

# **SAMPLE FINDINGS** **AND AWARD**

PLEASE NOTE THAT THIS  
AWARD TAKES INTO  
ACCOUNT THE FOLLOWING  
FINDINGS:

- PARTIES AGREED TO  
BINDING ARBITRATION
- THE WRITTEN FEE  
AGREEMENT WAS  
FOUND TO BE VALID,  
THEREFORE, ANALYSIS  
OF SUBSEQUENT  
ISSUES PURSUANT TO  
PECH V. MORGAN AND  
STATE BAR OF  
CALIFORNIA  
ARBITRATION ADVISORY  
1993-02.

1 **BEFORE THE COMMITTEE ON ARBITRATION**  
2 **OF THE LOS ANGELES COUNTY BAR ASSOCIATION**  
3 **ATTORNEY-CLIENT MEDIATION AND ARBITRATION SERVICES**  
4 **COUNTY OF LOS ANGELES, STATE OF CALIFORNIA**

5  
6 In the Matter of the Arbitration Between )  
7 TAYLOR CLIENT ) CASE NO. M-999-21-JB  
8 Client, )  
9 ) FEE ARBITRATION  
10 and ) FINDINGS AND AWARD  
11 ) (BINDING)  
12 ALEX LAWYER, ESQ. ) Date of Hearing: September 8, 2021  
13 Attorney. ) Time of Hearing: 2:30 PM  
14 ) Location: Zoom Videoconference  
15 )

16 **INTRODUCTORY STATEMENT**

17 A mandatory fee arbitration hearing between Taylor Client (“Client”) and Alex Lawyer, Esq., an  
18 attorney-at law, who currently practices at Lawyer & Lawyer, LLC (“Attorney”), was held on  
19 September 8, 2021, at 2:30 PM PST via Zoom Videoconference before Jamie Smith, Esq., Sole  
20 Arbitrator (the “Arbitrator”). Due notice of the Hearing was given to the parties via electronic mail.

21 Client and Attorney were administered an oath, testified, cross-examined and otherwise  
22 participated in the Hearing.

23 Client appeared in person without legal representation.

24 Attorney appeared in person without legal representation.

25 Client agreed to binding arbitration in the Client Petition for Arbitration. Attorney agreed to  
26 binding arbitration in the Attorney’s Reply to Petition for Arbitration of Fee Disputes. Therefore, the  
27 arbitration is binding. Either party may convert this Award into a judgment pursuant to the provisions of  
28 Section 6200 and following of the Business and Professions Code and/or Section 1280 and following of  
the Code of Civil Procedure of the State of California.

1 For purposes of this arbitration Award, the “responsible attorney” is Attorney, Alex Lawyer,  
2 Esq.

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4 **FEES INCURRED AND AMOUNT IN DISPUTE**

- |    |  |             |
|----|--|-------------|
| 5  | 1. The amount that the Client claims should have been charged:   | \$18,500.00 |
| 6  | 2. The amount that the Attorney claims should have been charged: | \$32,920.50 |
| 7  | 3. The amount that Client has paid to Attorney:                  | \$18,500.00 |
| 8  | 4. If there was a written fee agreement, under the agreement,    |             |
| 9  | what fees were charged:  | \$32,920.50 |
| 10 | 5. Amount of the filing fee paid by Client:                      | \$ 721.03   |

11  
12 **UNDISPUTED FACTS**

13 On March 20, 2021, Client engaged Attorney in connection with a petition for dissolution of  
14 marriage. The parties executed an hourly written fee agreement setting forth the terms of their  
15 agreement (e.g., initial deposit, hourly fee rates, etc.) (the “Written Fee Agreement”). Client remitted to  
16 Attorney a refundable initial retainer in the amount of Three Thousand Five Hundred Dollars  
17 (\$3,500.00). In addition, Client paid Attorney a total of Fifteen Thousand Dollars (\$15,000.00) over the  
18 course of the representation.

19 From March 20, 2021, to July 2, 2021, Attorney actively participated and represented Client  
20 pursuant to the terms of the Written Fee Agreement. Despite multiple attempts by Attorney to meet and  
21 confer with Client on the remaining outstanding balance owed to Attorney, such meetings never took  
22 place and Attorney ultimately substituted out of the case due to non-payment for services rendered.

23  
24 **CLAIM OF PARTIES**

25 Client is requesting that Attorney not be awarded any further fees and costs allegedly owed in the  
26 amount of Fourteen Thousand Four Hundred Twenty Dollars Fifty Cents (\$14,420.50). Client believes  
27 that Attorney did more work than was necessary and Client was not aware of the fees and costs that  
28 were accumulating in connection with the case as it was proceeding. Client contends that Attorney

1 could have handled the matters that came up during the case in a more efficient manner, which would  
2 have resulted in lower legal fees and costs.

3 Attorney is requesting that Client be required to pay Attorney Fourteen Thousand Four Hundred  
4 Twenty Dollars Fifty Cents (\$14,420.50), which represents the outstanding balance of the fees and costs  
5 incurred by Attorney in connection with Attorney's representation of Client. Attorney contends that  
6 Client's dissolution of marriage was anything but basic, but rather was incredibly complex and terribly  
7 acrimonious, which led to additional pleadings, appearances and time expended in representing Client's  
8 interests and those of the small children of the marriage.

### 10 ISSUES

11 The matters placed at issue by the Request for Arbitration of a Fee Dispute, Attorney's Reply to  
12 Client's Request for Arbitration and the testimony of the parties, are the following:

- 13 1. The nature of the Written Fee Agreement between the parties.
- 14 2. The nature of Attorney's hourly billing rate; and
- 15 3. The nature of the services performed by Attorney on Client's behalf, the reasonableness of  
16 the fees and costs billed by Attorney, the necessity of the Attorney performed tasks and  
17 whether Attorney is owed additional monies by Client.

### 19 FINDINGS

20 Statement, Stipulations, Reasoning and Determination of Questions Presented

21 [Business & Professions Code §6203(a)]

- 23 1. What is the nature of the Written Fee Agreement between the parties?

24 On March 20, 2021, Client and Attorney entered into the Written Fee Agreement, which set forth  
25 an hourly rate of Three Hundred Fifty Dollars (\$350.00) per hour for the services of Attorney. The  
26 scope of services as set forth in the Written Fee Agreement provided, among other things, the following:  
27

- 28 (a) Attorney would provide legal services to Client in connection with a petition  
for dissolution of marriage;

- 1 (b) Client would pay Attorney Three Hundred Fifty Dollars (\$350.00) per hour in  
2 fees, in addition to all out-of-pocket costs and filing fees incurred;
- 3 (c) Attorney would provide Client with monthly billing statements setting forth  
4 the services performed and applicable fees incurred, as well as any costs; and
- 5 (d) Any modification to the Written Fee Agreement required a writing executed by  
6 both parties setting forth any such modification.

7 Pursuant to Business and Professions Code §6148, an attorney who contracts to represent a client  
8 in which it is reasonably foreseeable that the total expense to a client, including attorney's fees, will  
9 exceed one thousand dollars (\$1,000.00), the contract for services must be in writing. At the time the  
10 contract is entered into, the attorney shall provide a duplicate copy of the contract, signed by both the  
11 attorney and the client, to the client. The written contract shall contain all of the following:

- 12 (a) Any basis of compensation including, but not limited to, hourly rates, statutory fees or  
13 flat fees, and other standard rates, fees and charges applicable to the case.
- 14 (b) The general nature of the legal services to be provided to the client.
- 15 (c) The respective responsibilities of the attorney and the client as to the performance of the  
16 contract.

17 The Written Fee Agreement herein complied with the statute and is a valid agreement between  
18 the parties. Further, the parties orally stipulated at the Hearing that neither party was contesting the  
19 validity of the Written Fee Agreement. In addition, the parties stipulated that the funds paid by Client to  
20 Attorney are accurate and correct.

21 2. What is the nature of Attorney's hourly rate as set forth in the Written Fee  
22 Agreement and whether such rate was unconscionable?

23 The Committee on Mandatory Fee Arbitration's Arbitration Advisory 1993-02 entitled "Standard  
24 of Review in Fee Disputes Where There Is a Written Fee Agreement," sets forth a standard of review  
25 when a written fee agreement complies with *Business and Professions Code* §6148.<sup>1</sup> Upon a  
26 determination that a written fee agreement is in compliance with *Business and Professions Code* §6148,  
27 the next step is to review the written fee agreement's terms to ensure the agreed upon fee is not  
28 unconscionable under Rule 1.5 of the Rules of Professional Conduct.

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<sup>1</sup> *Pech v Morgan* (61 Cal.App.5th 841), a recent published Court of Appeals case, concluded that the standard set forth in Advisory Opinion 1993-02 was "sound and this standard should likewise apply to civil suits for breach of a fee agreement that are adjudicated in the superior court."

1 The Written Fee Agreement set forth Attorney's hourly billing rate of Three Hundred Fifty  
2 Dollars (\$350.00).

3 Attorney was admitted to practice law in the State of California on December 5, 1991, which  
4 equates to Attorney practicing law for over twenty-nine (29) years.

5 Given the number of years Attorney has been practicing law, her vast experience in family law  
6 and the fact that Attorney is a Certified Family Law Specialist, the Arbitrator finds that the hourly rate  
7 charged by Attorney is not unconscionable and is a rate that is charged by similarly experienced  
8 attorneys for similar legal services in the community. Furthermore, Client is not disputing the hourly  
9 rate that was agreed to between the parties pursuant to the Written Fee Agreement.

10 3. What were the (i) nature of the services performed by Attorney on Client's behalf, (ii) the  
11 reasonableness of the fees and costs billed by Attorney, (iii) the necessity of the Attorney performed  
12 tasks and (iv) whether Client is due a refund of previously paid monies?

13 Once Client retained Attorney in the dissolution of marriage proceedings, Attorney provided the  
14 following legal services on Client's behalf, in addition to the expected legal services in connection with  
15 Client's petition for dissolution of marriage (e.g., preparation of the Petition for Dissolution of Marriage,  
16 mandatory settlement conferences, responding to Client's e-mails and phone calls, preparing form  
17 interrogatories, preparing declarations and in-person meetings with Client):

- 18 • Successfully petitioned the Court for an Order granting Client with exclusive control of  
19 the family residence.
- 20 • Successfully defended the spouse's attempt to impute income to Client, due to the fact  
21 that Client's income had been reduced due to health issues. Attorney was successful in  
22 obtaining guideline pendent lite spousal support and not based on a reduced amount.
- 23 • Successfully petitioned the Court for an Order to allow Client control and exclusive use  
24 of the community BMW 325i automobile.
- 25 • Successfully petitioned the Court for an Order for joinder of the community retirement  
26 accounts so that the spouse would cease unilateral withdrawals.

27 Client contends that even though monthly invoices were being mailed to the correct address, they  
28 were not received. Attorney pointed out that on or about May 9, 2021, a declaration signed by Client in

1 connection with documents submitted to the Court in connection with the dissolution of marriage  
2 proceedings included all the invoices generated to that date so that Client was in possession of all  
3 invoices. As such, Attorney argued that Client was aware on or about May 9, 2021, that fees and costs  
4 of almost Ten Thousand Dollars (\$10,000.00) were then due over and above the Eighteen Thousand  
5 Five Hundred Dollars (\$18,500.00) in fees and costs that Client had previously paid in connection with  
6 Attorney's services on Client's behalf.

7 Furthermore, Attorney argued that Client was aware that Attorney was rendering extensive legal  
8 services at Client's direction, which were complex and time consuming, due to the antagonistic nature of  
9 the divorce proceedings. Based on the Written Fee Agreement, Client was also aware that Attorney's  
10 hourly rate was Three Hundred Fifty Dollars (\$350.00) per hour.

11 Attorney had an initial conversation with Client the mounting legal bill on May 30, 2021, and  
12 then subsequently had additional follow-ups in June of 2021. Due to Client being nonresponsive to  
13 Attorney's request to bring the account current, ultimately Attorney filed a motion with the Court to  
14 withdraw as counsel of record for Client on July 1, 2021. Attorney followed Rule 1.16 of the Rules of  
15 Professional Conduct and did not prejudice the rights of the Client. On July 2, 2021, Attorney was  
16 substituted out of the case with Client's consent and the motion to withdraw was taken off-calendar.

17 Client acknowledged that Attorney rendered all of the legal services set forth in the monthly  
18 invoices and did so successfully. Other than testifying that Client was "shocked" at the rising costs,  
19 Client was unable to point out any specific charge or service that was excessive or that Attorney was not  
20 requested to do.

21 Given the nature of the dissolution of marriage action, Attorney has provided evidence that  
22 Client was sent monthly billing statements. In the event Client did not receive a statement for the month  
23 of March 2021 or April 2021, by virtue of the documents filed with the Court on or about May 9, 2021,  
24 Client was made aware of the legal fees and costs that were mounting in the case. In addition, Client  
25 was an active participant in all matters surrounding the case and for the series of meetings and hearings  
26 that took place over the rest of May and June of 2021. Client should have been aware that legal fees and  
27 costs were continuing to mount as Attorney vigorously represented Client's interests, including agreeing  
28 to advance costs for an expert witness. Furthermore, Attorney was continuing to send Client monthly

1 statements by U.S. Mail and Electronic Mail. Client's position that they were not received was found to  
2 be unpersuasive.

3 Client's divorce proceedings were not harmonious. Attorney expended a great amount of time  
4 on Client's case. Based on the various issues handled by Attorney, the fees and costs were reasonable  
5 and there was no excessive billing. Therefore, Attorney is entitled to the fees and costs that were billed.

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7 **ALLOCATION OF FILING FEE**

8 *Business and Professions Code* §6203(a) permits the allocation of the arbitration filing fee paid  
9 by Client. However, the Code is silent as to when and how arbitration filing fees should be allocated.  
10 Based on the facts of this fee dispute, Client shall bear the cost of the arbitration filing fee of Seven  
11 Hundred Twenty-one Dollars Three Cents (\$721.03).

12  
13 **AWARD**

14 The Arbitrator finds that the total amount of fees and/or costs which should have been charged in  
15 this matter is: \$32,920.50

16 Of which the Client is found to have paid: \$18,500.00

17 In addition, the fee arbitration filing fee shall be allocated:

18 Client: \$ 721.03

19 Attorney: \$ 0.00

20 For a net amount due Attorney of: \$14,420.50

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1 Accordingly, the following award is made:

2 Client, Taylor Client, shall pay Attorney, Alex Lawyer, Esq., Fourteen Thousand Four Hundred  
3 Twenty Dollars Fifty Cents (\$14,420.50), plus interest in the amount of ten percent per annum from the  
4 30<sup>th</sup> day after the date of service of this award.  
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7 Respectfully submitted,

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9 Dated: September 15, 2021

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11 Jamie Smith, Esq., Sole Arbitrator  
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