

**ATTACHMENT C**

Com ment #	Name or Organization	Attorney or Public Member?	Position (A/AM/ D/NP) <sup>1</sup>	Public comments
1	Anonymous	n/a	A	
2	Lee L. Blackman	Attorney member	AM	<p>I am an attorney in active status in California and an MFA program arbitrator and mediator – and a Committee Vice-Chair -- of the Los Angeles County Bar Association’s Attorney Client Arbitration and Mediation Service.</p> <p>The proposed Advisory fairly captures the appropriate approach to testing fees and costs billed under a retainer agreement where the client is sophisticated enough to know that the terms of the engagement are negotiable and where the client has made an informed decision to accept a fee structure that may result in charges that are higher than other lawyers in the community might bill because of factors like the lawyer’s special experience, expertise, success, or commanding standing in the community; the amount in controversy or the sophistication of the issues in the matter; or other similar considerations.</p> <p>The Advisory does not explicitly suggest, however, that arbitrators ought to be satisfied, before giving force to a fee agreement that results in a higher fees than would generally be considered reasonable for a comparable matter in the relevant community, that a client who has agreed to pay such a premium has done so knowingly and because of the client’s judgment that the circumstances are sufficient to justify anticipated fees that are or may turn out to be higher than would otherwise be determined to be reasonable.</p> <p>Stated alternatively, in a case where the client has agreed to a fee structure resulting in larger than generally accepted fees for ostensibly similar work, if the evidence does not demonstrate that the client’s consent to the unusually high fee structure was genuinely “informed”, the arbitrator should perform the more rigorous reasonable fee assessment to determine the amount the lawyer could properly bill for its services.</p> <p>While this view of the proper scope of review of fee agreements with unusually high rates is arguably implicit in the language of the proposed Advisory suggesting that arbitrators are to evaluate whether</p>

<sup>1</sup> A = Agree with proposal; AM = Agree if modified; D = Disagree with proposal; NP = No position on proposal

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				<p>the agreed fee structure is procedurally or substantively unconscionable, it would nevertheless be appropriate for the Advisory – perhaps in the form of a footnote to the unconscionability discussion – to remind arbitrators that, in deciding whether the client’s consent to the fee structure was “informed”, arbitrators should consider whether the lawyer informed the client (or whether the client otherwise knew) that the fee structure was negotiable, that third parties might judge the fees billed under the selected structure to be higher than the rates or charges generally billed in the community for comparable work, and that the lawyer selected the fee structure as a result of the lawyer’s judgment that the nature of the matter and/or the lawyer’s special expertise justified the particular rate or fee structure.</p>
3	Maralee Nelder	n/a	A	
4	Anahid Agemian	Attorney member	AM	<p>Paragraph 2, before "(Original italics.)" - ... where a breach of the covenant of good faith and fair dealing may be found." Otherwise, the sentence states that there was a breach of a breach. ("where a breach of the covenant of good faith and fair dealing may be found to have been breached.")</p> <p>Paragraph 2 it is "unconscionable or " then in paragraph 3 it seems to imply that it is "unconscionable" and (not or) a breach of the covenant.</p> <p>The correct reading is "and" pursuant to Pech. "To be enforceable, the fee agreement cannot be unconscionable. And ..."</p> <p>"Discussion": 1. complying fee agreement? - must comply with the MFA</p> <p>2. "when analyzing a fee agreement" it should be "when analyzing a complying fee agreement"</p> <p>Pech states that when the agreement is found not to be unconscionable, NO reasonableness analysis is made.</p>

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				<p>"The trial correctly held" that reasonableness analysis is not required where the fee is specified in the contract. (Pech)</p> <p>The advisory seems confused and does not seem to support the conclusion.</p>
<a href="#">5</a>	California Lawyers Association	Attorney member	AM	See Attached Comment
6	Anonymous	Attorney member	D	In the thirty years I've belonged to the California State Bar, it's never provided me with anything of value in return for my membership dues. Moreover, the State Bar has provided little value to the general public, either, and has completely fallen down in its duty to protect the public from unscrupulous shysters like Tom Girardi. Instead, the State Bar has ENABLED Girardi and his ilk to victimize their clients. This sort of slipshod, negligent performance merits no increase in membership fees. If anything, the membership fees should be REDUCED.
7	Kaelee Gifford	n/a	D	
8	Karen L. Landau	Attorney member	A	As a fee arbitrator, I think this advisory is a useful statement of applicable law that would be helpful to arbitrators in particular.
9	April Washington	Public Member	A	I want to sue the Judy Justice show for misleading me. I was told I would get pay for my lawyer fees, filing fees, and my car. I did sign a contract. I had a real case and the judge didn't look at my case. She simply waved me off her show like I was contagious. My case was first in criminal court. My youngest daughter (Calista) was charged with simple battery for allegedly cutting her sister. Once we finished that then we went to California for the Judy Justice show. Well she had the case wrong. I was suing for my car, money and for an attorney.
10	Susan Lea	N/A	AM	The biggest problem I have seen with written " fee" agreements is that ambiguous language is intentionally used to allow the lawyer to keep and retain the initial fees required from the client, and in the past the BAR has allowed the lawyer to steal thousands and thousands of dollars from clients

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				because the lawyer was able to require a \$5000 retainer, do \$1000 of work, and just keep the \$4000 difference. Despicable. Theft.