

LEGAL FEE REASONABLENESS AT TRIAL

In California

1st Edition (2014)

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***A Mini-Handbook on the Methodology for
Evaluating the Reasonableness of Legal Fees
Claimed as Damages at Trial in California***

***APPLICABLE IN CALIFORNIA STATE AND FEDERAL COURTS AND
IN CALIFORNIA MEDIATIONS AND ARBITRATIONS***

TABLE OF CONTENTS

14-FACTOR EXPERT METHODOLOGY APPLICABLE IN CALIFORNIA CASES (WITH SUPPORTING EXPERT COMMENTARY AND EXPLANATION)

PREFACE	1
THE AMOUNT OF THE FEE IN PROPORTION TO THE VALUE OF THE SERVICES PERFORMED	1
THE RELATIVE SOPHISTICATION OF THE ATTORNEY(S) AND THE CLIENT	2
THE NOVELTY AND DIFFICULTY OF THE QUESTIONS INVOLVED AND THE SKILL REQUISITE TO PERFORM THE LEGAL SERVICE PROPERLY	3
THE AMOUNT INVOLVED AND THE RESULTS OBTAINED	4
THE TIME LIMITATIONS IMPOSED BY THE CLIENT OR BY THE CIRCUMSTANCES	4
THE NATURE AND LENGTH OF THE ATTORNEY'S PROFESSIONAL RELATIONSHIP WITH THE CLIENT	5
THE EXPERIENCE, REPUTATION, AND ABILITY OF THE ATTORNEY(S) PERFORMING THE SERVICES	5
THE TIME AND LABOR REQUIRED	5
THE INFORMED CONSENT OF THE CLIENT TO THE FEE	6
CONCENTRATION OF WORKFLOW FROM STAFFING THE CASE WITH A CORE TEAM OF ATTORNEYS	6
APPROPRIATE MIX OF CORE ATTORNEYS AT DIVERSE HOURLY RATES	7
APPROPRIATE DELEGATION OF WORK	8
CONTINUITY OF CORE ATTORNEY STAFFING	8
EXERCISE OF LAW FIRM BILLING JUDGMENT	8
ABOUT THE AUTHOR	10

**14-FACTOR EXPERT METHODOLOGY APPLICABLE IN
CALIFORNIA CASES**

(WITH SUPPORTING EXPERT COMMENTARY AND EXPLANATION)

PREFACE

The 14 discrete, substantive factors set forth below are applicable in California-venued cases where legal fees are being sought as damages. These 14 factors include the relevant factors from the California Rules of Professional Conduct for attorneys, as well as certain other factors relating to litigation management and case staffing efficiency which have been admitted into evidence and validated by trial judges and arbitrators in California (as well as in other jurisdictions). Expert commentary and explanation have been provided for each factor, to put each factor into its proper context.

The more of these 14 factors that can proven at arbitration or trial in an attorney's-fees-as-damages case, the more the balance of legal fee reasonableness will tip in the fee claimant's favor. Ideally, a fee claimant should be prepared to establish a substantial majority of these 14 factors to have a strong argument for overall fee reasonableness. Conversely, the opposing party will seek to demonstrate the absence of as many of these factors as possible at trial.

Some of the fee reasonableness factors discussed herein may be more applicable in certain types of attorney's-fees-as-damages cases than in others. Also, a fee claimant or opposing party has the option of presenting additional factors relating to fee reasonableness, where appropriate, beyond the factors discussed herein.

- 1.) THE AMOUNT OF THE FEE IN PROPORTION TO THE VALUE OF THE SERVICES PERFORMED
(source: California Rules of Professional Conduct)**

ABOUT THE AUTHOR

As a licensed California attorney since 1980 and a legal fee/litigation management expert since 1991, Kenneth Moscarel is a leading trial expert in California and nationwide. He has testified both in support of and in opposition to claimed legal fees in many multimillion-dollar fee cases. Among his accomplishments, Mr. Moscarel is known for:

1.) His success as a testifying expert in the *Enron* litigation in U.S. District Court in Houston in 2008, in which the presiding federal judge repeatedly relied on Mr. Moscarel's opinions in her 209-page published fee ruling, making a record-setting \$700 million attorney fee award in that case. The federal judge in *Enron* described Mr. Moscarel in her ruling as one of the "nationally prominent experts on fee awards" who was "highly qualified to testify about attorneys' fees and market rates." See <http://enronfeeexpert.com>.

2.) Providing continuing legal education seminars on two occasions in 2005 and 2008 to all JAMS retired judge arbitrators and mediators in California and the U.S. on attorney fee issues and attorney fee awards. JAMS management turned Mr. Moscarel's 2008 seminar into an audio podcast and DVD video for use by JAMS neutrals in the future. Richard Chernick, managing director of JAMS' national arbitration program, invited Mr. Moscarel to speak. See <http://feedispute.com/getJAMS.asp>.

3.) Being invited to publish a first-ever article for the Association of Business Trial Lawyers (ABTL), a prestigious legal organization comprised of federal and state court judges and top commercial litigators at major law firms in California. Mr. Moscarel's article discussed the appropriate methodology for a trier of fact to use in evaluating the reasonableness of claimed legal fees in different types of attorney's-fees-as-damages cases. Mr. Moscarel's ABTL article was the first time this particular fee issue had been analyzed in such detail in a recognized legal publication. See <http://www.abtl.org/report/nc/abtlncalvol23no2.pdf>.

4.) Being invited as a guest speaker by the College of Commercial Arbitrators (CCA - www.thecca.net), an elite, invitation-only national organization of arbitrators in large, complex cases. Mr. Moscarel was the only attorney fee trial expert invited to speak at the CCA annual conference in Los Angeles in 2014.

5.) Publishing a series of articles in the Los Angeles/San Francisco *Daily Journal* legal newspaper outlining strategy and tactics on attorney fee issues to aid policyholders counsel in winning large, complex insurance recovery actions and Cumis arbitrations against insurers. See <http://feedispute.com/documents/DailyJournal.pdf>.

6.) Being regularly retained as a trial fee expert by the largest, most highly-regarded law firms in California and the U.S. in large, complex arbitrations and lawsuits in federal and state courts involving seven-figure, eight-figure, and nine-figure legal fees, where fee reasonableness was in dispute. See <http://feedispute.com/getClients.asp>.

Mr. Moscarel's complete fee expert credentials can be found at www.FeeDispute.com.