

# Other Clauses of Interest in Fee Agreements

## 1. ARBITRATION

### A. ARBITRATION OF ALL DISPUTES INCLUDING CLAIMS OF MALPRACTICE

Any ~~controversy~~ dispute between the parties [Attorney and Client] regarding the construction, application or performance of any services under this Agreement, and any claim arising out of or relating to this Agreement or its breach, including, without limitation, claims for breach of contract, professional negligence, breach of fiduciary duty, misrepresentation, fraud and disputes regarding attorney fees and/or costs charged under this Agreement (except as provided in paragraph B below) shall be submitted to binding arbitration upon the written request of one party after the service of that request on the other party. The parties shall appoint one person [Option: or agree upon a 3-person panel] to hear and determine the dispute. [Option: name the arbitration provider such as AAA, JAMS, ADR, etc., and provide that the arbitration shall be conducted pursuant to the provider's rules]. If the parties cannot agree, then the Superior Court of [fill in the name of county] County shall choose an impartial arbitrator whose decision shall be final and conclusive on all parties. Attorney and Client shall each have the right of discovery in connection with any arbitration proceeding in accordance with Code of Civil Procedure Section 1283.05. [Optional provision: The cost of the arbitration, excluding legal fees and costs, shall be borne by the losing party or in such proportion as the arbitrator shall decide.] The parties shall bear their own legal fees and costs for [all claims, or contract claims, or tort claims]. The sole and exclusive venue for the arbitration and or any legal dispute, shall be [fill in name of county] County, California.

By initialing below, Client and Attorney confirm that they have read and understand subparagraphs A above, and voluntarily agree to binding arbitration. In doing so, Client and Attorney voluntarily give up important constitutional rights to trial by judge or jury, as well as rights to appeal. Client has the right to have an independent lawyer of Client's choice review these arbitration provisions, and this entire agreement, prior to initialing this provision or signing this Agreement.

\_\_\_\_\_ (Client Initial Here)

\_\_\_\_\_ (Attorney Initial Here)

### **B. ~~STATE BAR~~ MANDATORY FEE ARBITRATION**

Notwithstanding subparagraph A above, in any dispute over attorney's fees, costs or both subject to the jurisdiction of the State of California over attorney's fees, charges,

costs or expenses, Client has the right to elect arbitration pursuant to the fee arbitration procedures ~~of the State Bar of California~~, as set forth in California Business and Professions Code Sections 6200, ~~et seq~~ 6206. Arbitration pursuant to the Mandatory Fee Arbitration Act is non-binding. Those procedures permit a trial after arbitration, unless the parties agree in writing, after the dispute has arisen, to be bound by the arbitration award. The Mandatory Fee Arbitration procedures permit a court trial after arbitration, or a subsequent binding contractual arbitration if the parties have agreed to binding arbitration and either party rejects the award and requests a trial de novo within 30 days after the award is mailed to the parties. If, after receiving a notice of client's right to arbitrate, Client does not elect to proceed under the State Bar fee arbitration procedures, and file a request for fee arbitration within 30 days, any dispute over fees, charges, costs or expenses, will be resolved by binding arbitration as provided in the previous ~~sub~~paragraph A.

[Optional provision: If either party rejects a non-binding fee arbitration award by timely submission of a request for trial de novo, Attorney and Client agree that in lieu of a trial de novo in court, the trial after arbitration shall be binding arbitration pursuant to the provisions of paragraph 1, above.]

~~Because each party is giving up a right, Client is encouraged to have an independent lawyer of Client's choice review these arbitration provisions before agreeing to them.~~

~~By initialing below, Client and Attorney confirm that they have read and understand subparagraphs A and B above, and voluntarily agree to binding arbitration. In doing so, Client and Attorney voluntarily give up important constitutional rights to trial by judge or jury, as well as rights to appeal. Client is advised that Client has the right to have an independent lawyer of Client's choice review these arbitration provisions, and this entire agreement, prior to initialing this provision or signing this Agreement.~~

\_\_\_\_\_ (Client Initial Here) \_\_\_\_\_ (Attorney Initial Here)

## 2. MEDIATION CLAUSE

If a dispute arises out of or relating to any aspect of this Agreement between ~~Client and Attorney~~ Attorney and Client, or the breach thereof, and if the dispute cannot be settled through negotiation, Attorney and Client agree to ~~discuss first try~~ discuss first try in good faith to settle the dispute by private the use of mediation or fee mediation provided by local bar association programs before resorting to arbitration, litigation, or any other dispute resolution procedure. The cost of such mediation shall be borne equally by the parties, unless otherwise stipulated in a settlement agreement between the parties.