

7. Pending Lawsuit or Arbitration to Collect Attorney's Fees and Costs

- YES, Attorney has filed a lawsuit or another arbitration proceeding against Client to recover fees which are the subject of this OCBA fee arbitration proceeding.

OCBA will arbitrate a fee dispute if requested by Attorney *provided that* all parties stipulate to stay further court or other arbitration proceedings pending OCBA arbitration. Attach a conformed copy of the stipulation to stay court or other arbitration proceedings pending OCBA arbitration. If a lawsuit or other arbitration proceeding has been filed or initiated and a conformed copy of the stipulation to stay court or other arbitration proceedings pending OCBA arbitration signed by all parties does not accompany this petition, OCBA will take no further action on this petition.

- NO, Attorney has not filed such a lawsuit or arbitration proceeding and is not aware of any such lawsuit or arbitration proceeding.

CLIENT CAUTION: A lawsuit filed by an attorney to recover fees which are the subject of a pending OCBA fee arbitration proceeding or an arbitration proceeding filed by an attorney with another arbitration program *may* be postponed during the pendency of OCBA arbitration proceedings. The lawsuit or arbitration will **not** be automatically postponed upon filing of this petition with OCBA. Client must properly file a *Notice of Stay of Proceedings* in the court where the lawsuit is pending or with the other arbitration program in order to postpone the lawsuit or arbitration. Client may lose the right to arbitrate this fee dispute if the *Notice of Stay of Proceedings* is not properly filed with the court or other arbitration proceeding. OCBA does **not** file the *Notice of Stay of Proceedings* under any circumstance. Upon request, OCBA will provide client with a form *Notice of Stay of Proceedings* which Client may complete and file with the court or other arbitration proceeding.

8. Description of Fee Dispute (See Attachment 8)

On a separate sheet of paper, please provide a description of the fee dispute. Please provide enough information to make it understandable to someone without your knowledge or understanding of the circumstances of the dispute. Client will be requested to respond to the petition and will also submit a description of the dispute. Please write legibly or type.

9. Notice of Arbitration Rights

- YES, Attorney mailed a *Notice of Client's Right to Arbitration* to Client informing Client of Client's fee arbitration rights. Attach a copy and proof of service to this petition.
- NO, Attorney did not mail any such notice to Client.

CLIENT CAUTION: Client will lose Client's right to arbitrate this fee dispute before OCBA if Client:

Fails to properly file a *Petition to Arbitrate a Fee Dispute* within thirty (30) days from receipt of a *Notice of Client's Right to Arbitration*, or

Files an answer to any complaint filed by Attorney for collection of attorney's fees or costs which are the subject of the fee dispute after Client receives a *Notice of Client's Right to Arbitration*, or

Files a reply, answer or other responsive paper to any petition filed by Attorney with any other arbitration program or organization for collection of attorney's fees or costs which are the subject of the fee dispute after Client receives a *Notice of Client's Right to Arbitration*, or

Files any pleadings or papers in court or with any other arbitration program or organization seeking a court or other arbitration program resolution of the fee dispute, or seeking any affirmative relief against Attorney for damages or otherwise based upon alleged legal malpractice, professional negligence or professional misconduct.

10. Amount in Dispute - Filing Fee

The filing fee for this *Petition to Arbitrate a Fee Dispute* is based upon the total amount in dispute. The total “amount in dispute” is the amount of unpaid fees and costs which Attorney is seeking to collect from Client plus the total amount of any fees and costs which Client previously paid and believes were not earned by Attorney and which should be refunded to Client.

- a. Enter the total amount billed by Attorney to date..... \$
- b. Enter the total amount paid to Attorney to date..... \$
- c. Enter the total **amount in dispute** (this may include fees and costs already paid and fees/costs outstanding)..... \$

If the total amount in dispute is *less than or equal to* \$1,500.00, the filing fee is \$75.00. If the total amount in dispute is more than \$1,500.00, the filing fee is five percent (5%) of the total amount in dispute. The maximum filing fee is \$5,000.00.

- d. The total **filing fee** for purposes of this fee arbitration is..... \$

11. Type of Legal Matter

Please check one box which best describes the type of legal matter which became the subject of this fee dispute.

- | | | |
|--|---|--|
| <input type="checkbox"/> Administrative | <input type="checkbox"/> Child Custody (Family Law) | <input type="checkbox"/> Military |
| <input type="checkbox"/> Adoptions | <input type="checkbox"/> Family Law | <input type="checkbox"/> Medical Malpractice |
| <input type="checkbox"/> Business Bankruptcy | <input type="checkbox"/> Federal Law | <input type="checkbox"/> Patents, Trademarks and Copyrights |
| <input type="checkbox"/> Individual Bankruptcy | <input type="checkbox"/> Housing | <input type="checkbox"/> Personal Injury and Property Damage |
| <input type="checkbox"/> Civil Appellate | <input type="checkbox"/> Insurance | <input type="checkbox"/> Real Property |
| <input type="checkbox"/> Corporate and Business | <input type="checkbox"/> Immigration and Naturalization | <input type="checkbox"/> Social Security |
| <input type="checkbox"/> Consumer | <input type="checkbox"/> International | <input type="checkbox"/> Taxation |
| <input type="checkbox"/> Criminal | <input type="checkbox"/> Juvenile | <input type="checkbox"/> State and Local Welfare |
| <input type="checkbox"/> Discrimination and Civil Rights | <input type="checkbox"/> Labor and Employment | <input type="checkbox"/> Other (please specify): |
| <input type="checkbox"/> Wills, Trusts and Estates | <input type="checkbox"/> Mental Health | _____ |
| | | _____ |

12. Prior Agreement to Arbitrate

- YES, Client has agreed in writing to fee arbitration. Attach a signed copy of the agreement to this petition.
- NO, Client has not previously agreed to fee arbitration.

13. Effect of Arbitration

Advisory Arbitration. If either Client or Attorney is not satisfied with the arbitration award (the decision of the Arbitrator(s)), then Client or Attorney may petition the court for a court hearing (a trial *de novo*) within thirty (30) days from the date that the arbitration award is mailed to Client and Attorney. If either party does petition for a court hearing within the thirty (30) day period, the Advisory Arbitration Award will be without legal effect. **CAUTION:** Advisory arbitration becomes **final and binding** on all parties thirty (30) days after the date the arbitration award is mailed to Client and to Attorney *unless* a petition is properly filed in court prior to the expiration of the thirty (30) day period.

Binding Arbitration. If both Client and Attorney agree that the arbitration may proceed as Binding Arbitration, then the Arbitration Award becomes immediately final and no further proceedings, no court hearing or appeal are permitted. If the Client and Attorney do not both agree to Binding Arbitration, the proceedings will be Advisory Arbitration. If the amount in dispute is \$1,500.00, or less, Attorney must stipulate to binding arbitration. **If the amount in dispute is \$1,500.00, or less and Attorney does not want to stipulate to binding arbitration, Attorney may contact the State Bar of California Mandatory Fee Arbitration Program at 415/538-2020 to obtain the forms to file with the State Bar's program.**

Attorney agrees to Binding Arbitration or Advisory Arbitration.

14. Number of Arbitrators

If the amount in dispute is \$10,000.00 or less, the matter will be assigned to one (1) Arbitrator.

If the amount in dispute is over \$10,000.00, the matter will be assigned to a panel of three (3) Arbitrators (at least one of whom will be a non-attorney) *unless* the parties agree to have the matter heard by one (1) arbitrator.

Attorney agrees to one (1) Arbitrator or Three (3) Arbitrators.

15. Mediation

Please read the information included with this packet regarding mediation. Please indicate below whether or not you wish to try to resolve this dispute through mediation. Mediation is a process that allows the parties themselves to achieve a settlement of their dispute. The mediator will not decide the dispute. The mediator's role is to assist the parties in coming to a mutually agreeable settlement. Mediation is a consensual process requiring both parties to compromise. If the client does not also agree to mediation, this dispute will be arbitrated. If the parties are unable to resolve their dispute through mediation, the matter will proceed to arbitration, an arbitrator will be appointed and a hearing will be scheduled.

YES, I would like to try to resolve this dispute through mediation.

NO, I would not like to try to resolve this dispute through mediation.

16. Client – Attorney Relationship

I hereby stipulate and agree that the OCBA has authority and jurisdiction to decide the issue of whether an attorney-client relationship (or other legal basis for an award of fees) existed between the parties to this fee dispute. The OCBA MFA Committee is only empowered to hear disputes over fees and costs in matters where there is an actual attorney-client relationship or other legal basis for the payment of fees and costs for professional services rendered.

CLIENT CAUTION: Please note that if you do not check this option box, your petition may not be processed by the OCBA Mandatory Fee Arbitration Committee pursuant to Rule 4(l) of the OCBA Rules of Procedure for Mandatory Fee Arbitration.

17. Refunds

In no event will a refund be granted if the parties have not settled their fee dispute and properly notified the OCBA in writing. In each filed matter, \$75.00 will be retained as a non-refundable administrative fee regardless of disposition. If the matter has not been assigned to an arbitrator, a panel of arbitrators or a mediator and if proper written notice is given to OCBA, seventy-five percent (75%) of the filing fee will be refunded. If the matter has been assigned and no hearing has been scheduled, fifty percent (50%) of the filing fee will be refunded. If the matter has been scheduled for hearing, twenty-five

percent (25%) of the filing fee will be refunded *provided that* proper written notice is given to OCBA and to the arbitrator(s) or mediator at least five (5) business days prior to the first scheduled hearing date. There will be no filing fee refunds if request is made in any manner after five (5) days prior to the first scheduled hearing date.

18. OCBA Staff

California state law prohibits any person who is not a licensed attorney from giving any legal advice or counsel. There are no attorneys on the OCBA staff. No OCBA staff member is permitted to give any legal advice, counsel or opinion concerning any matter-fee disputes, fee dispute arbitrations or collection of arbitration awards. The function of the OCBA staff is to process this petition and related fee arbitration paperwork.

19. Basis of Arbitrator Awards

In general, Arbitrators are to decide whether the services provided by an attorney were necessary and whether the fees charged for services were reasonable. Factors which may be considered when making an arbitration award (a decision) include, but are not limited to: the nature of the fee arrangement, the reasonable value of the attorney's services, the experience of the attorney, the complexity of the legal matter, the diligence of the attorney in pursuing the legal matter, and the result obtained.

20. Starting the Fee Arbitration

To commence fee arbitration proceedings, Attorney must:

- (1) Complete and personally sign the original *Petition to Arbitrate a Fee Dispute*.
- (2) Unless Client has previously agreed in writing to fee arbitration and a signed copy of the agreement is attached, obtain Client's signature on the original petition.
- (3) Return the original and three (3) copies of the *Petition to Arbitrate a Fee Dispute* and all attachments to the Orange County Bar Association Mandatory Fee Arbitration Committee at the following address:

Orange County Bar Association
Mandatory Fee Arbitration Committee
Post Office Box 6130
Newport Beach, California 92658
- (4) Send a copy of the petition and all attachments to Client and if known, their attorney. The petition and attachments may be sent to Client by first class mail or Attorney may arrange to have all documents personally served on Client.
- (5) Enclose the proper filing fee with the original petition. Do not send cash. Checks should be made payable to "Orange County Bar Association."

By signing this *Petition to Arbitrate a Fee Dispute*, I certify that I have read and understand this petition and the Rules of Procedure for Mandatory Fee Arbitration. Prior to filing this petition, I attempted to resolve this fee dispute to the best of my ability. I hereby declare that the facts, circumstances and information recited herein are true and correct. For purposes of this fee arbitration proceeding, I understand and agree that the Arbitrator hearing this fee arbitration dispute shall **not** have jurisdiction to award any party to this arbitration attorney's fees or costs of arbitration.

Prior to filing this *Petition to Arbitrate a Fee Dispute*, I mailed a copy of this petition and all attachments by first class mail or have served a copy on Client at Client's address set forth at Section 3 and their attorney, if known.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

ATTORNEY'S SIGNATURE

DATE PETITION SIGNED

Client Stipulation to Fee Arbitration

I am the Client named in the above petition. I stipulate and agree that the fee dispute which is the subject of this petition may proceed to arbitration before Arbitrator(s) assigned by the OCBA Mandatory Fee Arbitration Committee. I hereby **waive** the Attorney-Client privilege and authorize OCBA, its staff and Arbitrators to take such action as may be required to resolve this fee dispute. I understand that upon receipt of this petition, the OCBA Mandatory Fee Arbitration Committee will forward fee arbitration information and materials to me at my address set forth at Section 3. I will complete and file the *Reply to Petition to Arbitrate a Fee Dispute* immediately upon receipt of the fee arbitration information and materials.

CLIENT'S SIGNATURE

DATE SIGNED

