

MCLE SELF-STUDY TEST  
FEE ARBITRATOR LEGAL ISSUES

1. A request for arbitration may be made by a person who is not the client but who may be liable or entitled to a refund of attorney's fees or costs.
2. A binding arbitration clause in a retainer agreement is unenforceable under B&P Code § 6204 (a).
3. Any agreement to be bound must be in writing and made after the fee dispute arises.
4. A party may withdraw from a binding agreement at any time.
5. Non-binding arbitration awards are not as important as binding arbitration awards.
6. The issue of who has the burden of proof is left to the discretion of the arbitrator but is usually based upon the party best able to produce evidence on a given issue.
7. The attorney should generally bear the burden of establishing his or her performance.
8. Hearsay is not permitted as evidence.
9. Evidence in fee arbitration hearing is based strictly on the common law or statutory rules.
10. If the fee arbitration is relating to claims of malpractice the arbitrator may award affirmative relief.
11. Arbitrators should consider the background, experience and relative sophistication of the parties and make every effort to make a full and fair review of the facts.
12. The attorney has no obligation to give the client an itemized bill or explain whether or not the billing represents time reasonably spent on behalf of the client.
13. The client's conduct during the course of the representation may be considered by the arbitrator.
14. Attorney/client and work product privileges prohibit disclosure of relevant communications or work product in fee arbitrations.
15. Legislation requiring a written fee agreement will invalidate any agreements not in writing and make non-complying written agreements voidable as per B&P Code § 6146, 6147 and 6148.
16. In accordance with Rule 4-200 of the State Bar Rules of Professional Conduct an attorney may enter into an agreement for, charge or collect an illegal or unconscionable fee.

17. "True" or "Classic" retainers are enforceable only if the client has agreed that the amount was paid "solely for the purpose of ensuring the availability of the member.

18. It is important to assess the enforceability of a written fee agreement as per Arbitration Advisory 93-02.

19. If there is no written fee agreement or if the written fee agreement is unenforceable, the attorney is not entitled to a reasonable fee.

20. The question of whether or not an arbitrator should void a fee agreement unless the client affirmatively raises the issue is sticky per Arbitration Advisory 96-04.

21. Civil Code § 1598, 1599 and 1608 are important to consider when dealing with the issue of voiding the fee agreement.

22. Bills don't have to clearly state the basis thereof or identify the nature and amount of costs and expenses incurred.

23. Evidence relating to claims of malpractice shall be admissible only to the extent that those claims bear upon the fees or costs to which the attorney is entitled. Arbitrators may rule that the value of attorney's services was lessened due to the way the case was handled and reduce fee.

24. California law suggests there must be a serious violation of the attorney's responsibilities before an attorney who violates an ethical rule is required to forfeit fees.

25. If there was a severe ethical violation then quantum meruit does not apply and an attorney is not entitled to keep fees earned before the conflict arose.

26. In the absence of a court order arising from a proceeding where the client has a fair opportunity to contest the fee owing to his own counsel, the dispute is subject to mandatory fee arbitration.

27. Mandatory Fee Arbitrations are subject to any applicable statute of limitations such as Code of Civil Procedure § 337 and 339.

28. Private arbitration clauses in fee agreements may not be stayed if a client elects to file a request for Mandatory Fee Arbitration.

29. Monetary sanctions for misconduct or egregious behavior of a party are not authorized or permissible.



704 Main ♦ Street ♦ Martinez ♦ CA ♦ 94553

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ANSWER SHEET

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Date:
Name:
Law Firm:
Address:
City/State/Zip:
Telephone:
State Bar #:

Mail completed ANSWER SHEET to:

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