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# MEMORANDUM

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**DATE:** March 13, 2015  
**TO:** Fee Arbitrators  
**FROM:** Phil Rosenblatt, Presiding Arbitrator  
Elizabeth Strickland, Fee Arbitration Coordinator  
**RE:** Settlement; Awards

I would like to review a few points with you regarding the process of handling fee arbitrations. Most of the issues that I see concern the award form. However, there is one other matter of great importance that I'd like to address first.

I've seen several cases since I've been here that have been settled by the arbitrator, rather than an arbitration taking place and an award being issued. Please remember: you do not have statutory immunity to act as a mediator or as a settlement conference judge. Serving in a capacity other than as an arbitrator can create liability for you and for the Bar Association. Our rules provide for the mediation of fee disputes; however, the parties must agree in writing to mediation proceedings, prior to the mediation taking place. You have no immunity to act as a mediator if the parties have come expecting an arbitration and have not agreed, in advance and in writing, to mediation.

At the same time, settlement should not be discouraged. If the parties request the opportunity to discuss settlement between themselves, let the parties settle the case on their own. Leave the room and let them talk if they want to negotiate. If they do settle, you should not assume any role in the settlement. Do not draft a mediation or settlement agreement. We can only send out an arbitration award; we cannot send a mediation or settlement agreement. Inform the parties that the client should report the settlement to the Bar office, in writing.

The award form has been a continuing topic of discussion. We are currently revising the form and hope to have a more user-friendly form in the near future. Just a few reminders to insure that the awards are accurate.

1) Please check your math, on a calculator if at all possible. The calculation must be precise or the award is not enforceable. If the math is not correct, I am required to send the award back to you for correction, which causes unnecessary delays and inconveniences the parties. Most important is that the award must be enforceable when we serve it on the parties.

2) Please send me **three originals** (or more, if there are more parties that need a copy) of the award. You may copy the completed award, but please have

original signatures on all copies of the award forms. I need one original to keep and one original to send to each party. Send them directly to me, and the Bar Association will serve them on the parties.

3) Please provide a written reasoning and basis for the award. Other arbitration programs may discourage listing reasons; however, we encourage a thorough discussion of the reasoning behind the award amount. The State Bar has asked us to do this, and it is easier to enforce an award when the Bar staff can see the reasoning behind the award.

4) Please fill in all the appropriate spaces on the award form. If the space that you are leaving empty looks like it could raise a question, write "N/A".

5) The client has already paid the filing fee. If you are going to split the fee, make sure the math reflects the fact that the client has already paid.

6) Be very sure that you identify the responsible attorney on the award form, and put the attorney's State Bar number. If the specific attorney is not identified, the award is not enforceable. You can get the attorney's State Bar number from the State Bar website - <http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch>

Hearing a case and drafting an award takes a great deal of time and effort. The process will go more quickly and smoothly for everyone, and will be of greater assistance to the parties, if these suggestions are followed. The Santa Clara County Bar Association recognizes the time that you give to this program. We very much appreciate your service.