

Contra Costa County Bar Association

AGREEMENT TO MEDIATE AN ATTORNEY/CLIENT FEE DISPUTE
PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTIONS 6200-6206
And Pursuant to Evidence Code Section 1119

Client: _____ Attorney: _____

The client and the attorney agree to mediate this fee dispute and accept the following terms and conditions.

1. We understand that the **CONTRA COSTA COUNTY BAR ASSOCIATION** will appoint the mediator(s) to facilitate our dispute. We understand that any decision to settle this dispute through mediation is voluntary and that no agreement shall be binding without the consent of all parties.
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 (see page 2)** no mediator shall be called as a witness in any litigation that may result from the matter being mediated.
4. We agree that pursuant to **Evidence Code Section 1119 (see page 2)** the mediation conference is entirely confidential, and 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. We understand that the mediator may confer with participants in separate confidential meetings as well as in joint meetings as the mediator shall determine is appropriate.
5. We agree that if we reach a resolution, or partial resolution of the dispute our agreement will 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) the amount of any allocation of the filing fee in reaching this agreement. If no agreement is reached, we understand that the Mediator shall notify the Panel 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 (page 2)**, once any written agreement reached between us in the course of this mediation has been signed by us, that agreement 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) in the event of a State Bar enforcement proceeding under Section 6203(d) of the Business and Professions Code, or (c) in the event of enforcement by a court.

Signed: _____ Date: _____
Client

Signed: _____ Date: _____
Attorney

State of California Evidence Code

703.5. No person presiding at any judicial or quasi-judicial proceeding, and no arbitrator or mediator, shall be competent to testify, in any subsequent civil proceeding, as to any statement, conduct, decision, or ruling, occurring at or in conjunction with the prior proceeding, except as to a statement or conduct that could (a) give rise to civil or criminal contempt, (b) constitute a crime, (c) be the subject of investigation by the State Bar or Commission on Judicial Performance, or (d) give rise to disqualification proceedings under paragraph (1) or (6) of subdivision (a) of Section 170.1 of the Code of Civil Procedure.

California Evidence Code Sections 1119

1119. Except as otherwise provided in this chapter:

(a) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(b) No writing, as defined in Section 250, that is prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential.

1120. (a) Evidence otherwise admissible or subject to discovery outside of a mediation or a mediation consultation shall not be or become inadmissible or protected from disclosure solely by reason of its introduction or use in a mediation or a mediation consultation.

(b) This chapter does not limit any of the following:

(1) The admissibility of an agreement to mediate a dispute.

(2) The effect of an agreement not to take a default or an agreement to extend the time within which to act or refrain from acting in a pending civil action.

(3) Disclosure of the mere fact that a mediator has served, is serving, will serve, or was contacted about serving as a mediator in a dispute.

1121. Neither a mediator nor anyone else may submit to a court or other adjudicative body, and a court or other adjudicative body may not consider, any report, assessment, evaluation, recommendation, or finding of any kind by the mediator concerning a mediation conducted by the mediator, other than a report that is mandated by court rule or other law and that states only whether an agreement was reached, unless all parties to the mediation expressly agree otherwise in writing, or orally in accordance with Section 1118.

1122. (a) A communication or a writing, as defined in Section 250, that is made or prepared for the purpose of, or in the course of, or pursuant to, a mediation or a mediation consultation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if either of the following conditions is satisfied:

(1) All persons who conduct or otherwise participate in the mediation expressly agree in writing, or orally in accordance with Section 1118, to disclosure of the communication, document, or writing.

(2) The communication, document, or writing was prepared by or on behalf of fewer than all the mediation participants, those participants expressly agree in writing, or orally in accordance with Section 1118, to its disclosure, and the communication, document, or writing does not disclose anything said or done or any admission made in the course of the mediation.

(b) For purposes of subdivision (a), if the neutral person who conducts a mediation expressly agrees to disclosure, that agreement also binds any other person described in subdivision (b) of Section 1115.

1123. A written settlement agreement prepared in the course of, or pursuant to, a mediation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if the agreement is signed by the settling parties and any of the following conditions are satisfied:

(a) The agreement provides that it is admissible or subject to disclosure, or words to that effect.

(b) The agreement provides that it is enforceable or binding or words to that effect.

(c) All parties to the agreement expressly agree in writing, or orally in accordance with Section 1118, to its disclosure.

(d) The agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute.

1126. Anything said, any admission made, or any writing that is inadmissible, protected from disclosure, and confidential under this chapter before a mediation ends, shall remain inadmissible, protected from disclosure, and confidential to the same extent after the mediation ends.

1127. If a person subpoenas or otherwise seeks to compel a mediator to testify or produce a writing, as defined in Section 250, and the court or other adjudicative body determines that the testimony or writing is inadmissible under this chapter, or protected from disclosure under this chapter, the court or adjudicative body making the determination shall award reasonable attorney's fees and costs to the mediator against the person seeking the testimony or writing.