FORM Request for Fee Arbitration

PLEASE READ THIS AND THE RULES OF PROCEDURE BEFORE COMPLETING THE REQUEST FOR ARBITRATION AND MEDIATION – If you need a copy of the rules, please call (669) 204-3100.

WE CAN conduct an arbitration/mediation of disputes concerning fees, costs, or both, charged by an attorney. WE CANNOT provide arbitration/mediation if no material portion of the legal services were rendered in the State of California, or where the fee has been determined by Statute or Court Order.

You may choose to proceed directly to Fee Arbitration or use the Fee Mediation program instead of arbitration. Mediation is a voluntary process that provides a neutral person to meet with both parties and help work out a final settlement for your particular case. If you choose to mediate your case first, and if the mediation does not settle the case, then your case will proceed to Fee Arbitration. The cost of Fee Mediation is included in the cost of Fee Arbitration.

THE CLIENT GIVES UP (WAIVES) THE RIGHT TO FEE ARBITRATION/MEDIATION OF THE DISPUTE IF:

(1) This "Request for Fee Arbitration/Mediation" is not returned to us within thirty (30) days after the client received the Notice of Client's Right to Arbitrate; OR

(2) A client files any pleading in any lawsuit where resolution of this fee dispute is sought without first requesting fee arbitration/mediation; OR

(3) A client has taken court action to seek relief against an attorney for damages or otherwise based upon a claim of malpractice or professional misconduct.

Stay Of Proceedings:
If an attorney, or the attorney's assignee, commences an action to collect fees or costs in any court or other proceeding, with limited exceptions including provisional remedies, the court action or other proceeding is automatically stayed upon filing a request for fee arbitration with a State Bar approved fee arbitration program. The party who requested fee arbitration has a duty to notify the court of the stay and attach a copy of the arbitration request form. If the person who requested or caused the stay has not appeared in the action or other proceeding or is not subject to the jurisdiction of the court, the plaintiff must immediately file a notice of stay and attach a copy of the arbitration request form showing that the proceeding is stayed. *Upon request, the program may provide a copy of a notice of automatic stay to the party.*

The Request for Fee Arbitration/Mediation is designed to inform us of the nature of your fee dispute. Please keep your originals of all documents or records so you can present them at the hearing. Any information you provide in the Request, or attached to it, may be forwarded to the attorney involved and/or the State Bar of California.

The Santa Clara County Bar Association has no power to discipline attorneys. We are authorized only to attempt to resolve fee disputes between clients and attorneys whose practice is located in Santa Clara County, or your case has been filed in Santa Clara County. Please see page six (6) of this request for information on the filing fee required to process your request.

THE FILING FEE MUST BE SUBMITTED WITH THE REQUEST. PLEASE SEE THE RULES OF PROCEDURE PROVIDED WITH THIS REQUEST FOR INFORMATION REGARDING THE SCCBA'S POLICY FOR REFUNDS OF FEE ARBITRATION/MEDIATION FILING FEES. At a fee arbitration hearing, the arbitrators have the discretion to order the filing fee reimbursed to the client by the other party, if the arbitrator(s) feel it is appropriate.

INFORMATIONAL MATERIAL HAS BEEN PROVIDED WITH THE REQUEST

If you have further questions, please call the Fee Arbitration/Mediation Program at (669) 204-3100, between the hours of 9:00 a.m. and 3:00 p.m. (Monday through Friday).

SANTA CLARA COUNTY BAR ASSOCIATION
REQUEST FOR FEE ARBITRATION/MEDIATION

MAIL THIS FORM TO:

SANTA CLARA COUNTY BAR ASSOCIATION
P.O. Box 26457
San Jose, CA 95159

SCCBA USE ONLY	
File No:	
Fee Amt:	
Ck. No:	

PLEASE PROVIDE AN ORIGINAL WITH **TWO COPIES** FOR DISPUTES OF LESS THAN $10,000, OR AN ORIGINAL WITH **FOUR COPIES** FOR DISPUTES IN EXCESS OF $10,001. THANK YOU.

PLEASE PRINT OR TYPE

1.

Requesting Party Home Telephone Number:	
Daytime Telephone Number:	
Email Address:	
Firm Name, if applicable:	
Address or P.O. Box / City / State / Zip Code:	

If you are or will be represented by an attorney, please provide name, address and telephone number. **It is not necessary to be represented by an attorney**.

Attorney Name:	
Attorney Email:	
Attorney Telephone Number:	
Attorney Address / City / State / Zip Code:	

2.

Party with whom there is a dispute:	
Telephone Number:	
Email Address:	
Firm Name (if applicable)	
Firm Name, if applicable: Address or P.O. Box / City / State / Zip Code:	

Attorney representing other party whom there is a dispute:	
Telephone Number:	
Email Address:	
Street Address or P.O. Box / City / State / Zip Code:	

3. What type of case is involved in the dispute? _____

4a. When did you first have contact with the other party? _____

4b. Written fee agreement? If yes, attach a copy. ☐ Yes ☐ No

4c. Retainer agreement? If yes, attach a copy. ☐ Yes ☐ No

5a. Was a **Notice of Client's Right to Arbitration sent/received**? ☐ Yes ☐ No
IF YES, ATTACH A COPY.

5b. Date written notice was **received**: _____

6a. Has a lawsuit/complaint been filed by the attorney to collect fees? ☐ Yes ☐ No
(IF YES, ATTACH A COPY OF THE COMPLAINT)

6b. Date client was served with Summons/Complaint: _____

6c. Has a responsive pleading been filed in that suit? ☐ Yes ☐ No

7. Has the client filed a suit against the attorney? ☐ Yes ☐ No

8. Total amount billed and claimed by the attorney: $_____

9. Amount disputed by the client: $_____

(Arbitration/Mediation filing fee is based on this amount)

10. How much has the client paid the attorney? $_____

11. Has the bill been referred to by a collection agency? ☐ Yes ☐ No

(If yes, list Name, Address and Telephone Number for Collection Agency)

12. Please give a general description of the fee dispute. Attached is a separate sheet of paper for your description (see page 5).

13. You may choose between **fee arbitration** and **fee mediation** as your first step toward resolving your dispute. Fee Mediation is a voluntary process where both parties meet with a neutral mediator to attempt to finally settle your case. You may elect to go to fee mediation (SEE COVER PAGE FOR EXPLANATION OF FEE MEDIATION). If the case is not settled in mediation, it will then be transferred into an arbitration proceeding at a later date. If you would like to mediate your case, please sign & return the enclosed **Agreement to Mediate** form.

14. a. An arbitration panel shall consist of one (1) attorney arbitrator for disputes involving $10,000.00 or lessor lessee (3) arbitrators for disputes involving more than $10,001.00, one of whom will not be an attorney, unless otherwise agreed to by the parties. The Fee Arbitration/Mediation Committee will appoint an attorney as Chairperson of the panel.

IF THE PARTIES AGREE, a dispute involving $10,001.00 or more may be heard by a SINGLE ARBITRATOR.

If you agree to one (1) arbitrator, please check here: ☐

Attorney arbitrators are categorized by the Bar Association as either civil law practitioners or criminal law practitioners, depending on the primary emphasis of their practices. At the client's request, one member of a three (3) arbitrator panel or the sole arbitrator, as the case may be, shall be selected by the Bar Association from the practice area (either civil law or criminal law) which corresponds to the case from which the fee dispute arose.

If you wish to make that choice, check here: ☐

If you checked the box above, check whether you want an attorney who practices:

☐ Civil Law ☐ Criminal Law

(* REMEMBER: The choice must relate to the underlying case)

b. Fee mediation is conducted by a sole mediator.

15. **BINDING OR NON-BINDING ARBITRATION**

a. Fee arbitration may be binding or non-binding. Unless both parties agree in writing to binding arbitration, the arbitration shall be non-binding. NON-BINDING ARBITRATION means that, if either the client or the attorney is not satisfied with the arbitration award, the dissatisfied party has the right to ask the Court for a new hearing within thirty (30) days from the date the arbitration award is mailed. If a Court hearing (TRIAL AFTER ARBITRATION) is not requested within the THIRTY (30) DAYS, a party may seek to obtain a Court Judgment, which confirms the award and is binding upon all parties.

b. **THE CLIENT AND THE ATTORNEY MAY AGREE TO MAKE THE FEE ARBITRATION BINDING.** If both agree to BINDING ARBITRATION, once the award is rendered, no appeal or further proceedings will ordinarily be possible.

IF YOU AGREE TO <u>BINDING</u> FEE ARBITRATION, please check here: ☐

16. **<u>DOCUMENTARY SUPPORT FOR YOUR CASE</u>**

a. In the event of a fee arbitration, the parties shall present to the arbitrator(s) papers, books, records, communications and documents, and such testimony of any witness within their control as may be requested by the arbitrator(s). The parties are each responsible to support their positions by presenting to the arbitrator(s) all of their necessary evidence (witnesses, documents, etc.).

b. In the event of fee mediation, the parties may provide any material that will assist them in presenting their positions.

17. Notices and communications to the parties may be given by mail to the addresses shown on the first page of this request and on the Attorney's Response.

18. How did you hear about the SCCBA Fee Arbitration program? Check one: ☐ Internet; ☐ California State Bar; ☐ Notice of Client's Right to Arbitrate; ☐ Other

For Other, please describe: _____

<u>CONSENT TO ELECTRONIC SERVICE</u>

I hereby consent to receive service of documents and communications concerning this arbitration by electronic means (facsimile or email), as provided by the SCCBA Rules of Procedure for Attorney-Client Fee Arbitrations.

Neither the Santa Clara County Bar Association nor any of its officers, members, agents or employees, or any of the arbitrators or mediators named or serving there under, shall be liable to any of the parties hereto for any cause whatsoever arising from this agreement or the arbitration to be conducted hereunder.

I agree to submit to arbitration by members of the Fee Arbitration/Mediation Committee of the Santa Clara County Bar Association to be chosen by the Chairperson or designee of such Committee and to be bound by the foregoing terms. I also have read and agreed with the Rules of Procedure for the Fee Arbitration Program.

I also hereby give my permission to the Santa Clara County Bar Association to forward this form to the Fee Arbitration/Mediation Committee of the Bar Association for appropriate action, which may include forwarding copies of the fee dispute file, including this form, to the State Bar of California.

SIGNATURE	DATE

REMEMBER TO INCLUDE YOUR FILING FEE - SEE PAGE 7 FOR FEE SCHEDULE

CLIENT'S DESCRIPTION OF FEE DISPUTE

ITEM 12. Please give a brief description of the fee dispute. Attach additional sheets if necessary.

SCCBA FEE ARBITRATION/MEDIATION FILING FEE SCHEDULE

NOTE: PLEASE REFER TO THE SCCBA RULES OF PROCEDURE FOR ATTORNEY-CLIENT FEE ARBITRATIONS AND FEE MEDIATIONS BY THE SCCBA (Rule 15.3); FOR INFORMATION ON THE FILING FEE REFUND POLICY.

FILING FEE SCHEDULE (AS OF 10/9/15): (FILING FEE MUST BE SUBMITTED WITH REQUEST)

IF THE DISPUTED AMOUNT (PAGE 2, LINE 12) IS BETWEEN:	FILING FEE REQUIRED IS:
0 - $1,000	$54
$1,001 - $5,000	$162
$5,001 - $10,000	$270
$10,001 and above	8% of the amount in dispute with a $7,500 maximum fee:

You may pay by check, money order, Visa, MasterCard or American Express. Please make your check or money order payable to the Santa Clara County Bar Association (SCCBA). If you would like to pay by Visa, MasterCard or American Express, please fill out the information below and return this page with your request.

Print Name on Card:			
Name:			
Charge Amount (Based on above fee schedule)			
Card Type: ☐ Visa ☐ MasterCard ☐ American Express			
Card Number			
Experation Date		CVV	

*If billing address different from Page 2 – petitioner's address, please list:

Billing Address
Street Address or P.O. Box: _____

City_____ State_____ Zip Code_____

Authorized Signature for Credit Card	Date

AGREEMENT TO MEDIATE AN ATTORNEY/CLIENT FEE DISPUTE
PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTIONS 6200 - 6206

_____, Client, and _____, Attorney agree to participate in this mediation and to abide by the following terms and conditions:

1. We understand that the _____ Bar Association will appoint the mediator(s) to facilitate our dispute.

2. We have read and agree to abide by the rules of procedure for this program.

3. We understand that except under the limited circumstances permitted by Evidence Code Section 703.5 (upon request), no mediator shall be a witness in any litigation that may result from this mediation.

4. We agree that pursuant to Evidence Code Section 1119 (upon request) there shall be no disclosure of any statement made or document created during the mediation in any later civil action or proceeding. We further agree that, except as set forth in number 6 below, no statement made or document created during the mediation shall be relied upon or introduced as evidence in any arbitration, administrative hearing or judicial or other proceeding.

5. We agree that if we reach a resolution, or partial resolution of the dispute, our agreement shall be put in writing and signed by us. We agree that the writing shall include (a) the amount Attorney agrees to refund to Client; OR the amount Client agrees to pay Attorney; OR whether nothing should be paid to any party; (b) the full name of the individual attorney responsible for any refund to Client; and (c) that the parties considered the allocation of the filing fee in reaching this agreement. If no agreement is reached, we understand that the Mediator shall notify the Committee in writing and the matter will proceed to arbitration in accordance with the Rules of Arbitration.

6. We agree that, notwithstanding Evidence Code Section 1123, once any written agreement reached between us in the course of this mediation has been signed by us, it will be admissible in evidence and subject to discovery for the following purposes: (a) in the event of an alleged breach of this agreement and (b) any State Bar enforcement proceeding under Section 6203(d) of the Business and Professions Code (upon request).

7. Attorney in this matter agrees to be personally responsible for paying any refund to Client. Attorney acknowledges that failure to comply with an agreement to refund fees *and/or* costs to Client may result in Attorney being placed on temporary inactive status pursuant to Business and Professions Code Section 6203(d).

Client Signed	Date
Attorney Signed	Date

***TO: RESPONDENT**- If you agree to the above, please sign above and return with the "Respondent's Reply Form", by the due date indicated. Thank you.