

LOS ANGELES COUNTY BAR ASSOCIATION  
Mediation of Fee Disputes Program



**RULES OF MEDIATION**

**I. APPOINTMENT AND RESPONSIBILITIES OF MEDIATION PROGRAM**

It is the policy of the Board of Directors (Board) of the Los Angeles County Bar Association to promote the consensual resolution of attorney/client fee disputes, attorney/attorney fee disputes and to avoid the necessity of arbitration of these disputes when agreeable to the parties. Therefore, the Board finds that a mediation alternative to the arbitration program currently offered by the Association, in accordance with Business and Profession Code Section 6200 regulating attorney/client fee disputes, is desirable. The Board authorizes the institution of a Mediation of Fee Disputes Program regulated by these Rules of Mediation. The Board hereby delegates to the Attorney Fee Disputes Committee the authority and responsibility to appoint and maintain a panel of qualified mediators in accordance with the Attorney Fee Disputes committee's Arbitration Rules of Procedure and these Mediation Rules. Further, the Committee shall determine all questions of interpretation of the Rules at any stage of the proceedings.

**II. JURISDICTION**

- A. Participation in this mediation program is entirely voluntary for the parties. No party to any dispute shall be required to engage in mediation through this program, and any party may terminate the mediation at any stage.
- B. The Committee 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 Committee shall appoint qualified volunteer mediators, both lawyers and non-lawyers, 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 40 hours of mediator training.

**IV. THE PROCESS**

**A. Commencement of Mediation**

The matter will proceed to mediation only if all parties indicate on the Arbitration Petition and Reply forms that they wish to mediate the 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 Arbitration Rules of Procedure.

**B. Assignment of Mediator**

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

**C. Disqualification of Mediator**

1. The Committee shall, as part of the assignment process, inform the prospective Mediator of the names of the parties and the nature of the case 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 Mediator without cause and an unlimited number with cause. The challenge must be made in writing no later than ten (10) calendar days after date of the notice of Mediator assignment, addressed to the Committee, with a copy to the Mediator and the other party.

3. Upon the withdrawal or removal of the Mediator, the Committee 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 notice of Mediator assignment the Mediator shall arrange a mediation date, which shall take place within thirty (30) calendar days after the notice of Mediator assignment, was mailed. The Mediator shall promptly send the Agreement to Mediate which shall include notification of the location, date, and time of session to the parties and the Committee.

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

A request for a continuance of the session date should be made to Mediator. Each side shall have one continuance without the agreement of the other party(s). Otherwise a continuance will be granted by the Mediator only with the agreement of all parties. Should one side object to such 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 Staff 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 to the Mediator and the other side. The parties may, by agreement, exchange other documents containing information relevant to the dispute. Either or both parties may provide the Mediator with written statements, confidential or otherwise, outlining any pertinent information not contained in the Request for Arbitration.

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

#### **G. The Mediation Session**

1. Mediations shall normally be scheduled for no more than a three-hour session. The filing fees already paid to the Association for the filing of the Petition for Arbitration shall include up to three (3) 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 \$150.00 per hour. This is true regardless of the fact that a client may have been granted a waiver of the Association filing fee. If a party is unable or unwilling to pay for Mediator time beyond the first three 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. Only the parties to the mediation, their attorneys or other advisor, if any, and the Mediator shall be present during the mediation. However, the Mediator shall have the authority to determine if others may be present during the process. If any party requires an interpreter, they must provide one at their own expense.

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.

3. 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 action taken to the Committee.

## H. The Outcome

### 1. Resolution

If the parties resolve the dispute, the points of agreement shall be immediately reduced to writing at the session. All parties shall sign and copies will be distributed to the parties. Signing of the Agreement indicates that it accurately sets forth the points agreed to. The Mediator shall not provide legal advice concerning the terms of the agreement. The Mediator shall promptly notify the Committee in writing that the matter was resolved. The file will be closed and the Staff shall forward to the parties a copy of the State Bar of California's Notice of Your Rights after Mediation.

#### Written Agreement Requirements

##### 1) Responsible Attorney

The State Bar of California Guidelines and Minimum Standards requires 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 (Minimum Standard III.7.).

##### 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 (Minimum Standard III.8.):

The following agreement is made:

- (a) Client, \_\_\_\_\_, shall pay to Attorney, \_\_\_\_\_, the sum of \$ \_\_\_\_\_; **or**
- (b) Attorney, \_\_\_\_\_, shall pay to Client, \_\_\_\_\_, the sum of \$ \_\_\_\_\_; **or**
- (c) Nothing further shall be paid by either Attorney or Client.

### 2. No Resolution

If the parties are unable to resolve the dispute through mediation, the Mediator shall notify the Committee in writing and the matter will proceed to arbitration in accordance with the Rules of Arbitration.

## V. CONFIDENTIALITY

- A. All communications, negotiations, or settlement discussion by and between participants and/or Mediators shall remain confidential.
- B. The mediation session(s), or any documents prepared for or during the mediation, shall be confidential, in accordance with the provisions of California Evidence Code Section 1115-1128.
- C. The Mediator, 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.

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