



The Lawyer- Client Relationship, Part Three: Fee Arbitration

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ABSTRACT

This article discusses issues relating to a conflict between a lawyer and his or her client concerning legal fees. The article is Part III in a series considering issues that arise during the course of the lawyer-client relationship. The authors argue that the *Mandatory Fee Arbitration Act of 1977*, enacted in the State of California, should serve as a model for all states in order to resolve such conflicts *extrajudicially*—outside of the normal legal process of filing a lawsuit in a civil court of competent jurisdiction over such matters. The *Mandatory Fee Arbitration* system, abbreviated *MFA*, is an important “risk management” tool in jurisdictions that adopt this approach. Unless otherwise noted, this article is based on an analysis of the California Act, pursuant to the provisions of *California Business and Professions Code* (Bacon, 2020). The article also provides a comprehensive list of resources available to both lawyers and their clients in case should a fee dispute arise [Appendix I]. In Appendix II, the authors provide a comprehensive list of state and/or local bar association lawyer-client fee arbitration systems for future research.

Key Words: fee disputes; fee arbitration; contingency fee; Mandatory Fee Arbitration Act; arbitration award

INTRODUCTION

Model Rule 1.5 promulgated by the American Bar Association (2020) relating to fees states:

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent (see Rapoport & Tiano, Jr., 2022; Billings, Jr., 2022).

Unfortunately, disputes over legal fees are a rather common source of disagreement in the lawyer-client relationship (see Bacon, 2020; Bovitz, 2021). Mallen and Smith (2020) point out that disputes between attorneys and clients over legal fees contribute to approximately *twenty percent* of all legal-malpractice claims.

In order to resolve these issues, Shely (2020, p. 18) states that “Some states mandate that lawyers agree to bar fee arbitration, and other states provide that free bar-sponsored arbitrations are voluntary options (unless, of course, the lawyer included bar fee arbitration as a provision in the fee agreement--then it becomes mandatory).”

Attorney Alan Farger (2022) describes the process of arbitration in attorney’s fee disputes between an attorney and client when he writes about the arbitration process in Massachusetts:

“Arbitration is an informal way of presenting issues for resolution. The arbitrator(s) hear evidence and ultimately render a decision that is final and binding on the parties; that is, there is no right of appeal from the decision. The process from beginning to end usually takes only a couple of months, and the Board charges at most a few hundred dollars (the arbitrators donate their time). There is always at least one arbitrator who specializes in the area of law that was the subject of the representation; this allows for presentations by the client of his/her position without the need for an expert witness to testify concerning the reasonableness or necessity of various charges.”

“A 1973 special committee of the American Bar Association observed that “disputes concerning fees are universally recognized as constituting the most serious problem in the relationship between the Bar and the public” (cited in Williamson, 2019), referred to as the “MFA System” or MFA.”

Although not universally accepted or necessarily praised (Szalai, 2018), the State Bar of California (2022) nonetheless proactively recognized the importance of this issue and developed a mechanism for arbitrating disputes over legal fees and costs before such disputes boiled over into civil courts (Lueders, 2017).

The resulting *Mandatory Fee Arbitration Act* (“MFAA”) (*Gertz v. Echo Rock Ventures, LLC*, 2006; *Grp. v. Fifty Five Foundry, Inc.*, 2022) was enacted in 1979 to provide an expeditious and low-cost alternative to the normal court system in order to “resolve attorney-client fee disputes, and to alleviate the disparity in bargaining power in attorney fee disputes, by creating an effective, inexpensive and speedy remedy which does not necessitate that the client hire a separate attorney” (see Bacon, 2020; see also *Manatt, Phelps, Rothenberg & Tunney v. Lawrence*, 1984, pp. 1174-1175; *Eichenberger v. Clark*, 2015).

MFA is administered by the California State Bar Association; fee arbitrations are normally handled through local bar association programs. As the core component of the MFA, the State Bar Association and local bar associations are charged with impaneling arbitrators to hear disputes between a lawyer and his or her client relating to the amount of fees and/or costs charged by the attorney during the course of representation. The system is decidedly one-sided in one sense. The client has the *sole authority* to initiate the fee arbitration process. The client’s participation is voluntary—a “one way street by design” (Fitzgibbons (2020)—unless the

parties have agreed to an enforceable provision in their fee agreement embodied in an engagement letter providing for non-binding mandatory fee arbitration.

However, MFA is *mandatory* for the attorney if requested by client, even if the fee agreement between the parties requires that fees disputes be submitted to private contractual arbitration (see *Schatz v. Allen Matkins Leck Gamble & Mallory LLP*, 2009; *In re Dubey*, 2013). The process stays any pending litigation, and Bacon (2020) argues, “it reduces the chance of a malpractice claim.”

One of the key features of the MFA is confidentiality. Unlike issues resolved through a more traditional litigation model, MFA does not take place in a public forum. Because of the confidential nature of the proceedings, the award is not admissible in evidence in any other proceeding and does not operate either as collateral estoppel or *res judicata* barring appropriate action in any other proceeding for some other purpose (see *Liska v. Arns Law Firm*, 2004).

As to the nature of the procedures, Fitzgibbons (2020) commented that “Unless the parties agree to binding arbitration in writing before the arbitration, the result will be non-binding.”

DISPUTES COVERED BY MFA

The MFA, as adopted in the State of California, applies to disputes between an attorney and client regarding fees, costs, or both. Interestingly, a third party non-client who has agreed to pay the client’s legal bills or guaranteed the payment of an attorney’s fees may also avail themselves of the provisions of the MFAA (see *Wager v. Mirzayance*, 1998).

MFA does not apply in the following circumstances:

- (1) fee disputes between attorneys;
- (2) where the fee or cost to be paid by the client has been determined pursuant to statute or court order;
- (3) where services were not rendered in California in any material part by an attorney who maintains no office in California.

A client cannot recover damages for any alleged malpractice in MFA proceedings—the arbitration is strictly about fees and costs (see *Gale v. Providence Hospital*, 1982). The California Business & Professions Code (2017) Section 6203 provides that evidence relating to claims of malpractice and professional misconduct may be admissible in an arbitration procedure conducted under the MFAA, but only to the extent that claims alleging attorney malpractice bear upon the fees or costs to which the attorney may be entitled. Thus, the question in an MFA arbitration relating to any malpractice claims is whether the attorney’s alleged acts or omissions affected the *value* of the services to the client. In that case, the fee may be adjusted, but the arbitrator cannot award damages for the alleged malpractice or professional misconduct.

A provision in an attorney-client fee agreement for binding arbitration embodied in the letter of engagement (Terrell, 2002; Purvis, 2011; Proctor, 2011/2012) does not preclude a client’s right to non-binding fee arbitration (Bennett, 2006) under the MFAA. The MFAA is designed to provide a “*separate and distinct arbitration scheme*.” The statute provides that the parties may

only agree to binding MFA, *after* the dispute over fees has arisen. (*Benjamin, Weill & Mazer v. Kors*, 2011). Accordingly, a client must first be given opportunity to request mandatory fee arbitration under the MFA, even where there is a private arbitration clause.

However, *after* non-binding MFA has been completed, either party can request that the fee dispute be submitted to binding arbitration (Sternlight, 2000) in accordance with an arbitration clause in the fee agreement in lieu of trial *de novo* in court (i.e., *arbitration de novo*). Fitzgibbons (2020) states: "Either party may request a trial *de novo* within 30 days after notice of the arbitration award is served."

While MFA is generally voluntary for the client, a fee agreement may include a provision requiring that the client agree to non-binding MFA. If such a clause exists in the fee agreement, it is enforceable, and MFA will be mandatory for *both* parties.

Not unlike other civil actions, MFA actions are subject to a statute of limitations and MFA may not be commenced if a civil action requesting the same relief would be barred by the applicable statute of limitations (see *Pacaldo v. Halliburton Energy Servs.*, 2012; *Sherman v. CLP Res., Inc.*, 2018). There is a limited, but important, exception to this rule, allowing arbitration to be commenced by a client, after the statute of limitations would otherwise have expired, if *it follows the filing of a civil action by the attorney* for non-payment of a fee.

Until 2016, the California State Bar Committee on Mandatory Fee Arbitration that the one-year statute of limitations for professional liability or malpractice actions did not apply to MFA because damages for legal malpractice are not available in MFA proceedings. However, a 2015 decision of the California Supreme Court held that the statute of limitations may apply to a client's claim for a refund of allegedly unearned fees from their attorney (*Lee v. Hanley*, 2015). The Committee also concluded that because the statute of limitations is an affirmative defense, it must be affirmatively raised in the attorney's response, or it is considered waived.

PROCEDURAL REQUIREMENTS

MFA is *non-binding* unless all parties agree to binding arbitration in writing after the fee dispute arises. However, an award given by the arbitrator can become binding after the passage of 30 days from service of the award if neither party has filed a motion to reject the award.

An attorney who decides to pursue recovery of fees or costs from a client is required to provide the client with a written notice of the client's right to MFA before or with service of summons of a civil action brought to collect fees or prior to or at the commencement of any non-MFAA arbitration. The written notice must be given on the mandatory *Notice of Client's Right To Fee Arbitration* form found at <https://www.calbar.ca.gov/Attorneys/For-Attorneys/Mandatory-Fee-Arbitration/Forms-Resources> (see also *Preble-Rish Haiti, S.A. v. Republic of Haiti*, 2022).

The required notice of a client's right to MFA can only be given after an actual fee dispute has arisen (see *Huang v. Cheng*, 1998). If an attorney's fails to give the required notice, such failure is grounds for dismissal of a lawsuit filed by the attorney to collect fees or costs.

Upon receipt of the notice, the client has 30 days to file a request for fee arbitration under the auspices of a county bar program or with the State Bar if no local or county bar program exists.

The client waives the right to MFA if they fail to file the request within the 30-day period, if they initiate a civil action against the attorney, or if they file a responsive pleading in an action filed by the attorney.

The 30-day deadline for a client to request fee arbitration runs from the date the *Notice of Client's Right to Fee Arbitration* form is received by the client. In order to avoid issues regarding the date of receipt, attorneys should serve the notice by certified mail or some other form of delivery which establishes when the notice was received by the client—although this is not strictly required.

An attorney may also initiate arbitration by filing an attorney's *Request to Arbitrate* form which can be found at <https://www.calbar.ca.gov/Attorneys/For-Attorneys/Mandatory-Fee-Arbitration/Forms-Resources>. However, because mandatory fee arbitration is voluntary for the client, before an arbitration requested by an attorney can proceed, the client must expressly agree in writing to arbitrate the fee dispute.

Effective January 1, 2020, a client's timely request for fee arbitration now tolls the statute of limitations to file an action for legal malpractice until 30 days after receipt of an award, or notice that the arbitration is otherwise terminated, whichever may occur first.

After the client submits a completed request for arbitration, the MFA program will notify the attorney, who then has 30 days to submit a reply to the request for arbitration. The attorney should carefully review the allegations in the client's request, respond specifically to each claim, and provide documents and records to support the attorney's position. The attorney should also raise any cognizable defenses to the client's claim, including the statute of limitations or waiver by the client.

In MFA proceedings, the program assigns the arbitration panel consisting of *two lawyers and one layperson* (see Amberg, 2021; *Huzhou Chuangtai Rongyuan Inv. Mgmt. P'ship v. Hui Qin*, 2022). Press (2021, p. 56) notes that "The Code of Ethics for Arbitrators in Commercial Disputes... requires arbitrators to be 'faithful to the relationship of trust and confidentiality inherent in that office' The client has the option to request the appointment of an attorney-arbitrator who practices in the area of civil law if the fee dispute relates to a civil matter, or one whose practice is criminal law if the dispute relates to a criminal matter" (see *Roussos v. Roussos*, 2021). However, the parties do not get to select the actual arbitrators who will decide the issue.

Similar to other arbitrations, procedures of the MFA program provide that a party may *disqualify* one arbitrator *without cause* (Koch, 2003; *Goodwin v. Comerica Bank, N.A.*, 2021), by providing written notice within 15 days of service of the Notice of Arbitrator Assignment. Parties also have an unlimited number of challenges *for cause* in order to remove an individual arbitrator. If an arbitrator believes that she or he cannot render a fair or impartial decision (Schacherer, 2018; see *Speier v. The Advantage Fund, LLC*, 2021) or believes that there could be an *appearance of bias* so that she or he cannot render an impartial decision, the arbitrator should disqualify herself or himself.

Roberts (2018, p. 683), in commenting on the Supreme Court's ruling in *Commonwealth Coatings v. Continental Cas. Co.* (1968), noted: "Justice Black said that an arbitrator, 'not only

must be unbiased but also must avoid even the appearance of bias.' Black also said that arbitrators must disclose to parties 'any dealings that might create an impression of possible bias,' and that arbitrators should be held to the same ethical standards as judges."

The arbitrator may contact one or both of the parties to the dispute *ex parte* to address pre-hearing issues such as the date and manner for exchange of documents or scheduling questions. Interestingly, written briefs are not required, unless requested by the arbitrator or panel. A party to the arbitration may also submit exhibits or notify the arbitration panel of their intent to call witness at an appropriate time during the arbitration hearing.

Of course, an attorney should provide a copy of their fee agreement as *prima facie* evidence as found in the letter of engagement (see *Lumar v. Singer*, 2022) or elsewhere and provide proof that the fee agreement complies with any statutory requirements of California law—especially that a duplicate copy of the fully executed fee agreement was provided to the client at the time the contract was entered into.

DISPUTES REGARDING CONTINGENT FEES

In part II of this study, the authors discussed the unique nature of contingent fee arrangements (Hunter and Shannon, 2022b; see also *Missakian v. Amusement Industry, Inc.*, 2021). Bacon (2022) notes that "Most fee disputes between plaintiff's personal injury attorneys and their clients involve contingent-fee agreements" (see *contra* Kubo, 2021). Interestingly, most MFA disputes regarding contingent-fee agreements involve:

- (1) whether the agreement complied with *statutory requirements* of the Business and Professional Code;
- (2) whether the attorney is entitled to a fee after *withdrawing* from the case; and
- (3) the amount of the contingent fee the attorney may recover after being *discharged* by the client.

Attorneys who handle cases on a contingent-fee basis should be especially familiar with the provisions of Business and Professional Code Section 6147:

(a) An attorney who contracts to represent a client on a contingency fee basis shall, at the time the contract is entered into, provide a duplicate copy of the contract, signed by both the attorney and the client, or the client's guardian or representative, to the plaintiff, or to the client's guardian or representative. The contract shall be in writing and shall include, but is not limited to, all of the following:

- (1) A statement of the contingency fee rate that the client and attorney have agreed upon.
- (2) A statement as to how disbursements and costs incurred in connection with the prosecution or settlement of the claim will affect the contingency fee and the client's recovery.
- (3) A statement as to what extent, if any, the client could be required to pay any compensation to the attorney for related matters that arise out of their relationship not covered by their contingency fee contract. This may include any amounts collected for the plaintiff by the attorney.
- (4) Unless the claim is subject to the provisions of Section 6146, a statement that the fee is not set by law but is negotiable between attorney and client.
- (5) If the claim is subject to the provisions of Section 6146, a statement that the rates set forth in that section are the maximum limits for the contingency fee agreement, and that the attorney and client may negotiate a lower rate.

(b) Failure to comply with any provision of this section renders the agreement voidable at the option of the plaintiff, and the attorney shall thereupon be entitled to collect a reasonable fee.

Especially relevant to this determination is Section 6146 relating to percentage limitations on the amount of a contingency fee by the lawyer in the case of an action against a health care provider:

(a) An attorney shall not contract for or collect a contingency fee for representing any person seeking damages [in connection with an action for injury or damage against a health care provider] based upon such person's alleged professional negligence in excess of the following limits:

- (1) Forty percent of the first fifty thousand dollars (\$50,000) recovered.
- (2) Thirty-three and one-third percent of the next fifty thousand dollars (\$50,000) recovered.
- (3) Twenty-five percent of the next five hundred thousand dollars (\$500,000) recovered.
- (4) Fifteen percent of any amount on which the recovery exceeds six hundred thousand dollars (\$600,000).

The limitations shall apply regardless of whether the recovery is by settlement, arbitration, or judgment, or whether the person for whom the recovery is made is a responsible adult, an infant, or a person of unsound mind.

If the fee agreement does not comply with the requirements of section 6147, the agreement is voidable at the option of the client, and the attorney is then entitled to the *reasonable value* of her or his services (see *Stroud v. Tunzi*, 2008; *Monterroso v. Hydraulics*, 2022).

In the case of an attorney's *withdrawal* after partial performance of the lawyer's duties, entitlement to recover a fee will depend on the circumstances of the withdrawal. If the withdrawal is *without good cause*, the attorney is not entitled to recover any fees for services performed (see *Hensel v. Cohen*, 1984; *Estate of Falco v. Decker*, 1987). However, if the attorney can demonstrate "good cause" for withdrawal under the rules of professional responsibility under Model Rule 1.16, the attorney may be entitled to recover for the reasonable value of their services rendered prior to the withdrawal on at least the basis of *quantum meruit*.

Where an attorney has been *discharged* by the client after partial performance, the attorney may recover in *quantum meruit* for the reasonable value of the services provided *prior* to the discharge under the terms of the contingency fee agreement (see *Fracasse v. Brent*, 2011). Thus, if the client loses the underlying case which is the subject matter of the fee dispute and does not as a result achieve a recovery, the attorney is not entitled to a fee because the contingent event did not occur. As a matter of procedure, if a case has not yet been resolved, the attorney's claim for *quantum meruit* is not yet ripe, and MFA should be dismissed or abated until the contingency actually occurs (see *Hance v. Super Store Industries*, 2020).

In any event, the attorney should be prepared to demonstrate the "reasonable value" of the services provided based on the factors presented in Rule of Professional Conduct 1.5, described in the Introduction to this article. As Dick (2021) has noted: "Proving the reasonableness of time and rates ordinarily can be accomplished by declarations of counsel regarding the usual, customary, and regular timekeeping and billing practices of the law firm."

THE HEARING

Finally, the day of the actual MFA hearing has arrived! (see *Emerald Aero, LLC v. Kaplan*, 2017). As are most administrative-type hearings which are less formal than court proceedings or standard contractual arbitration (see Hunter & Shannon, 2017), many of the technical rules of evidence do not apply (see *Aixtron, Inc. v. Veeco Instruments Inc.*, 2020). In fact, the MFA program is designed so that clients can arbitrate without legal training or without the assistance of counsel.

However, as Telesca, Sy, and Enck (2022, p. 349) states:

“To guard against an arbitrator ignoring or misapplying relevant law, parties normally select well-experienced lawyers or retired judges as arbitrators. Often, those arbitrators work through nationally recognized alternative dispute resolution (ADR) organizations, such as JAMS or the American Arbitration Association (AAA). The AAA lists the following seven qualifications for its arbitrators on its website:

- a. Minimum of 15 years of senior level legal, business or professional experience
- b. Educational degree(s) and/or professional license(s) appropriate to your field of expertise
- c. Knowledgeable regarding cybersecurity and the benefits and risks associated with relevant technology
- d. Training or experience in arbitration and/or other forms of dispute resolution
- e. Honors, awards and citations indicating leadership in your field
- f. Training or experience in arbitration and/or other forms
- g. Membership in a professional association(s)
- h. Other relevant experience or accomplishments (e.g., published articles).”

Under general principles relating to issues of proof (*McIsaac v. Foremost Ins. Co. Grand Rapids, Michigan*, 2021), Sendele (2022, p. 86) points out:

“In addition to changing the standard of review required when appealing arbitration decisions, agencies should consider what standard for burden of proof the arbitrator will use to render their decision. Common standards for burden of proof are the ‘preponderance of the evidence’ standard and the slightly more rigid ‘clear and convincing’ standard. With the preponderance of the evidence standard, the factfinder only needs to be convinced by the greater weight of the evidence that the officer engaged in the misconduct. By contrast, a clear and convincing standard requires that it was highly probable or probably certain that the officer engaged in the misconduct. Having agency investigators mirror their standard for burden of proof to the standard that will be used by the arbitrator if the discipline is appealed may make a difference in the outcome of a future arbitration decision.”

In the case of the MFA hearing, each side will be allowed to present their case and call witnesses, but surprisingly, there is no specific guidance on who has the burden of proof (see generally *Caballero v. Premier Care Simi Valley LLC*, 2021). The task of resolving issues relating to the allocation of the burden of proof is left to the discretion of the arbitrator, and this determination may depend upon which party has the greater access to sources of proof. As in civil cases, in an MFA hearing, the sufficiency of evidence for a particular claim or position is based upon a preponderance of the evidence.

The attorney-client and work product privileges which are described in Part I of this study (Hunter & Shannon, 2022a) do not apply in MFA proceedings between attorneys and their clients. However, where the arbitration involves a third-party payor such as an insurance company or some other indemnitor, and the client does not participate in the arbitration, absent the client's written consent to disclosure of otherwise confidential information, a fee arbitration with a non-client is not intended to abrogate the attorney's duty to maintain client confidences, unless such disclosure is otherwise permitted by law.

THE AWARD

As is the case in non-fee arbitration cases, the arbitrators will hear all pertinent or "relevant" evidence and arguments regarding the fee dispute, and then make appropriate "findings of fact" and state any "conclusions of law," and issue a written award based on "a determination of all the questions submitted to the arbitrators, the decision of which is necessary in order to determine the controversy." As stated by Widman (2020, p. 36), "In *Employers Insurance Co. of Wausau v. OneBeacon American Insurance Co.* (2014), the First Circuit noted that a federal judgment that confirms an award 'rarely considers the merits of the arbitrator's decision' and thus the confirmation order 'is distinct from the arbitration award itself.'"

The award or decision will include a specific determination of either the amount the client owes the attorney or the amount the attorney must refund the client. The award may also determine that nothing is owed by either party. Proving the reasonableness of time and rates ordinarily can be accomplished by declarations of counsel regarding the *usual, customary, and regular* timekeeping and billing practices of the law firm.

While the award may include an allocation of the MFA filing fee to the parties, the award cannot include attorney's fees and other costs incurred in connection with the MFA proceeding itself, even if the fee agreement between the parties includes a provision for prevailing party attorney's fees.

Should the award be non-binding, either party may reject the award and request a trial *de novo* in court (3200 *Imperial Highway Corp. v. Setareh*, 2022), or a private arbitration pursuant to an arbitration clause in the fee agreement, within 30 days of service of the award (see Maloney & Fogas, 2020; *Halverson v. Allstate Prop. & Cas. Ins. Co.*, 2021). However, if a trial or arbitration *de novo* is not requested within the 30 days by either party, the award automatically becomes binding on the parties.

The 30-day period for requesting a trial *de novo* begins to run from the date notice of the arbitration award is served and the 30-day period is not extended where the award is served by mail. However, if the 30th day falls on a weekend or legal holiday, a trial *de novo* request is timely so long as it is filed on the next day that is not a weekend or holiday. Caution must be taken to comply with the terms of any applicable statute, as the time period is generally strictly enforced.

The right to reject a non-binding award may also be lost where a party willfully fails to appear at the arbitration hearing itself. The MFAA provides that when an attorney has been ordered to refund all or a portion of attorney's fees to the client, the client may seek assistance from the

State Bar if the attorney fails to comply with the award. In this case, the attorney may be subject to discipline.

SOME CONCLUSIONS AND OBSERVATIONS

Bacon (2020) provides sound advice and commentary on the “best practices” in dealing with MFA:

“... be proactive in taking steps to avoid it altogether. Some of the best ways not to have a fee dispute with a client in the first place include always having a detailed and understandable written fee agreement with the client at the outset. As the representation progresses, it also is essential for the attorney to communicate with the client often and honestly, including responding to all questions, managing expectations, and reporting on and explaining events that affect the representation, especially bad news.”

We also suggest that states become proactive in dealing with fee arbitration issues if they have not yet done so or are in the process of rethinking their administrative processes. At a minimum, a model for settling a fee dispute between a lawyer and his or her client should include:

- A statement of the *purpose* behind fee arbitration;
- A statement regarding the *composition of the arbitration panel*;
- A statement regarding the *initiation of arbitration proceedings*;
- A statement regarding the *nature of the arbitration hearing*;
- A statement regarding the *decision or award*; and
- A statement regarding any required *supporting documents*.

The MFA is a good start! Its provisions are fair, balanced, and transparent and would provide all parties with an expeditious process to resolve often difficult and complex issues.

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APPENDIX I: MFA RESOURCES AVAILABLE TO BOTH LAWYERS AND CLIENTS

(<https://www.calbar.ca.gov/Attorneys/For-Attorneys/Mandatory-Fee-Arbitration/Forms-Resources>)

For Clients:

- Client form to request fee arbitration
- Client's request for enforcement of an arbitration award
- Rules of the State Bar of California relating to mandatory fee arbitration and schedule of charges and deadlines
- Notice of rights after fee arbitration
- Frequently Asked Questions: Fee Disputes
- See a graphic that shows how fee arbitration works
- Arbitration Advisories
- Fee arbitrator appointments application
- General demand letter writing tool

For Lawyers:

- Request for arbitration of a fee dispute (This form is for the State Bar program only. Contact local bar for local bar forms.)
- Notice of Client's Right to Fee Arbitration
- Guidelines and minimum qualifications of arbitrators for the State Bar fee arbitration program
- Sample fee agreement forms and instructions:
 - Sample written fee agreement form
 - Optional clauses and disclosure forms
 - Sample written fee agreement forms instructions and comments

General Resources:

- Rules of the State Bar of California relating to mandatory fee arbitration and schedule of charges and deadlines
- Business and Professions Code, Article 13 Arbitration of Attorney's Fees (§§ 6200-6206)
- Business and Professions Code, Article 8.5 Fee Agreements (§§ 6146-6149.5).
- Code of Civil Procedure, Article 1 Confirmation, Correction or Vacation of the Award (§§ 1285-1289)
- Code of Civil Procedure, Article 2 Limitations of Time (§§ 1288-1288.8)
- Arbitration Advisories
- Fee arbitrator appointments application (Note: All arbitrators must complete the Basic Fee Arbitrator Training program, available here as a self-study MCLE video, before they can be assigned to hear a MFA case.)
- FAQs: Preparing for the arbitration hearing

APPENDIX II: STATE OR LOCAL BAR ASSOCIATION ARBITRATION PROGRAMS

Alabama Fee Arbitration (by individual bar associations), e.g., https://birminghambar.org/page/Fee_arbitration

Alaska Fee Arbitration, <https://alaskabar.org/for-the-public/attorney-fee-disputes/fee-arbitration-process/>

Arizona Fee Arbitration, <https://www.azbar.org/media/fwijantl/fee-arb-rules-5-18-18.pdf>

Arkansas Fee Arbitration, <https://law.justia.com/codes/arkansas/2014/title-16/subtitle-7/chapter-108/subchapter-2>

California Fee Arbitration, <https://www.calbar.ca.gov/Attorneys/For-Attorneys/Mandatory-Fee-Arbitration>

Colorado Fee Arbitration, <https://www.cobar.org/legalfee>

Connecticut Fee Arbitration, https://www.ctbar.org/docs/default-source/resources/6-2018-approved-cba-rules-for-resolution-of-legal-fees.pdf?sfvrsn=8145eb6e_2

Delaware Fee Arbitration, see e.g., <https://www.regerlaw.com/new-procedures-for-mandatory-non-binding-arbitration-in-delaware.html>

Florida Fee Arbitration, https://www-media.floridabar.org/uploads/2022/08/2023_01-JUL-FEE-ARBITRATION-PROCEDURAL-RULES-7-29-2022.pdf

Georgia Fee Arbitration, <https://www.gabar.org/committeesprogramssections/programs/feearbitration.cfm>

Hawaii Fee Arbitration, https://hsba.org/HSBA_2020/Public/Attorney_Client_Relations.aspx

Idaho Fee Arbitration, https://isb.idaho.gov/wp-content/uploads/ibcr_sec07_feearb.pdf

Illinois Fee Arbitration, [https://lrs.chicagobar.org/pages/fee-dispute; 2 145 Ill 2d R 90\(a\)](https://lrs.chicagobar.org/pages/fee-dispute; 2 145 Ill 2d R 90(a)).

Indiana Fee Arbitration, https://www.inbar.org/resource/resmgr/rebecca/afdr_policies_procedures_upd.pdf

Iowa Fee Arbitration, <https://www.pcbaonline.org/community/fee-arbitration/>

Kansas Fee Arbitration, https://www.ksrevisor.org/statutes/ksa_ch5.html

Kentucky Fee Arbitration, <https://www.kybar.org/page/legalfeearb>

Louisiana Fee Arbitration, <https://www.lsba.org/Public/FeeDisputeResolution.aspx>

Maine Fee Arbitration, https://mebaroverseers.org/regulation/bar_rules.html?id=63332

Maryland Fee Arbitration, <https://www.msba.org/for-the-public/dispute-an-attorney-fee/>

Massachusetts Fee Arbitration, <https://www.massbar.org/membership/fee-arbitration-board>

Michigan Fee Arbitration, see <https://altiorlaw.com/ethics-alert-the-michigan-supreme-court-enacts-mrpc-1-19-to-impose-new-requirements-for-arbitration-provisions-in-attorney-client-engagement-agreements/>;

https://www.michbar.org/opinions/ethics/numbered_opinions/R-023

Minnesota Fee Arbitration, <https://my.mnbar.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=60f5de51-1802-8ccf-f348-42431083482d>

Mississippi Fee Arbitration, <https://www.msbar.org/ethics-discipline/fee-disputes/the-program/>

Missouri Fee Arbitration, https://mobar.org/site/content/Lawyer-Resources/Dispute_Resolution.aspx

Montana Fee Arbitration, <https://www.montanabar.org/Public/Disputing-Attorney-Fees>

Nebraska Fee Arbitration, <https://www.nebar.com/page/FeeArbitration>

Nevada Fee Arbitration, <https://nvbar.org/disputing-a-lawyers-fee/petitioners/>

New Hampshire Fee Arbitration, <https://www.nhbar.org/nhba-dispute-resolution-committee/>

New Jersey Fee Arbitration, <https://www.njcourts.gov/attorneys/ethics/fee-arb-prog>
New Mexico Fee Arbitration, <https://www.sbnm.org/For-Public/I-Have-a-Dispute-with-My-Lawyer/Dispute-a-Lawyers-Fee>
New York Fee Arbitration, <https://ww2.nycourts.gov/rules/chiefadmin/137.shtml>
North Carolina Fee Arbitration, <https://www.ncbar.gov/bar-programs/fee-dispute-resolution-program/>
North Dakota Fee Arbitration,
https://www.sband.org/resource/resmgr/docs/for_public/rules_on_arbitration_of_fee_.pdf
Ohio Fee Arbitration (by individual bar associations), e.g.,
<https://www.toledobar.org/?pg=fee-arb>
Oklahoma Fee Arbitration, <https://www.okbar.org/ethics/ethics-opinion-no-312/>
Oregon Fee Arbitration, <https://www.osbar.org/feedisputeresolution>
Pennsylvania Fee Arbitration,
<https://www.pabar.org/public/committees/dispreso/disput.asp>
Rhode Island Fee Arbitration, <https://ribar.com/for-the-public/fee-arbitration/>
South Carolina Fee Arbitration, <https://www.sdcbabar.org/?pg=FeeArbitrationMain>
Tennessee Fee Arbitration,
<https://www.tncourts.gov/sites/default/files/rule47comments.pdf>
Texas Fee Arbitration,
<https://www.texasbar.com/Content/NavigationMenu/ForThePublic/ProblemswithanAttorney/ResolvingFeeDisagreements/default.htm>
Utah Fee Arbitration,
<https://www.utahbar.org/public-services/fee-dispute-resolution-program/>
Vermont Fee Arbitration, <https://legislature.vermont.gov/statutes/section/12/192/05665>
Virginia Fee Arbitration, <https://www.vsb.org/site/public/fee-dispute-resolution-program>
Washington Fee Arbitration,
https://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=mar&ruleid=supmar6.4
West Virginia Fee Arbitration, <https://wvbar.org/public-information/voluntary-fee-dispute-resolution-program/>
Wisconsin Fee Arbitration,
<https://www.wisbar.org/forpublic/ihaveadisputewithmylawyer/documents/about-the-fee-arbitration-program.pdf>
Wyoming Fee Arbitration, <https://www.wyomingbar.org/wp-content/uploads/Petition-Fee-Arbitration.pdf>
Puerto Rico Fee Arbitration, e.g., <https://www.mcvpr.com/practices-PuertoRico-Mediation-Dispute-Resolution>
D.C. Bar Fee Arbitration, <https://www.dcbar.org/for-lawyers/fee-dispute-program>