

# **Voluntary Fee Mediation Rules of Procedure Sacramento County Bar Association**

## **I. APPOINTMENT AND RESPONSIBILITIES**

It is the policy of Sacramento County Bar Association (“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 Mandatory Fee 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 Fee Mediation. The Mandatory Fee Arbitration Committee (“Committee”) shall have the authority and responsibility to appoint and maintain a Panel of qualified Mediators in accordance with the Mandatory Fee Arbitration Committee's Arbitration Rules of Procedure and these Mediation Rules. Further, the Committee Chair shall determine all questions of interpretation of the Rules at any stage of the proceedings.

## **II. JURISDICTION**

**A.** Participation in this Attorney/Client Fee Mediation Program (“Program”) is entirely voluntary for the parties. No party to any fee dispute shall be required to engage in Mediation through this Program, and any party may terminate the Mediation at any stage.

**B.** The Program shall have jurisdiction to perform Mediation of Attorney/Client Fee Disputes under the authority of Business and Professions Code Section 6200.

## **III. APPOINTMENT/QUALIFICATION OF MEDIATORS**

The Program shall appoint qualified volunteer Mediators, both Attorneys and Non-Attorneys, to a pool of Mediators. The Committee shall establish and publish guidelines for the qualifications of Mediators, which include the requirement that all Mediators have a minimum of 32 hours of mediator training which includes classroom and practical training.

## **IV. THE PROCESS**

### **A. Commencement of Mediation**

The matter will proceed to mediation only if all parties indicate on the Request for Fee Arbitration and Reply forms that they wish to mediate the fee dispute or if all parties agree in writing to submit the matter to mediation at a later time. If all parties do not wish to mediate, the matter will proceed to arbitration in accordance with the Mandatory Fee Arbitration Rules of Procedure.

## **B. Assignment of Mediator**

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

## **C. Disqualification of Mediator**

1. The Program shall, as part of the assignment process, inform the prospective Mediator of the names of the parties and the nature of the fee dispute and ask if there is any personal bias regarding the parties or the subject matter, or any reason that the perception of bias could arise with any of the parties. A Mediator who has any personal bias, or who feels that the perception of bias may exist, regarding a party or the subject matter of the dispute, shall not serve as a Mediator in the dispute.

2. Any party may challenge one (1) Mediator for no cause and an unlimited number for cause. The challenge must be made in writing no later than five (5) working days after receipt of the Mediator assignment, addressed to the Program, with a copy to the Mediator and the other party.

3. Upon the withdrawal or removal of the Mediator, the Program shall reassign the matter and notify the parties of the new Mediator within ten (10) calendar days.

## **D. Mediation Session Date**

Within ten (10) calendar days after the mailing of the final Mediator assignment, the Mediator shall arrange a Mediation date which shall take place within thirty (30) calendar days after the Mediator assignment was mailed. The Mediator shall promptly send the Agreement to Mediate, which shall include notification of the location, date and time of the mediation session, to the parties and the Program.

## **E. Mediation Session Date Continuance**

Any request for a continuance of the session date may be made to the Mediator, with a copy to the Program and all parties. A continuance will be granted only with the agreement of all parties. Should one side object to a continuance request, the requesting party shall be given the choice to either attend the session on the date set or proceed directly to Arbitration without utilizing the Mediation service. The Mediator shall promptly notify the Program in writing of any continuance or of the necessity to proceed to arbitration.

## **F. Preparation for the Mediation Session**

Prior to the first Mediation session, the Attorney will provide copies of the relevant detailed billing records and any fee agreement to the Mediator and the other side, if not already included in the Attorney's Request or Reply form. The parties may, by agreement, exchange other documents containing information relevant to the dispute.

Either or both parties may, and are encouraged to, provide the Mediator with a brief written statement outlining any pertinent information not contained in the Request or Reply for Resolution of a Fee Dispute. Any party submitting such a brief may also provide the other side with a copy. Parties may, if they choose, provide additional material for the Mediator's review.

The Mediator and each party to the Mediation shall sign a Mediation Agreement, in the form provided by the Program, which substantially complies with The State Bar of California's approved form, prior to the commencement of the first Mediation session.

### **G. 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 Staff with a copy to the Mediator and the other side.

### **H. The Mediation Session**

**1. Costs:** The filing fee already paid to the Program for the filing of the Request for Arbitration of a Fee Dispute includes up to four 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 be no more than \$150 per hour notwithstanding that a Client may have been granted a waiver of the Program filing fee. If a Client is unable to pay for Mediator time beyond the first four 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.

**2. Attendees:** Only the parties to the Mediation, their Attorneys or other advisor(s), if any, and the Mediator have the right to be present during the Mediation. However, the Mediator shall have the authority to determine if others may be present during the process.

**3. Communication:** Nothing in these Rules shall prevent the Mediator from meeting with the parties and/or their advisors separately during the course of the Mediation or from otherwise communicating separately with them. At the discretion of the Mediator, any Mediation session may be conducted by telephone.

**4. Failure to Appear:** If a party fails to appear, the Mediator shall have the option of rescheduling the Mediation or terminating the Mediation. The Mediator shall report any such action taken to the Committee.

### **I. The Outcome**

#### **1. Resolution**

If the parties resolve the dispute, the points of agreement shall be reduced immediately to writing at the session. All parties shall sign and retain an original of the settlement agreement. Signing of the Agreement indicates that it accurately sets forth the points agreed to. The

Mediator shall not draft any release, or provide legal advice concerning the terms of the agreement. The Mediator shall promptly notify the Program in writing that the matter resolved. The file will be closed and the Staff shall forward to the parties a copy of The State Bar of California's Your Rights After Mediation. There is no refund of the filing fees when the Mediation is successful and the matter settles.

**(a) Written Agreement Requirements**

**(1) Responsible Attorney:** The State Bar of California's Guidelines and Minimum Standards require that each mediated agreement in which the parties agree that the Client shall receive a refund of previously paid fees/costs shall include the name of the individual responsible Attorney(s) responsible for making the refund.

**(2) Required Language:** Each mediated agreement shall be in writing and signed by the Client and the responsible Attorney(s) and shall include substantially the following language:

The following agreement is made (using full names):

**(a)** [Client] [Non-Client Party] \_\_\_\_\_, shall pay to Attorney, \_\_\_\_\_ the sum of \$ \_\_\_\_\_, who shall accept such payment in full settlement of the covered issues; **or**

**(b)** Attorney, \_\_\_\_\_, shall refund to Client, \_\_\_\_\_, the sum of \$ \_\_\_\_\_; who shall accept such payment in full settlement of the covered issues, **or**

**(c)** Nothing further shall be paid by either Attorney or Client or Non-Client; **and**

**(d)** The parties have considered the allocation of the filing fee paid to the Program in making this agreement. The parties agree that the arbitration/mediation filing fee of \$ \_\_\_\_\_ shall be apportioned as follows: [Client] [Non-Client] shall pay \$ \_\_\_\_\_ and Attorney shall pay \$ \_\_\_\_\_ of the mediation filing fee.

**(e) If a Lawsuit is Pending,**

(1) Judgment may be entered immediately based on this agreement.

or

(2) Judgment may be entered if there is a breach of this agreement

**(f) Complete, Final and Binding Agreement:**

The parties herein agree that they have reached a full and final settlement of all disputes between these parties regarding fees or costs. This Settlement Agreement is binding and it contains the material terms of the agreement between the parties and, if necessary for

enforcement, shall be exempt from confidentiality. The original of this agreement shall be filed with the Program under whose supervision this mediation was conducted, and 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 §1152, et seq. and is admissible in evidence to enforce the settlement.

## **2. No Resolution**

If the parties are unable to resolve the dispute through Mediation, the Mediator shall notify the Program in writing and the matter will proceed to Arbitration in accordance with the Rules of Procedure for Mandatory Arbitration. In such cases, the Mediator shall be disqualified from serving as the Arbitrator.

## **V. CONFIDENTIALITY**

**A.** All communications, negotiations, or settlement discussions by and between participants and/or Mediators shall remain confidential except for the purposes of judicially enforcing the terms of any settlement reached through the mediation, in which event, 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 §1152, et seq. and is admissible in evidence to enforce the settlement.

**B.** The Mediation session or sessions, or any documents prepared for or during the Mediation, shall be confidential, in accordance with the provisions of California Evidence Code Sections 1115-1128.

**C.** The Mediator, Program/Association Staff and Committee members shall be 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.