisfy the basic requirements of Business & Professions Code section 6148 but may not address varying contractual obligations which may be present in a particular case. The State Bar makes no representation of any kind, express or implied, concerning the use of these forms.

cooperate fully with Attorney in all matters related to the preparation and presentation of Client's claims.

**4. DEPOSIT**

Client agrees to pay Attorney an initial deposit of \$\_\_\_\_\_ [PROVIDE DEPOSIT AMOUNT] by \_\_\_\_\_ [DATE] which will be deemed an advance deposit for fees and costs to be incurred in this matter. The hourly charges and costs will be charged against the Deposit. The initial Deposit, as well as any future deposits, will be held in Attorney's Client Trust Account. Client authorizes Attorney to use that deposit to pay the fees and other charges. Client acknowledges that the deposit is not an estimate of total fees and costs to be charged by Attorney, but merely an advance.

Client agrees that Attorney's right to recover fees and costs from the Deposit or any subsequent deposit held in Attorney's Client Trust Account becomes fixed \_\_\_\_ [PROVIDE NUMBER] days after the date a bill is sent to Client. Client authorizes Attorney to withdraw the funds from Attorney's Client Trust Account to pay Attorney's fees and costs \_\_\_\_ [PROVIDE NUMBER] calendar days after the date a bill is sent to Client. If Attorney receives a written objection from Client within \_\_\_\_ [PROVIDE NUMBER] days of sending the bill, Attorney's right to withdraw the amount that is identified in the objection shall be deemed to be disputed, and Attorney will not withdraw the disputed fees and/or costs from the Client Trust Account until the dispute is resolved. If Attorney receives an objection from Client more than \_\_\_\_ [PROVIDE NUMBER] days after the date the bill is sent and after the funds have been withdrawn, Attorney will not be required to redeposit the disputed fees and/or costs into the Client Trust Account during the pendency of the dispute.

Client agrees to pay all deposits after the initial deposit within \_\_\_\_ [PROVIDE NUMBER] days of Attorney's demand. In the event there is any money from any deposit remaining in Attorney's Client Trust Account after Attorney's final bill is satisfied, that money will be promptly refunded to Client.

Whenever the deposit is exhausted, Attorney reserves the right to demand further deposits, each up to a maximum of \$\_\_\_\_\_ [PROVIDE AMOUNT OF FURTHER DEPOSIT] at any time before a trial or arbitration date is set. Once a trial or arbitration date is set, Client will pay all sums then owing and deposit the Attorney's fees estimated to be incurred in preparing for and completing the trial or arbitration, as well as the jury fees or arbitration fees, expert witness fees and other costs likely to be assessed. Those sums may exceed the maximum deposit.

**5. LEGAL FEES AND BILLING PRACTICES**

Client agrees to pay by the hour at Attorney's rates as set forth below for all time spent on Client's matter by Attorney and Attorney's legal personnel. Current hourly rates for legal personnel are as follows:

Senior partners	_____	/hour
Partners	_____	/hour
Associates	_____	/hour
Paralegals	_____	/hour

Law clerks \_\_\_\_\_ /hour

The rates on this schedule are subject to change on 30 days written notice to Client. If Client declines to pay increased rates, Attorney will have the right to withdraw as attorney for Client if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law.

The time charged will include, but is not limited to, the time Attorney spends on telephone calls, e-mails and other electronic communications relating to Client's matter, including calls and e-mails with Client, witnesses, opposing counsel, court personnel or other persons. [OPTIONAL: The legal personnel assigned to Client's matter may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting, court hearing or other proceeding, each will charge for the time spent.] Time is billed in minimum increments one-tenth (.1) of an hour. Attorney will charge for waiting time in court and elsewhere and for travel time, both local and out of town.

## **6. COSTS AND OTHER CHARGES**

- (a) Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses in addition to the hourly fees. The costs and expenses commonly include, service of process charges, filing fees, court and deposition reporters' fees, translator/interpreter fees, jury fees, notary fees, deposition costs, long distance telephone charges, messenger and other delivery fees, postage, outside photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultants' fees, expert witness, professional, mediator, arbitrator and/or special master fees and other similar items. The foregoing external costs and expenses will be charged at Attorney's cost. Internal charges are billed at the following rates: (1) mileage – IRS Standard Mileage Rate; (2) in-house printing and photocopying – [ ] [PROVIDE RATE] cents per page; (3) facsimile charges – [ ] [PROVIDE RATE] cents per page; (4) postage at cost; and (5) computerized legal research at cost.
- (b) Out-of-town travel. Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Attorney and Attorney's personnel. Client will also be charged \_\_\_\_% [PROVIDE RATE] of the hourly rates for the time legal personnel spend traveling.
- (c) Experts, Consultants and Investigators. To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants or investigators. Client agrees to pay such fees and charges. Attorney will select any expert witnesses, consultants or investigators to be hired, and Client will be informed of persons chosen and their charges.
- (d) Attorney will obtain Client's consent before incurring any costs in excess of \$\_\_\_\_\_ [PROVIDE AMOUNT].

**7. OTHER FEES AND COSTS**

Client understands that if Client’s case proceeds to court action or arbitration, the court may award attorney fees as well as some or all of the type of costs enumerated in Paragraph 6 above to the other party or parties. Payment of such attorney fees and costs shall be the sole responsibility of Client. Similarly, other parties may be required to pay some or all of the fees and costs incurred by the Client. Client acknowledges that any such determination does not in and of itself affect the amount of the fees and costs to be paid by Client to Attorney pursuant to this agreement.

**8. BILLS**

Attorney will send Client periodic bills for fees and costs incurred. Each bill will be payable within \_\_\_\_ [PROVIDE NUMBER] days of its mailing date. Client may request a bill at intervals of no less than 30 days. If Client so requests, Attorney will provide one within 10 days. Bills for the fee portion of the bill will include the amount, rate, basis for calculation, or other method of determination of the Attorney’s fees. Bills for the cost and expense portion of the bill will clearly identify the costs and expenses incurred and the amount of the costs and expenses. Client agrees to promptly review all bills rendered by Attorney and to promptly communicate any objections, questions, or concerns about their contents.

**9. CLIENT APPROVAL NECESSARY FOR SETTLEMENT**

Attorney will not make any settlement or compromise of any nature of any of Client’s claims without Client’s prior approval. Client retains the absolute right to accept or reject any settlement.

**10. DISCHARGE AND WITHDRAWAL**

Client may discharge Attorney at any time. Attorney may withdraw with Client’s consent or for good cause or if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law. Among the circumstances under which Attorney may withdraw are: (a) with the consent of Client; (b) Client’s conduct renders it unreasonably difficult for the Attorney to carry out the employment effectively; and/or (c) Client fails to pay Attorney’s fees or costs as required by this Agreement. Notwithstanding the discharge, Client will remain obligated to pay Attorney at the agreed rates for all services provided and to reimburse Attorney for all costs advanced.

**11. CONCLUSION OF SERVICES**

When Attorney’s services conclude, whether by completing the services covered by this Agreement, or by discharge or withdrawal, all unpaid charges for fees or costs will be due and payable immediately.

Client may have access to Client’s case file at Attorney’s office at any reasonable time. At the end of the engagement, Client may request the return of Client’s case file. If Client has not requested the return of Client’s file, and to the extent Attorney has not otherwise delivered it or disposed of it consistent with Client’s directions, Attorney will retain the case file for a period of \_\_\_\_\_, [PROVIDE LENGTH OF TIME] after which Attorney is authorized by this agreement to have the case file destroyed. If Client would like Attorney to maintain Client’s case file for more than \_\_\_\_\_ [PROVIDE LENGTH OF TIME] after the conclusion of Attorney’s services for Client on a given matter, a separate written

agreement must be made between Attorney and Client, which may provide for Client to bear the cost of maintaining the file. In the event Client requests that Attorney transfer possession of Client's case file to Client or a third party, Attorney is authorized to retain copies of the case file at Attorney's expense. The case file includes Client papers and property as defined in Rule 3-700(D)(1) of the California Rules of Professional Conduct.

## **12. DISCLAIMER OF GUARANTEE AND ESTIMATES**

Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of the matter are expressions of opinion only, are neither promises nor guarantees, and will not be construed as promises or guarantees. Any deposits made by Client, or estimate of fees given by Attorney, are not a representation of a flat fee and will not be a limitation on fees or a guarantee that fees and costs will not exceed the amount of the deposit or estimate. Actual fees may vary significantly from estimates given.

## **13. PROFESSIONAL LIABILITY INSURANCE DISCLOSURE**

Pursuant to California Rule of Professional Conduct 3-410, I am informing you in writing that I \_\_\_have \_\_\_ do not have [CHECK APPROPRIATE ENTRY] professional liability insurance.

## **14. NO TAX ADVICE**

Attorney has not been retained to provide Client with any tax advice concerning any of the services described in paragraph 2. Any documents prepared by Attorney may have specific tax ramifications. To be sure Client understands and is certain of all the potential tax consequences, Client should consult with tax advisors regarding these matters.

## **15. ENTIRE AGREEMENT**

This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

## **16. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY**

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

## **17. MODIFICATION BY SUBSEQUENT AGREEMENT**

This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them.

## **18. EFFECTIVE DATE**

This Agreement will govern all legal services performed by Attorney on behalf of Client commencing with the date Attorney first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, Client will

be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

**THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE ATTORNEY FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. CLIENT WILL RECEIVE A FULLY EXECUTED COPY OF THIS AGREEMENT.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
CLIENT

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

DATED: \_\_\_\_\_

ATTORNEY OR LAW FIRM

By: \_\_\_\_\_

ATTORNEY

**Form No. 2**  
**Sample Written Fee Agreement<sup>2</sup>**  
**Hourly Non-Litigation**

**LAW FIRM**  
**ADDRESS**  
**PHONE NUMBER**

**(Date)**

**ATTORNEY-CLIENT FEE AGREEMENT**

[LAW FIRM OR ATTORNEY] (“Attorney”) and [CLIENT] (“Client”) hereby agree that Attorney will provide legal services to Client on the terms set forth below.

**1. CONDITIONS**

This Agreement will not take effect, and Attorney will have no obligation to provide legal services, until: (a) Client returns a signed copy of this Agreement; (b) Client pays the initial deposit called for under Paragraph 4; and (c) Attorney acknowledges acceptance of representation by counter-signing this Agreement and returning a fully executed copy to Client. Upon satisfaction of these conditions, this Agreement will be deemed to take effect retroactive to [DATE].

**2. SCOPE OF SERVICES AND ATTORNEY’S DUTIES**

Client hires Attorney to provide legal services in the following matter: [PROVIDE DETAILED DESCRIPTION OF SERVICES TO BE PROVIDED]. Attorney will provide those legal services reasonably required to represent Client. Attorney will take reasonable steps to keep Client informed of progress and to respond to Client’s inquiries. This Agreement does not cover litigation services of any kind, whether in court, arbitration, administrative hearings, or government agency hearings. A separate written agreement for these services or services in any other matter not described above will be required.

**3. CLIENT’S DUTIES**

Client agrees to be truthful with Attorney and not to withhold information, to cooperate, to keep Attorney informed of any information or developments which may come to Client’s attention, to abide by this Agreement, to pay Attorney’s bills on time, and to keep Attorney advised of Client’s address, telephone number and whereabouts. Client will assist Attorney by timely providing necessary information and documents.

<sup>2</sup> This sample written fee agreement form is intended to satisfy the basic requirements of Business & Professions Code section 6148 but may not address varying contractual obligations, which may be present in a particular case. The State Bar makes no representation of any kind, express or implied, concerning the use of these forms.

**4. DEPOSIT**

Client agrees to pay Attorney an initial deposit of \$\_\_\_\_\_ [PROVIDE DEPOSIT AMOUNT] by \_\_\_\_\_ [DATE] which will be deemed an advance deposit for fees and costs to be incurred in this matter. The hourly charges and costs will be charged against the Deposit. The initial Deposit, as well as any future deposit, will be held in Attorney’s Client Trust Account. Client authorizes Attorney to use that deposit to pay the fees and other charges. Client acknowledges that the deposit is not an estimate of total fees and costs to be charged by Attorney, but merely an advance.

Client agrees that Attorney’s right to recover fees and costs from the Deposit or any subsequent deposit held in Attorney’s Client Trust Account becomes fixed \_\_\_\_ [PROVIDE NUMBER] days after the date a bill is sent to Client. Client authorizes Attorney to withdraw the funds from Attorney’s Client Trust Account to pay Attorneys’ fees and costs \_\_\_\_ [PROVIDE NUMBER] calendar days after the date a bill is sent to Client. If Attorney receives a written objection from Client within \_\_\_\_\_ [PROVIDE NUMBER] days of sending the bill, Attorney’s right to recover the amount that is identified in the objection will be deemed to be disputed, and Attorney will not withdraw the disputed fees and/or costs from the Client Trust Account until the dispute is resolved. If Attorney receives an objection from Client more than \_\_\_\_ [PROVIDE NUMBER] days after the date the bill is sent and after the funds have been withdrawn, Attorney shall not be required to redeposit the disputed fees and/or costs into the Client Trust Account during the pendency of the dispute.

Client agrees to pay all deposits after the initial deposit within \_\_\_\_ [PROVIDE NUMBER] days of Attorney’s demand. In the event there is any money from any deposit remaining in Attorney’s Client Trust Account after Attorney’s final bill is satisfied, that money will be promptly refunded to Client.

Whenever the deposit is exhausted, Attorney reserves the right to demand further deposits, each up to a maximum of \$\_\_\_\_\_ [PROVIDE AMOUNT OF FURTHER DEPOSIT] .

**5. LEGAL FEES AND BILLING PRACTICES**

Client agrees to pay by the hour at Attorney’s rates as set forth below for all time spent on Client’s matter by Attorney and Attorney’s legal personnel. Current hourly rates for legal personnel are as follows:

Senior partners	_____	/hour
Partners	_____	/hour
Associates	_____	/hour
Paralegals	_____	/hour
Law clerks	_____	/hour

The rates on this schedule are subject to change on 30 days written notice to Client. If Client declines to pay increased rates, Attorney will have the right to withdraw as attorney for Client

if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law.

The time charged will include, but is not limited to, the time Attorney spends on telephone calls, e-mails and other electronic communications relating to Client's matter, including calls and e-mails with Client and other parties and attorneys. [OPTIONAL: The legal personnel assigned to Client's matter may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting or other proceeding, each will charge for the time spent]. Time is billed in minimum increments of one-tenth (.1) of an hour. Attorney will charge for waiting time and for travel time, both local and out of town.

## **6. COSTS AND OTHER CHARGES**

- (a) Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses in addition to the hourly fees. The costs and expenses commonly include notary fees, long distance telephone charges, messenger and other delivery fees, postage, outside photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, translator/interpreter fees, consultants' fees and/or special master fees and other similar items. The foregoing external costs and expenses will be charged at Attorney's cost. Internal charges are billed at the following rates: (1) mileage – IRS Standard Mileage Rate; (2) in-house printing and photocopying – [ ] [PROVIDE RATE] cents per page; (3) facsimile charges – [ ] [PROVIDE RATE] cents per page; (4) postage at costs; and (5) computerized legal research at cost.
- (b) Out-of-town travel. Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Attorney and Attorney's personnel. Client will also be charged \_\_\_\_% [PROVIDE RATE] of the hourly rates for the time legal personnel spend traveling.
- (c) Experts, Consultants and Investigators. To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants or investigators. Client agrees to pay such fees and charges. Attorney will select any expert witnesses, consultants or investigators to be hired, and Client will be informed of persons chosen and their charges.
- (d) Attorney will obtain Client's consent before incurring any costs in excess of \$\_\_\_\_\_ [PROVIDE AMOUNT].

## **7. BILLS**

Attorney will send Client periodic bills for fees and costs incurred. Each bill will be payable within \_\_\_\_ [PROVIDE NUMBER] days of its mailing date. Client may request a bill at intervals of no less than 30 days. If Client so requests, Attorney will provide one within 10 days. Bills for the fee portion of the bill will include the amount, rate, basis for calculation, or

other method of determination of the Attorney's fees. Bills for the cost and expense portion of the bill will clearly identify the costs and expenses incurred and the amount of the costs and expenses. Client agrees to promptly review all bills rendered by Attorney and to promptly communicate any objections, questions, or concerns about their contents.

#### **8. CLIENT APPROVAL NECESSARY FOR SETTLEMENT**

Attorney will not make any settlement or compromise of any nature of any of Client's claims without Client's prior approval. Client retains the absolute right to accept or reject any settlement.

#### **9. DISCHARGE AND WITHDRAWAL**

Client may discharge Attorney at any time. Attorney may withdraw with Client's consent or for good cause or if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law. Among the circumstances under which Attorney may withdraw are: (a) with the consent of Client; (b) Client's conduct renders it unreasonably difficult for the Attorney to carry out the employment effectively; and/or (c) Client fails to pay Attorney's fees or costs as required by this Agreement. Notwithstanding the discharge, Client will remain obligated to pay Attorney at the agreed rates for all services provided and to reimburse Attorney for all costs advanced.

#### **10. CONCLUSION OF SERVICES**

When Attorney's services conclude, whether by completing the services covered by this Agreement, or by discharge or withdrawal, all unpaid charges for fees or costs will be due and payable immediately.

Client may have access to Client's case file at Attorney's office at any reasonable time. At the end of the engagement, Client may request the return of Client's case file. If Client has not requested the return of Client's file, and to the extent Attorney has not otherwise delivered it or disposed of it consistent with Client's directions, Attorney will retain the case file for a period of \_\_\_\_\_ [PROVIDE LENGTH OF TIME], after which Attorney is authorized by this agreement to have the case file destroyed. If Client would like Attorney to maintain Client's case file for more than \_\_\_\_\_ [PROVIDE LENGTH OF TIME] after the conclusion of Attorney's services for Client on a given matter, a separate written agreement must be made between Attorney and Client, which agreement may provide for Client to bear the cost of maintaining the file. In the event Client requests that Attorney transfer possession of Client's case file to Client or a third party, Attorney is authorized to retain copies of the case file. The case file includes Client papers and property as defined in Rule 3-700(D)(1) of the California Rules of Professional Conduct.

#### **11. DISCLAIMER OF GUARANTEE AND ESTIMATES**

Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of the matter are expressions of opinion only, are neither promises nor guarantees, and will not be construed as promises or guarantees. Any deposits made by client or estimate of fees given by Attorney are not a representation of a flat fee and will not be a limitation on fees or a guarantee that fees and

costs will not exceed the amount of the deposit or estimate. Actual fees may vary significantly from estimates given.

**12. PROFESSIONAL LIABILITY INSURANCE DISCLOSURE**

Pursuant to California Rule of Professional Conduct 3-410, I am informing you in writing that I \_\_\_have \_\_\_ do not have [CHECK APPROPRIATE ENTRY] professional liability insurance.

**13. NO TAX ADVICE**

Attorney has not been retained to provide Client with any tax advice concerning any of the services described in paragraph 2. Any documents prepared by Attorney may have specific tax ramifications. To be sure Client understands and is certain of all the potential tax consequences, Client should consult with tax advisors regarding these matters.

**14. ENTIRE AGREEMENT**

This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

**15. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY**

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

**16. MODIFICATION BY SUBSEQUENT AGREEMENT**

This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them.

**17. EFFECTIVE DATE**

This Agreement will govern all legal services performed by Attorney on behalf of Client commencing with the date Attorney first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

**THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE ATTORNEY FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. CLIENT WILL RECEIVE A FULLY EXECUTED COPY OF THIS AGREEMENT.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
CLIENT

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

DATED: \_\_\_\_\_

ATTORNEY OR LAW FIRM

By: \_\_\_\_\_

ATTORNEY

**Form No. 3**  
**Sample Written Fee Agreement<sup>3</sup>**  
**Contingency Fee Agreement**

**LAW FIRM**  
**ADDRESS**  
**CITY, STATE, ZIP**  
**PHONE NUMBER**

**(Date)**

**ATTORNEY-CLIENT FEE AGREEMENT**

[LAW FIRM OR ATTORNEY] (“Attorney”) and [CLIENT] (“Client”) hereby agree that Attorney will provide legal services to Client on the terms set forth below.

**1. CONDITIONS**

This Agreement will not take effect, and Attorney will have no obligation to provide legal services, until: (a) Client returns a signed copy of this Agreement; (b) Client pays the initial deposit for costs, if any, called for under Paragraph 7; and (c) Attorney acknowledges acceptance of representation by counter-signing this Agreement and returning a fully executed copy to Client. Upon satisfaction of these conditions, this Agreement will be deemed to take effect as of [DATE].

**2. SCOPE OF SERVICES AND ATTORNEY’S DUTIES**

Client hires Attorney to provide legal services in the following matter: [PROVIDE DETAILED DESCRIPTION OF SERVICES TO BE PROVIDED]. Attorney will provide those legal services reasonably required to represent Client. Attorney will take reasonable steps to keep Client informed of progress and to respond to Client’s inquiries. If a court action is filed, Attorney will represent Client through trial and post-trial motions. This Agreement does not cover representation on appeal or in collection proceedings after judgment or proceedings regarding renewal of a judgment. A separate written agreement for these services or services in any other matter not described above will be required. Attorney is representing Client only in the matter described above.

This Agreement also does not include defending Client against, or representing Client in, any claims that may be asserted against Client as a cross-claim or counter-claim in Client’s case. If any such matters arise later, Attorney and Client will either negotiate a separate agreement if Client and Attorney agree that the Attorney will perform such additional legal work or Client will engage separate counsel with respect to the cross-claim or counter-claim or additional legal work.

<sup>3</sup> This sample written fee agreement form is intended to satisfy the basic requirements of Business & Professions Code Section 6147 but may not address varying contractual obligations which may be present in a particular case. The State Bar makes no representation of any kind, express or implied, concerning the use of these forms.

### 3. CLIENT'S DUTIES

Client agrees to be truthful with Attorney and not to withhold information. Further, Client agrees to cooperate, to keep Attorney informed of any information or developments which may come to Client's attention, to abide by this Agreement, to pay Attorney's bills on time, and to keep Attorney advised of Client's address, telephone number and whereabouts. Client will assist Attorney by timely providing necessary information and documents. Client agrees to appear at all legal proceedings when Attorney deems it necessary, and generally to cooperate fully with Attorney in all matters related to the preparation and presentation of Client's claims.

### 4. LEGAL FEES

Attorney will only be compensated for legal services rendered if a recovery is obtained for Client. If no recovery is obtained, Client will be obligated to pay only for costs, disbursements and expenses, as described in Paragraph 6.

The fee to be paid to Attorney will be a percentage of the "net recovery," depending on the stage at which the settlement or judgment is reached. The term "net recovery" means: (1) the total of all amounts received by settlement, arbitration award or judgment, including any award of attorney's fees, (2) minus all costs and disbursements set forth in Paragraph 6. If another party is ordered by the court to pay Client's Attorney's fees and/or costs, that award will be part of Client's net recovery and the contingent fee will be based on the Client's total recovery, including the amount of the court ordered award of attorney's fees and/or costs. Net recovery will also include the reasonable value of any non-monetary proceeds.

Attorney's fee will be calculated as follows:

- (a) If the matter is resolved before filing a lawsuit or formal initiation of proceedings, then Attorney's fee will be \_\_\_\_\_[PROVIDE RATE] percent (\_\_\_\_%) of the net recovery;
- (b) If the matter is resolved prior to \_\_\_\_ [PROVIDE NUMBER] days before the initial trial or arbitration date, then Attorney's fee will be \_\_\_\_\_ [PROVIDE RATE] percent (\_\_\_\_%) of the net recovery; and
- (c) If the matter is resolved after the times set forth in (i) and (ii), above, then Attorney's fee will be \_\_\_\_\_ [PROVIDE RATE] percent (\_\_\_\_%) of the net recovery.

In the event of Attorney's discharge, or withdrawal with justifiable cause, as provided in Paragraph 13, Client agrees that, upon payment of the settlement, arbitration award or judgment in Client's favor in this matter, Attorney will be entitled to be paid by Client a reasonable fee for the legal services provided. Such fee will be determined by considering the following factors:

- (1) The amount of the fee in proportion to the value of the services performed;

- (2) The relative sophistication of the Attorney and the Client;
- (3) The novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly;
- (4) The likelihood, if apparent to the Client, that the acceptance of the particular employment will preclude other employment by the Attorney;
- (5) The amount involved and the results obtained;
- (6) The time limitations imposed by the Client or by the circumstances;
- (7) The nature and length of the professional relationship with the Client;
- (8) The experience, reputation, and ability of the Attorney;
- (9) The time and labor required;
- (10) The informed consent of the Client to the fee.

**5. NEGOTIABILITY OF LEGAL FEES**

Client understands that the rates set forth above are not set by law, but are negotiable between Attorney and Client.

**6. COSTS AND LITIGATION EXPENSES/OTHER ATTORNEY'S FEES**

Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses paid or owed by Client in connection with this matter, or which have been advanced by Attorney on Client's behalf and which have not been previously paid or reimbursed to Attorney.

Costs, disbursements and litigation expenses commonly include court fees, jury fees, service of process charges, court and deposition reporters' fees, interpreter/translator fees, outside photocopying and reproduction costs, notary fees, long distance telephone charges, messenger and other delivery fees, postage, deposition costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultant, expert witness, professional mediator, arbitrator and/or special master fees and other similar items. Internal charges are billed at the following rates: (1) mileage – IRS Standard Mileage Rate; (2) in-house printing and photocopying – [ ] [PROVIDE RATE] cents per page; (3) facsimile charges – [ ] [PROVIDE RATE] cents per page; (4) messenger services – at cost; (5) postage at cost; and (6) computerized legal research at cost.

Client understands that, as set forth in Paragraph 7 below, a deposit for costs may be required before the expenditure is made by Attorney.

To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants or investigators. Attorney will select any expert witnesses,

consultants or investigators to be hired, and Client will be informed of persons chosen and their charges.

Client authorizes Attorney to incur all reasonable costs and to hire any investigators, consultants or expert witnesses reasonably necessary in Attorney's judgment.

Attorney will obtain Client's consent before incurring any costs in excess of \$\_\_\_\_\_ [PROVIDE AMOUNT].

A. Client's Responsibility for Prevailing Party or Court Ordered Fees and Costs to Other Party

Client understands that if Client's case proceeds to court action or arbitration and Client loses or is not the prevailing party, the court may award Attorney fees as well as some or all of the type of costs enumerated in this Paragraph 6 to the winning or prevailing party or parties. Payment of such attorney fees and costs will be the sole responsibility of Client.

If an award of fees and/or costs to be paid by another party is sought on Client's behalf in this action, Client understands that the amount which the court may order as fees and/or costs is the amount the court believes the party is entitled to recover, and does not determine what fees and/or costs Attorney is entitled to charge Client or that only the fees and/or costs which were allowed were reasonable.

B. Allocation of Court Award for Statutory or Contract Fees and Costs

Client agrees that any award of fees and costs that may be awarded pursuant to contract or statute will belong exclusively to Attorney. Client further agrees that, whether or not attorney's fees or costs are awarded by the court in Client's case, if there is a recovery other than an award of fees and costs pursuant to contract or statute Client will remain responsible for the payment, in full, of the attorney's fees and costs in accordance with this Agreement. However, any payment of court-awarded fees and/or costs by a third party will be credited against the amount of fees and/or costs owed by Client under this Agreement. Therefore, Client agrees that the attorney's fees and costs payable to Attorney pursuant to this Agreement shall be the greater of: (i) the amount otherwise owed to Attorney under this Agreement if the award of attorney's fees and costs were disregarded; or (ii) the amount of the court ordered award of attorney's fees and costs.

C. Responsibility For and Allocation Of Sanctions

Client agrees that any award of fees and costs that may be awarded as discovery or other sanctions shall not be considered part of the Client's recovery and shall belong exclusively to Attorney as additional compensation for extraordinary time and effort.

The court may assess monetary sanctions, (including attorney fees and costs) against Client for bad faith conduct, including of discovery proceedings prior to trial, or inappropriate

conduct during or even after trial. Any such award will be entirely the responsibility of Client.

**7. DEPOSIT**

Client agrees to pay Attorney an initial deposit for costs of \$\_\_\_\_\_ [PROVIDE AMOUNT], to be returned with this signed Agreement. Attorney will hold this initial deposit in a trust account. Client hereby authorizes Attorney to use that deposit to pay the costs, disbursements and other expenses incurred under this Agreement.

Client agrees that Attorney's right to recover costs and expenses from the Deposit or any subsequent deposit held in Attorney's Client Trust Account becomes fixed \_\_\_\_ [PROVIDE NUMBER] days after the date a bill is sent to Client. Client therefore authorizes Attorney to withdraw the funds from Attorney's Client Trust Account to pay Attorney's costs and expenses \_\_\_\_ [PROVIDE NUMBER] calendar days after the date a bill is sent to Client. If Attorney receives a written objection from Client within \_\_\_\_ [PROVIDE NUMBER] days of sending the bill, Attorney's right to recover the amount that is identified in the objection will be deemed to be disputed, and Attorney will not withdraw the disputed costs and/or expenses from the Client Trust Account until the dispute is resolved. If Attorney receives an objection from Client more than \_\_\_\_ [PROVIDE NUMBER] days after the date the bill is sent and after the funds have been withdrawn, Attorney will not be required to redeposit the disputed costs and/or expenses into the Client Trust Account during the pendency of the dispute.

When Client's deposit is exhausted, Attorney reserves the right to demand further deposits, each up to a maximum of \$\_\_\_\_\_ [PROVIDE AMOUNT].

Once a trial or arbitration date is set, Attorney will require Client to pay all sums then owing, and to deposit the costs Attorney estimates will be incurred in preparing for and completing the trial or arbitration, as well as the jury fees or arbitration fees likely to be assessed. Those sums may exceed the maximum deposit.

Client agrees to pay all deposits required under this Agreement within \_\_\_\_ [PROVIDE NUMBER] days of Attorney's demand. Any deposit that is unused at the conclusion of Attorney's services will be promptly refunded to Client.

**8. BILLS FOR COSTS AND EXPENSES**

Attorney will send Client periodic bills for costs and expenses incurred. Except as provided in Paragraph 7 ("Deposit"), each bill is to be paid in full within \_\_\_\_ [PROVIDE NUMBER] days of its mailing date. Client may request a bill at intervals of no less than 30 days. If Client so requests, Attorney will provide one within 10 days. Bills for the cost and expense portion of the bill will clearly identify the costs and expenses incurred and the amount of the costs and expenses. Client agrees to promptly review all bills rendered by Attorney and to promptly communicate any objections, questions, or concerns about their contents.

**9. CLIENT APPROVAL NECESSARY FOR SETTLEMENT**

Attorney will not make any settlement or compromise of any nature of any of Client's claims without Client's prior approval. Client retains the absolute right to accept or reject any settlement.

#### **10. LIEN**

Attorney has a lien on any and all claims that are the subject of Attorney's representation under this Agreement. Attorney's lien will be for any sums owing to Attorney for any unpaid costs, or attorney's fees, at the conclusion of Attorney's services. The lien will attach to any recovery Client may obtain, whether by arbitration award, judgment, settlement or otherwise. An effect of such a lien is that Attorney may be able to compel payment of fees and costs from any such funds recovered on behalf of Client even if Attorney has been discharged before the end of the case. In the event Attorney withdraws from representing Client without cause, Attorney will not be entitled to any lien for fees. The lien will exist and attach to any recovery only for costs already advanced by Attorney pursuant to Paragraph 6. Because a lien may affect Client's property rights, Client may seek the advice of an independent lawyer of Client's own choice before agreeing to such a lien. By initialing this paragraph, Client represents and agrees that Client has had a reasonable opportunity to consult such an independent lawyer and—whether or not Client has chosen to consult such an independent lawyer—Client agrees that Attorney will have a lien as specified above.

\_\_\_\_\_ (Client initials here) \_\_\_\_\_ (Attorney initials here)

#### **11. PROFESSIONAL LIABILITY INSURANCE DISCLOSURE**

Pursuant to California Rule of Professional Conduct 3-410, Attorney is informing Client in writing that Attorney \_\_\_has \_\_\_ does not have [SELECT APPROPRIATE RESPONSE] professional liability insurance.

#### **12. NO TAX ADVICE**

Attorney has not been retained to provide Client with any tax advice concerning any of the services described in paragraph 2. Any documents prepared by Attorney may have specific tax ramifications. To be sure Client understands and is certain of all the potential tax consequences, Client should consult with tax advisors regarding these matters.

#### **13. DISCHARGE AND WITHDRAWAL**

Client may discharge Attorney at any time. Attorney may withdraw with Client's consent or for good cause or if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law. Among the circumstances under which Attorney may withdraw are: (a) with the consent of Client; (b) Client's conduct renders it unreasonably difficult for the Attorney to carry out the employment effectively; and/or (c) Client fails to pay Attorney's costs and expenses as required by this Agreement. Notwithstanding the discharge and provided there is a recovery, Client will remain obligated to pay Attorney at a reasonable rate for all services provided and to reimburse Attorney for all costs advanced.

Notwithstanding Client's notice of discharge, and without regard to the reasons for the withdrawal or discharge, Client will remain obligated to pay Attorney for all costs and expenses incurred prior to the termination and, in the event that there is any net recovery obtained by Client after conclusion of Attorney's services, Client remains obligated to pay Attorney for the reasonable value of all services rendered from the effective date of this Agreement to the date of discharge. In the event Attorney voluntarily withdraws from representing Client without cause, Attorney waives, and will not be entitled to be paid, any

fees by Client but will be entitled to be reimbursed for any costs and expenses already advanced by Attorney.

#### **14. CONCLUSION OF SERVICES**

When Attorney's services conclude, whether by completing the services covered by this Agreement, or by discharge or withdrawal, all unpaid charges for costs and expenses will be due and payable immediately. Client may have access to Client's case file at Attorney's office at any reasonable time. At the end of the engagement, Client may request the return of Client's case file. If Client has not requested the return of Client's file, and to the extent Attorney has not otherwise delivered it or disposed of it consistent with Client's directions, Attorney will retain the case file for a period of \_\_\_\_\_ [PROVIDE LENGTH OF TIME], after which Attorney is authorized by this agreement to have the case file destroyed. If Client would like Attorney to maintain Client's case file for more than \_\_\_\_\_ [PROVIDE LENGTH OF TIME] after the conclusion of Attorney's services for Client on a given matter have concluded, a separate written agreement must be made between Attorney and Client, which may provide for Client to bear the cost of maintaining the file. In the event Client requests that Attorney transfers possession of Client's case file to Client or a third party, Attorney is authorized to retain copies of the case file at Attorney's expense. The case file includes Client papers and property as defined in Rule 3-700(D)(1) of the California Rules of Professional Conduct.

#### **15. RECEIPT OF PROCEEDS**

All proceeds of Client's case will be deposited into Attorney's trust account for disbursement in accordance with the provisions of this Agreement.

#### **16. DISCLAIMER OF GUARANTEE**

Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of this matter. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of this matter are expressions of opinion only, are neither promises nor guarantees, and will not be construed as promises or guarantees. Any deposits made by client or estimate of costs and expenses given by Attorney will not be a limitation on costs and expenses or a guarantee that costs and expenses will not exceed the amount of the deposit or estimate. Actual costs and expenses may vary significantly from estimates given.

#### **17. ENTIRE AGREEMENT**

This Agreement contains the entire agreement of the parties. No other agreement, statement or promise made on or before the effective date of this Agreement will be binding on the parties.

#### **18. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY**

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

**19. MODIFICATION BY SUBSEQUENT AGREEMENT**

This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both parties.

**20. EFFECTIVE DATE**

This Agreement will govern all legal services performed by Attorney on behalf of Client commencing with the date Attorney first performed services. The date at the beginning of the Agreement is for reference only. Even if this Agreement does not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

**THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM, AS OF THE DATE ATTORNEY FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE JOINTLY AND SEVERALLY FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. THE CLIENT WILL RECEIVE A FULLY EXECUTED COPY OF THIS AGREEMENT.**

DATED: \_\_\_\_\_

\_\_\_\_\_

CLIENT

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

DATED: \_\_\_\_\_

LAW FIRM NAME

By: \_\_\_\_\_

ATTORNEY

# Optional Clauses and Disclosure Forms

## 1. ARBITRATION

### A. ARBITRATION OF ALL DISPUTES INCLUDING CLAIMS OF MALPRACTICE

Any dispute between the parties [Attorney and Client] regarding the construction, application or performance of any services under this Agreement, and any claim arising out of or relating to this Agreement or its breach, including, without limitation, claims for breach of contract, professional negligence, breach of fiduciary duty, misrepresentation, fraud and disputes regarding attorney fees and/or costs charged under this Agreement (except as provided in Paragraph B below) shall be submitted to binding arbitration upon the written request of one party after the service of that request on the other party. The parties shall appoint one person [Option: or agree upon a 3-person panel] to hear and determine the dispute.

Option: The arbitration provider shall be \_\_\_\_\_ [fill in the name of the arbitration provider] whose rules shall govern the arbitration.

Option: If the parties cannot agree on the selection of an arbitrator, a party may petition the Superior Court of \_\_\_\_\_ [fill in name of county] County and the procedures set forth in Code of Civil Procedure Section 1281.6 for Appointment of Arbitrators shall apply. The court will choose an impartial arbitrator and the court's decision shall be final and conclusive on all parties.

Option: Attorney and Client shall each have the right of discovery in connection with any arbitration proceeding in accordance with Code of Civil Procedure Section 1283.05.

Option: Each party shall bear its own costs, expenses, attorney's fees and an equal share of the arbitrators' and administrative fees.

The venue for the arbitration and any post-award proceeding to confirm, correct or vacate the award shall be \_\_\_\_\_ [fill in name of county] County, California.

Client and Attorney confirm that they have read and understand subparagraphs A above, and voluntarily agree to binding arbitration. In doing so, Client and Attorney voluntarily give up important constitutional rights to trial by judge or jury, as well as rights to appeal. Client may consult with an independent lawyer of Client's choice to review these arbitration provisions, and this entire agreement, prior to signing this Agreement.

### B. MANDATORY FEE ARBITRATION

Notwithstanding subparagraph A above, the parties acknowledge that in any dispute over attorney's fees, costs or both subject to the jurisdiction of the State of California over attorney's fees, charges, costs or expenses, Client has the right to elect arbitration pursuant to procedures as

set forth in California Business and Professions Code Sections 6200-6206 (the Mandatory Fee Arbitration Act). If, after receiving a Notice of Client's Right to Fee Arbitration, Client does not elect to proceed under the Mandatory Fee Arbitration Act procedures by failing to file a request for fee arbitration within 30 days, any dispute over fees, charges, costs or expenses, will be resolved by binding arbitration as provided in the previous paragraph A. Arbitration pursuant to the Mandatory Fee Arbitration Act is non-binding unless the parties agree in writing, after the dispute has arisen, to be bound by the arbitration award. The Mandatory Fee Arbitration Act procedures permit a court trial after non-binding arbitration, or a subsequent binding contractual arbitration if the parties have agreed to binding arbitration, if either party rejects the award within 30 days after the award is mailed to the parties.

## **2. MEDIATION**

Attorney and Client agree to try to settle all disputes between them through private mediation before initiating any arbitration, litigation or other dispute resolution procedure. The disputes which are subject to mediation include without limitation the following: claims regarding the construction, application or performance of services, claims for breach of contract, professional negligence, breach of fiduciary duty, misrepresentation, fraud and attorney's fees and costs. Any party to the agreement may initiate mediation through service of a written demand in person or by mail or, if agreed to by the parties in advance, by e-mail to the opposing party. The mediation session will occur at a time mutually agreed upon by the parties in consultation with a mutually selected mediator, though no later than \_\_\_ days after the date of services of the initial notice, unless otherwise agreed by the parties and mediator. Each party shall bear its own fees and costs for the mediation.

## **3. INTEREST CHARGES**

If a bill is not paid when due, interest will be charged on the principal balance (consisting of any unpaid fees, costs, and/or expenses) shown on the bill. Interest will be calculated by multiplying the unpaid balance by the periodic rate of .833% per month (TEN PERCENT [10%] PER ANNUM). The unpaid balance will bear interest until paid.

## **4. REPLENISHING DEPOSIT**

To commence the representation, Client has provided [must provide] Attorney with a \$\_\_\_\_\_ deposit. Attorney will hold the deposit in Attorney/Client Trust Account and apply it to each bill when rendered by Attorney. Client will pay any additional balance in an amount necessary to return the deposited amount to \$\_\_\_\_\_. At the conclusion of the matter, the deposit will be applied to the final bill, in which event Client will be responsible for any remaining amount due over and above the deposit. If no amount remains due after the deposited funds have been applied to the final invoice, and should any deposited funds remain, client is entitled to and will have those funds returned in a timely manner.

## **5. ATTORNEY'S FEES**

The prevailing party in any action or proceeding arising out of or to enforce any provision of this Agreement, with the exception of a fee arbitration or mediation under Business and Professions Code Sections 6200-6206, will be awarded reasonable attorney's fees and costs incurred in that action or proceeding, or in the enforcement of any judgment or award rendered.

**6. OTHER PAYOR- INSURANCE**

Client has informed Attorney that Client may have insurance coverage which may pay for some or all of Attorney's fees and costs that may become due under this Agreement. Attorney will make a claim on Client's behalf with the insurer requesting that the insurer pay for the Attorney's services and costs incurred. It is understood, however, that if the insurer refuses or fails to pay Attorney for any reason, Client will remain responsible for all Attorney's bills as they are rendered upon the billing and payment terms set forth in this Agreement. Should the insurer pay only a portion of the fees and costs, Client will be responsible for the balance.

**7. FLAT FEE**

Client agrees to pay a flat fee of \$\_\_\_\_\_ for Attorney's services under this Agreement. This fee is fixed and does not depend on the amount of work performed or the results obtained. Client acknowledges that this fee is negotiated and is not set by law. The fee shall be paid by Client [Option 1: on \_\_\_\_ (insert date)]; [Option 2: in equal installments of \$\_\_\_\_ due \_\_\_\_]; [Option 3: when the work is completed]. The Flat Fee, upon payment, becomes the property of Attorney and need not be deposited into the Attorney/Client trust account. Either party may terminate the representation at any time, subject to Attorney's obligations under the Rules of Professional Conduct and the approval of the court if the matter is in litigation. If either party terminates the representation before Attorneys have provided all legal services described in this Agreement, Client may be entitled to a refund of all or part of the flat fee based on the value of the legal services performed prior to termination.

**8. DIVISION OF CONTINGENCY FEES**

Client agrees that Attorney may associate other attorneys to assist in the representation. Client's legal fees under this agreement will not increase by reason of this association. The associated attorneys will receive \_\_\_\_\_(fill in fraction or other method) of the fee and this firm will receive \_\_\_\_\_(fill in fraction or other method).

By signing this agreement, Client has read and understands the above and confirms his/her/its consent to the terms of the association of counsel and division of fees.

**9. "OTHER ATTORNEY"-HOURLY**

**OPTION 1 BILLED AS A COST**

It is agreed that Attorney will associate with another attorney, [name], who will assist Attorney regarding the representation. [Name] will be compensated by Attorney on an hourly basis at a rate of \$\_\_\_\_\_ per hour. These charges will be billed by Attorney to Client as a cost

as defined in this Agreement.

**OPTION 2 DIRECT BILLED**

It is agreed that Attorney will associate with another attorney, [name], who will assist Attorney regarding the representation. [Name] will be compensated on an hourly basis at a rate of \$\_\_\_\_\_ per hour. These charges will be billed directly to Client by attorney [name].

[NOTE: This language was not created for use in contingency cases.]

**10. PAYMENT OF REFERRAL FEE**

Client acknowledges that attorney \_\_\_\_\_(fill in name) who referred the case to this Attorney/firm will receive a referral fee of \_\_\_\_\_(fill in percentage) of all sums paid in this matter. Client’s legal fees will not be increased by reason of the referral fee.

By signing this agreement, Client confirms his/her/its consent to the terms of the payment of the referral fee.

**11. LIEN—HOURLY FEE AGREEMENT**

Client hereby grants Attorney a lien on any and all claims that are the subject of Attorney’s representation under this Agreement. Attorney’s lien will be for any sums owing to Attorney for any unpaid costs, or attorney’s fees, at the conclusion of Attorney’s services. The lien will attach to any recovery Client may obtain, whether by arbitration award, judgment, settlement or otherwise. An effect of such a lien is that Attorney may be able to compel payment of fees and costs from any such funds recovered on behalf of Client even if Attorney has been discharged before the end of the case. The lien shall exist and attach to any recovery only for costs already advanced by Attorney pursuant to Paragraph \_\_ [insert paragraph number pertaining to Costs]. Because a lien may affect Client’s property rights, Client may seek the advice of an independent lawyer of Client’s own choice before agreeing to such a lien. By initialing this paragraph, Client represents and agrees that Client has had a reasonable opportunity to consult such an independent lawyer and—whether or not Client has chosen to consult such an independent lawyer—Client agrees that Attorney will have a lien as specified above.

\_\_\_\_\_(Client initials here) \_\_\_\_\_(Attorney initials here)

**12. EXCLUDED SERVICES**

Attorney’s representation does not include independent or related matters that may arise, including, among other things, claims for property damage, workers’ compensation, disputes with a health care provider about the amount owed for their services, or claims for reimbursement (subrogation) by any insurance company for benefits paid under an insurance policy. [Expand as necessary.]

### **13. OPTIONAL CONTINGENCY LANGUAGE**

#### **A. NO RECOVERY LANGUAGE**

If no recovery is obtained, Client will be obligated to pay only for costs, disbursements and expenses, as described in Paragraph \_\_ [insert paragraph number pertaining to Costs]. These may include Client's obligation to pay attorney fees and costs of the type enumerated in Paragraph \_\_ [insert paragraph number pertaining to Costs] to any prevailing party, either pursuant to statute or court order.

#### **B. ATTORNEY ADVANCING COSTS LANGUAGE**

Client will not be obligated to pay Attorney for costs, disbursements or expenses advanced by Attorney. However, if Client is not the prevailing party the court may award attorney fees and costs of the type enumerated in Paragraph \_\_ [insert paragraph number pertaining to Costs] to any prevailing party and payment of such attorney fees and costs will be the sole responsibility of Client.

#### **C. NET RECOVERY OPTIONS**

##### **OPTION 1A:**

##### **STRAIGHT PERCENTAGE OF NET RECOVERY**

The fee to be paid to Attorney will be \_\_\_\_\_ percent (\_\_\_%) of the "net recovery". The term "net recovery" means (1) the total of all amounts received by settlement, arbitration award or judgment, (2) minus all costs and disbursements set forth in Paragraph \_\_ [insert paragraph number pertaining to Costs].

##### **OPTION 1B:**

##### **NET RECOVERY INCLUDING COURT ORDERED FEES**

The term "net recovery" means (1) the total of all amounts received by settlement, arbitration award or judgment, (2) minus all costs and disbursements set forth in Paragraph \_\_ [insert paragraph number pertaining to Costs]. If another party is ordered by the court to pay Client's Attorney's fees and/or costs, that award shall be part of Client's net recovery and the contingent fee shall be based on the Client's total recovery, including the amount of the court ordered award of attorney's fees and/or costs.

##### **OPTION 1C:**

##### **NET RECOVERY GREATER OF NET OR COURT ORDERED FEES:**

The term "net recovery" means (1) the total of all amounts received by settlement, arbitration award or judgment, (2) minus all costs and disbursements set forth in Paragraph \_\_ [insert paragraph number pertaining to Costs]. If another party is ordered by

the court to pay Client's Attorney's fees and/or costs, Client agrees that the attorney's fees and costs payable to Attorney pursuant to this Agreement shall be the greater of: (i) the amount otherwise owed to Attorney under this Agreement if the award of attorney's fees and costs were disregarded; or (ii) the amount of the court ordered award of attorney's fees and costs.]

#### **D. GROSS RECOVERY OPTIONS**

##### **OPTION 2A**

##### **STRAIGHT PERCENTAGE OF GROSS RECOVERY**

The fee to be paid to Attorney will be \_\_\_\_\_ percent (\_\_\_%) of the "gross recovery." The term, "gross recovery" means a percentage of the total of all amounts received by settlement, arbitration award or judgment before deducting any litigation costs and expenses set forth in Paragraph \_\_\_ [insert paragraph number pertaining to Costs] which have been either advanced or incurred by Attorney on behalf of Client.

##### **OPTION 2B**

##### **SCALED PERCENTAGE OF GROSS RECOVERY**

The fee to be paid to Attorney will be a percentage of the "gross recovery", depending on the stage at which the settlement or judgment is reached. The term, "gross recovery" means a percentage of the total of all amounts received by settlement, arbitration award or judgment before deducting any litigation costs and expenses all costs and disbursements set forth in Paragraph 6 which have been either advanced or incurred by Attorney on behalf of Client.

Attorney's fee shall be calculated as follows:

- (a) If the matter is resolved before filing a lawsuit or formal initiation of proceedings, then Attorney's fee will be \_\_\_\_\_ percent (\_\_\_%) of the gross recovery;
- (b) If the matter is resolved prior to \_\_\_ days before the date initially set for the trial or arbitration of the matter then Attorney's fee will be \_\_\_\_\_ percent (\_\_\_%) of the gross recovery; and
- (c) If the matter is resolved after the times set forth in (i) and (ii), above, then Attorney's fee will be \_\_\_\_\_ percent (\_\_\_%) of the gross recovery.

#### **14. CONSENT TO USE OF E-MAIL AND CLOUD SERVICES**

In order to provide Client with efficient and convenient legal services, Attorney will frequently communicate and transmit documents using e-mail. Because e-mail continues to evolve, there may be risks communicating in this manner, including risks related to confidentiality and security. By entering into this Agreement, Client is consenting to such e-mail transmissions with Client and

Client's representatives and agents.

In addition, Attorney uses a cloud computing service with servers located in a facility other than Attorney's office. Most of Attorney's electronic data, including emails and documents, are stored in this manner. By entering into this Agreement, Client understands and consents to having communications, documents and information pertinent to the Client's matter stored through such a cloud-based service.

## Disclosure and Consent-Third Party Payor Payment of Attorney's Fees and Costs

Under California Rules of Professional Conduct 3-310(F) an attorney may not accept compensation from one who is not the client without: (1) assuring the arrangement does not interfere with the attorney's independence or professional judgment on behalf of the client or with the attorney-client relationship, (2) providing for protection of client confidential information and secrets under Business & Professions Code Section 6068(e), (3) providing the client with a written disclosure of the relevant circumstances and the actual and foreseeable adverse consequences arising from the arrangement and (4) obtaining the client's informed written consent.

The potential adverse consequences of having a Third Party Payor responsible for payment of attorney's fees and costs is that the Third Party Payor may: (1) attempt to interfere with the attorney-client relationship between the attorney and client, (2) attempt to interfere with the attorney's exercise of independent professional judgment on behalf of the client, or (3) seek access to client confidential information or secrets contrary to the wishes of the client.

By signing this Agreement, Third Party Payor [insert name or entity] agrees to pay for all legal services which attorney provides to client and costs incurred in the representation of client. Client will remain responsible for and will pay attorney's bills in the event that third party payor fails for any reason to pay attorney's bills as they become due. If a refund is due at the conclusion of the representation, the refund will be paid to the person or entity who paid the fees and costs.

Third Party Payor [insert name or entity] acknowledges this agreement to pay for attorney's fees and costs does not make Third Party Payor a client of Attorney and that an attorney-client relationship will exist only between Attorney and Client. Third Party Payor further agrees that they will not interfere with the attorney-client relationship and will not interfere with the Attorney's exercise of independent professional judgment on behalf of the client. In furtherance of the independent nature of the attorney-client relationship, Third Party Payor acknowledges that it has no right to direct Attorney's handling of Client's matter.

### SELECT ONE:

\_\_\_ It is also understood and acknowledged that Third Party Payor [insert name or entity] will have no right to information regarding the representation and Attorney will not disclose any confidential or privileged information to Third Party Payor, unless client gives written permission to discuss some or all of the Client's matter with Third Party Payor.

### OR

\_\_\_ Client has asked Third Party Payor to participate in consultations with Attorney and may continue to do so with the understanding that Third Party Payor's involvement in any communications with Attorney is solely to further the interests of Client. Communications involving Third Party Payor [insert name,] are therefore intended to remain confidential and privileged as against persons or entities other than Attorney, Client and Third Party Payor. It is further understood and agreed that Attorney may share confidential information with Third Party Payor except when Client directs Attorney to keep information confidential. To the extent Client desires communications and information to remain confidential, Third Party Payor agrees that payment and receipt of Client confidential information or secrets shall not in any way limit Client's confidentiality rights or waive any privilege.

By signing this Agreement, Client and Third Party Payor [insert name or entity] acknowledge they have: (1) read and fully understand this disclosure and consent form, (2) agreed that Attorney may accept compensation from [insert name or entity] to provide legal services to Client under the terms and conditions of this Agreement and (3) that [insert name or entity] has been represented and advised by counsel in entering into this Agreement or has waived their right to such representation and advice.

Dated: \_\_\_\_\_

CLIENT: \_\_\_\_\_

Dated: \_\_\_\_\_

THIRD PARTY: \_\_\_\_\_

Dated: \_\_\_\_\_

ATTORNEY: \_\_\_\_\_

## Joint/Multiple Client Disclosure and Consent Form

Clients [NAME] and [NAME(s)] (“Joint Clients”) have asked Attorney to jointly represent them in [DESCRIBE MATTER]. While joint representation may result in economic or tactical advantages, it also involves risks and potential conflicts of interest. The California Rules of Professional Conduct require that before an attorney may concurrently represent two or more clients in a matter, the attorney must: (1) inform each client in writing of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the each client arising from the proposed joint representation, and (2) obtain the informed written consent of each client.

The purpose of this disclosure is to set forth potential conflicts of interest relating to the proposed joint representation, and what Attorney perceives to be the relevant circumstances and the actual and/or reasonably foreseeable adverse consequences. Assuming that both [OR ALL IF MORE THAN TWO CLIENTS] Clients provide their informed written consent, Attorney agrees to represent Joint Clients in [DESCRIBE MATTER]. Attorney understands that this arrangement is desired by Joint Clients as a means of securing the economic and tactical advantage of joint representation.

California law and Rule 3-310(C)(1) of the Rules of Professional Conduct require Attorneys to provide written disclosure of any actual and reasonably foreseeable adverse consequences arising from the proposed joint representation, and to obtain all clients’ informed written consent to the joint representation. While Attorneys do not perceive any actual or reasonably foreseeable adverse consequences at this time, Clients should consider the following potential adverse consequences prior to consenting to the proposed joint representation:

(1) When an attorney represents only one client, there is no concern regarding shared or divided loyalties; rather all of the attorney’s efforts are focused on representing the interests of that one client. When an attorney represents two or more clients in the same matter, the attorney acts to protect the interests of each client, which may result in divided, or at least shared, attorney-client loyalties. Issues may arise as to which Attorney’s representation of any one client may be limited by Attorney’s representation of any other joint client. While neither Attorney nor Clients are aware of any such issues at this time, divided loyalty is always a risk in the event of joint representation.

(2) Attorneys owe clients a duty to preserve secrets and confidential communications, unless that duty is excused by the State Bar Act, the Rules of Professional Conduct or other law. When an attorney represents more than one client in a matter, pursuant to Evidence Code §962 and California case, law there is no attorney-client privilege with respect to communications that take place between any of the Joint Clients and the attorney should any of the Joint Clients ever have a dispute in which those communications are relevant. Attorney has a duty to keep all of the Joint Clients reasonably informed of significant developments. Any information either of the Joint Clients discloses to Attorney during the course of the joint representation may be disclosed to the jointly represented clients during the course of the joint representation.

(3) Conflicts may arise in particular with regard to: (a) litigation strategies that can impact different clients differently; and (b) settlement issues, inasmuch as Joint Clients may each have different ideas regarding the propriety of settlement. At this point, Attorney does not have sufficient information to evaluate whether a potential settlement presents a conflict between the Joint Clients’ interests. If Attorney perceives there is a conflict with respect to a settlement demand or litigation strategy, there may be a need for Joint Clients to consult independent counsel.

(4) Joint representation may also create an issue regarding custody, or control, of the original file when an attorney-client relationship ends. By signing this agreement, each of you agree that if Attorney stops representing one of you, but continues to represent the other(s), the client(s) represented by Attorney is entitled to maintain custody or control of the original file. The other party or parties is/are entitled to a copy of Client Papers as defined in Rule 3-700(D) of the Rules of Professional Conduct.

(5) In the event of a dispute or conflict between any of the Joint Clients, there is a risk that Attorney may be disqualified from representing one or more of the Joint Clients or that it may otherwise be inappropriate for Attorney to continue with the joint representation absent written consent from each of the Joint Clients.

Select one

(6) [FOR USE WHEN REPRESENTING MULTIPLE PLAINTIFFS]

If there is insufficient insurance or assets to cover the damages of each client, there may be disputes regarding how to allocate the insurance proceeds or assets between the Joint Clients.

or

(6) [FOR USE WHEN REPRESENTING MULTIPLE DEFENDANTS]

If there is a judgment against any of the Joint Clients which is not covered by insurance, that client may have rights of indemnity against one or more of the other parties. If any disputes should arise between the Joint Clients, Attorney will not advise or represent any of the clients in connection with any claim for contribution or indemnity that it may have against any of the other clients.

[OPTION RE PUNITIVE DAMAGES]

The complaint includes a claim for punitive damages, which presents the potential for a conflict inasmuch as an award of punitive damages is not insurable. Attorney will endeavor to keep each of the Joint Clients advised as to their potential risks and exposure with respect to the punitive damage claim, or with respect to any over policy limits claims should one ever be made.

Because there is currently no conflict of interest, Attorney may jointly represent Joint Clients in connection with the [DESCRIBE MATTER] provided that Joint Clients both/all give your informed consent in writing. Each Joint Client should feel free to consult with independent counsel before finalizing your decision to proceed with the joint representation, including whether or not to sign this conflict disclosure and waiver. Attorney emphasizes that each Joint Client remains free to seek independent counsel at any time even if they decide to sign this consent.

Notwithstanding the foregoing, it is Attorney's current understanding that each of the Joint Clients desires to have Attorney jointly represent them in the [DESCRIBE MATTER]. By signing this Disclosure and Consent, each client expressly acknowledges that he/she or it (acting through its authorized representative): (1) has carefully read and fully understands the disclosures set forth above; (2) has carefully considered all of the circumstances and potential conflicts described above; (3) has had the opportunity to consult with independent counsel regarding the disclosures and consent in this agreement; and (4) agrees to the joint representation by Attorney of Clients in [DESCRIBE MATTER].

Dated: \_\_\_\_\_ CLIENT: \_\_\_\_\_

Dated: \_\_\_\_\_ CLIENT: \_\_\_\_\_

Dated: \_\_\_\_\_ ATTORNEY: \_\_\_\_\_

## Lew, Elizabeth

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**From:** Emily Day <eday@cccba.org>  
**Sent:** Thursday, September 06, 2018 11:32 AM  
**To:** Lew, Elizabeth  
**Cc:** 'Rod Marraccini'  
**Subject:** CCCBA Fee Arbitration Committee Meeting Minutes August 30, 2018

Dear Elizabeth,

The CCCBA Board of Directors asked the Fee Arbitration Committee to present to them at their November board meeting a recommendation as to the whether or not our Fee Arbitration Program should be maintained or dissolved.

At our meeting August 30, 2018, our committee discussed the following:

Is running the program a good thing for the bar? Why are we doing this? Is it beneficial to our members?

It is a thankless job. Especially burdensome when it comes to dealing with several cases each year wherein the parties wrangle over the process presenting problems to which the Chair and committee members must review and resolve.

Reviewing the statistics showed that only a small number of the awards are binding. We do not know the disposition of the non-binding cases. Do they become binding after 30 days or is trial de novo filed? We don't know because the only information we receive is when client returns a survey; and many of them do not respond.

It was also noted that according to our statistics that most disputes that go to mediation settle. Since mediation seems to be most beneficial, they wondered if it would it be possible to be a test county and partner with the State Bar MFA Program to offer only the mediation part of the fee arbitration process, since the State Bar MFA does not currently offer to mediate dispute prior to an arbitration hearing.

A major concern, is of course, how to set-up a procedure that would protect clients who receive a Notice of Client's Right to Fee Arbitration so that they can file with the State Bar MFA within the 30 day deadline and still have the option of mediation in Contra Costa County. Have you ever considered this type of partnership? We would like to know your thoughts and ideas.

The other avenue we are considering would be to dissolve the fee arbitration program and add a mediation program to our Client Relations program. This would offer mediation for all client/attorney disputes including fee disputes at any time during the case before they get to the stage where the Notice of Client's Right to Fee Arbitration has to be served. If fee disputes can be dealt with early before the case concludes; before it gets to the point requiring the Notice to be served, it may reduce the number of fee arbitrations that might otherwise be filed. Contra Costa attorneys would refer

clients to the State Bar MFA Program when they serve the required Notice, so the 30 day deadline to file would be protected.

Let me know what you and your staff think about these suggestions.

Thank you for your help.

Respectfully,

*Emily Day*

Fee Arbitration Program Director  
Systems Administrator  
(925) 370-2541

Contra Costa County Bar Association

Serving our members and the community since 1934

One Concord Center  
2300 Clayton Road, Suite 520  
Concord, CA 94520

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