

State Bar of California Mandatory Fee Arbitration

HEARING PROCEDURE SCRIPT/CHECKLIST OUTLINE

The hearing procedures set forth below may, in the discretion of the arbitrators, be varied provided all parties are allowed a full and fair opportunity to present their respective cases. The Chairperson will initiate the following:

- A. *Introduction of the Arbitrators* – classification as layperson or lawyer
- B. Have the parties exhausted all opportunities to resolve this before we proceed.
(Caveat: Beware! Do not participate or encourage settlement or you can lose your arbitral immunity.)
- C. Confirm if prior disclosures have been made. Also, any additional disclosures should be made to the parties at this time.
- D. Elicit names of all parties, their attorneys of record, and other representatives, if any. Include responses in the introduction section of the award.
- E. Confirm with the parties that the fee arbitration will be non-binding, or if the parties have agreed or wish to agree to binding arbitration, state as follows: Unless the law directs otherwise, all awards rendered will be final and not subject to appeal.
- F. *Formal Opening Of Hearing:* This fee dispute has been submitted to the Arbitrators for hearing in accordance with the _____ (State or County) Bar's Rules of Procedure for Fee Arbitrations.
- G. It is suggested that no interruptions be made during an individual's testimony. The arbitrators may ask questions as they deem appropriate.
- H. Responsibility of Arbitrators: We have been selected to serve as neutral arbitrators to hear and decide this matter. We are not State or local Bar Association employees.
- I. Expected Conduct: All participants are expected to act in a civil manner at all times. Parties and attorneys are requested to be on time for all sessions and to limit breaks to the time allotted. Parties and attorneys are responsible for providing copies of all proposed exhibits to all other parties and to the panel. Parties are encouraged to avoid repetitive arguments. Parties and counsel must direct all objections, motions and comments to the Panel and not to each other.
- J. Oath that May/Should be Administered To Witnesses

You do solemnly swear or affirm that the testimony you are about to give shall be the truth the whole truth and nothing but the truth?

Will each of you please state your name, address, and if applicable, your business affiliation.

Parties and a representative are permitted to remain throughout the proceeding. Expert witnesses are permitted to remain unless the panel determines that the witness should be excused. All other witnesses will now be excused and will be called upon at the appropriate time, unless the panel determines that the witness(es) will remain. ***(Note to Arbitrators: Barring countervailing reasons, expert witnesses who are assisting parties in the presentation of their cases should be permitted to attend all hearings. Generally, there is a presumption that expert witnesses, as opposed to witnesses testifying as to the facts pertinent to the case, will be permitted to attend the entire proceedings.)***

- K. The Arbitrators have read the papers that have been submitted to the program by the parties with their intake forms. These papers will be marked and received into evidence as Arbitrators' Exhibit #1. The Chairperson should recite the contents of Exhibit #1.
- L. The administrative announcements have been completed. The presentation of evidence will begin. Chairperson should announce order of presentation, depending upon the circumstances.
- M. Other important open matters may be addressed here.
- N. Arbitrator may set forth matters/facts that they understand are agreed to between the parties and issues understood by the parties.
- O. Opening Statements: Allow each party to make an opening statement. It should focus on the issues.
- P. Presentation Of Evidence: Allow the parties to present their evidence (based upon the burden of proof per the Arbitration Advisory 96-03).
- Q. Inquiry Prior To Closing Argument: Do the parties have any further evidence or testimony to present?
- R. Final Statements/Closing Argument: Each party may make a final statement/closing argument including a summary of their final request for their award and, also, including any changes to their original claims at the initiation of the arbitration. The parties are directed to limit their closing argument to a summation of what he or she believes has been proven. The parties may now begin their closing argument, beginning with the Claimant.
- S. Inquiries Prior To Closing Hearing: Do the parties have any other evidence that you would like to raise that you have not previously raised?
- T. The matter is now submitted. No party or counsel will contact any panel member directly. All communications must be directed to the program's staff assigned to the case.
- U. The award will be delivered to the Program Administrator who will, in turn, serve it upon the parties, and/or counsel.
- V. Please make sure that you have retained all originals of the documents. The panel

should have only copies, not original documents. Neither the Mandatory Fee Arbitration Program nor its arbitrators are responsible for secure disposal of any documents left by the Panel or the parties following a proceeding. This hearing facility will dispose of all remaining materials in its usual manner. If a party wishes to retain secure control of the materials, they must take them when leaving.

W. Closing the Hearing: No party will contact any member of this arbitration panel directly and I recommend that there be no direct communications with each other upon leaving this hearing.

I request that the parties leave the room at the same time.