

**COMMITTEE ON MANDATORY FEE ARBITRATION
THE STATE BAR OF CALIFORNIA**

AGENDA

**Friday, April 20, 2018
10:00 a.m. – 3:00 p.m.**

The State Bar of California
845 South Figueroa Street
Conference Room 2G, 2nd Floor
Los Angeles, CA 90017

Questions regarding any agenda item should be directed to Isabel Liou, Committee Staff Liaison, at **(415) 538-2573**.

The order of business is approximate and subject to change.

OPEN SESSION

- | | | |
|------|--|-----------------|
| I. | Call for Public Comment | (Walsh) |
| II. | Approval of Minutes of January 19, 2018 Meeting (Attachment 1, pp. 1-4) | (All) |
| III. | Chair's Report | (Walsh) |
| IV. | Report from Presiding Arbitrator | (Bacon) |
| V. | Report from State Bar Staff | (Staff) |
| | A. Office statistics (Attachment 2, p. 5) | |
| | B. Schedule of Events (Attachment 3, p. 6) | |
| | C. 2018 CMFA Recruitment | |
| | D. Recent Developments | |
| VI. | Business | |
| | A. Discuss New Advanced Fee Arbitration Training Outline
(Attachment 4, pp. 7-32) | (Walsh, Straus) |
| | B. Arbitration Advisory on Interest – Discuss Current Draft
(Attachment 5, pp. 33-37) | (Mark, Fish) |
| | C. Arbitration Advisory on Costs – Discuss Current Draft
(Attachment 6, pp. 38-42) | (Mark, Bacon) |
| | D. Discuss Revised Award Form and Sample Findings & Award
(Attachment 7, pp. 43-54) | (Straus) |

- E. Mediation Confidentiality - CLRC Study - Legislation Update (Walsh)
- F. Western San Bernardino County Bar Association – Discuss Proposed MFA Rules
(Attachment 8, pp. 55-84) (Mark, Zukerman)
- G. Discuss Status of CMFA Review per the Governance in the Public Interest Task Force, Appendix I (Walsh, Mark)
- H. Discuss Updated Description of Committee Service and Appointments Policy
(Attachment 9, pp. 85-96) (Walsh)
- I. San Mateo County Bar Association – Review Proposed Revised Filing Fee Schedule
(Attachment 10, pp. 97-98) (TBD)

Next committee meeting:

DATE: Friday, July 13, 2018
 TIME: 10:00 a.m. – 3:00 p.m.
 LOCATION: The State Bar of California
 180 Howard Street, 4th Floor
 San Francisco, CA 94105

In compliance with the Americans with Disabilities Act, those requiring accommodation at this meeting should notify Isabel Liou at (415) 538-2573. Please provide notification at least 72 hours prior to the meeting to allow sufficient time to make arrangements for accommodations at this meeting.

**COMMITTEE ON MANDATORY FEE ARBITRATION
THE STATE BAR OF CALIFORNIA**

MINUTES

**Friday, January 19, 2018
10:00 a.m. – 3:00 p.m.**

The State Bar of California
180 Howard Street, 8th Floor
San Francisco, CA 94105

Members Present (14): Lorraine Walsh (Chair), Ken Bacon (Presiding Arbitrator), Lee Straus (Vice Chair), Clark Stone (Vice Chair), Anahid Agemian, George Duesdieker, Michael Fish, Jobi Halper, Patrick Maloney, Joel Mark, John McDougall, Sharron McLawyer, Nick Migliaccio, Roy Zukerman.

Not Present (2): Carole Buckner, Jason Houston.

Staff Present: Executive Director Leah Wilson, Chief of Mission Advancement and Accountability Donna Hershkowitz, Dina DiLoreto, Isabel Liou, Arayeh Rahimitabar.

Chair Lorraine Walsh called the meeting to order at 10:09 a.m.

I. Call for Public Comment

There were no requests for public comment.

II. Approval of Minutes of October 27, 2017 meeting

The minutes were approved as attached.

III. Chair's Report

Lorraine reminded members that Bagley-Keene requires that meeting agendas be posted online 10 days before the meeting date. Any agenda item attachments should be submitted to Isabel 17 days before the meeting date. If you do not hear from your co-author regarding an assigned agenda item, please notify Lorraine or Isabel.

Lorraine also mentioned that the Western San Bernardino County Bar Association (WSBCBA) is putting together fee mediation and arbitration programs. This appears as a January 2018 agenda item and will be assigned two co-authors.

IV. Report from Presiding Arbitrator

Ken reported that a respondent attorney in an enforcement case stemming from an Orange County Bar Association (OCBA) fee arbitration award is threatening to sue him and the OCBA. Relatedly, Ken mentioned that he recently came across an OCBA arbitration award that did not include post-award interest, despite Guideline and Minimum Standard item 16 requiring such language. Ken explained that this is problematic from an enforcement standpoint because the State Bar Court has in the past refused to order an attorney to pay interest on an outstanding fee arbitration

CMFA Meeting Minutes – January 19, 2018

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award where the language of the local bar's arbitration award does not include post-award interest. Ken stated that post-award interest should be included in all awards because it motivates attorneys to refund their former clients promptly. Lastly, it was announced that the ABA recognized the State Bar of California's Mandatory Fee Arbitration Program as one of the leading MFA programs in the nation, and that the ABA extended an invitation for someone from the State Bar program to speak at the ABA's 34th National Forum on Client Protection. Ken will be representing the MFA Program at this event, which will be held on June 1-2, 2018 in Louisville, Kentucky.

V. Report from State Bar Staff

A. Office Statistics

Updated statistics were handed out. Isabel is working with the IT department to obtain data on the number of phone calls taken by the MFA department for the first half of December 2017.

B. Schedule of Events

An updated events calendar was handed out. Of note is an upcoming basic fee arbitrator training in Visalia, California on January 23, 2018. This training will hopefully help the Tulare County Bar Association get their fee arbitration program up and running again, as well as provide Tulare County arbitrators for the State Bar Program until the local bar association's program is viable. Also, the final 2018 CMFA meeting on September 14, 2018 will be held in San Diego. Lorraine is working with the San Diego County Bar Association to secure a conference room for this meeting.

C. 2018 CMFA Recruitment

Isabel reminded CMFA members to spread the word regarding recruitment. Members whose terms end in 2018 are Lorraine, Lee, Clark, Michael, and Carole. Anyone interested in serving as a committee officer (Chair or Vice Chair) should notify Isabel.

D. Special presentation by Executive Director Leah Wilson on the status of the Governance in the Public Interest Task Force, Appendix I Study (Sub-Entity Review)

A timeline for this study and related report was distributed. Lorraine and Joel will be working with State Bar ORIA and executive staff in preparing this report.

Lastly, Dina spoke generally regarding the use of subcommittees under Bagley-Keene. Based on advice from the Office of General Counsel, subcommittees should not exceed two CMFA members. If any subcommittee or working group meeting involves more than two CMFA members, it must be noticed at least 10 days before the meeting date pursuant to Bagley-Keene.

VI. Business

A. New Outline for Advanced Fee Arbitration Training

This item was discussed. Some overarching goals for this document are to 1) cite Arbitration Advisories throughout the outline where applicable; and 2) edit redundant or conflicting material throughout the three stages of the outline. Any comments or suggestions for this item should be e-mailed to Isabel no later than February 28, 2018.

B. Arbitration Advisory on Interest

Michael advised that a draft was prepared but was not typed due to a staffing issue; thus this agenda item will be reviewed at the April meeting.

C. Arbitration Advisory re: Costs

This item was discussed. In order to comply with Bagley-Keene requirements, Carole was removed from this agenda item, leaving two co-authors, Ken and Joel. Any comments or suggestions for this item should be e-mailed to Isabel no later than February 28, 2018.

D. Revised Sample Award Form; Sample Findings & Award

The two documents for this agenda item were discussed. The committee voted on whether to delete line 25 of the Sample Award Form (Attachment 6, page 22: "All parties were sworn, testified, cross-examined, and participated in the proceedings.") The committee members voted as follows:

Yay: (8) Ken, George, Michael, Jobi, Joel, John, Nick, Roy

Nay: (3) Anahid, Lee, Lorraine

Abstain: (3) Patrick, Sharron, Clark

Lee and Anahid will continue working on the award template, while Lee will finalize the sample award. Due to numerous suggested edits from committee members, comments or suggestions for either document associated with this agenda item should be e-mailed to Isabel no later than February 28, 2018.

E. Mediation Confidentiality - CLRC Study - New Legislation: Update

The proposed legislation includes MFA as an exception to mediation confidentiality. The next step is for the bill to find a sponsor. Lorraine will continue to monitor the status of this item.

F. Rule 3.513 & CCP §1013(a) - Adding Five Days for Service of an Arbitration Award

After briefly discussing the attachments for this item, the Committee agreed that the right to request a trial de novo within 30 days following the service of an arbitration award is jurisdictional and therefore CCP §1013(a) does not apply, and the 30-day post-award period is not extended by five days. Thus,

no revision of the *Notice of Your Rights After Fee Arbitration* handout is necessary.

- G. Western San Bernardino County Bar Association Proposed MFA Rules
Joel and Roy were assigned to this agenda item. Isabel will compare the proposed WSBCBA rules to the State Bar Model Rules and provide both versions to Joel and Roy.

The meeting adjourned at 3:00 p.m.

Next committee meeting:

DATE: Friday, April 20, 2018
TIME: 10:00 a.m. – 3:00 p.m.
LOCATION: The State Bar of California
845 S. Figueroa Street, Conference Room 2G
Los Angeles, CA 90017

**State Bar of California
Mandatory Fee Arbitration Program
2018**

Arbitration

Arbitration	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Year-To-Date	Year End 2017
Cases Open (Beginning of Month)	15	23	23											15
Fee Arbitration Requests	10	2	1										13	43
Arbitration Cases Closed	3	2	1										6	56
<i>Findings & Award Served</i>	2	0	0										2	35
<i>Cases Closed, No Award</i>	1	2	1										4	2
Cases Open (End of Month)	22	23	23											15
Phone Calls Handled	317	231	379										927	3262

Enforcement

Enforcement	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Year-To-Date	Year End 2017
Cases Open (Beginning of Month)	51	50	51											50
Enforcement Requests Rec'd.	1	1	0										2	17
Orders Re Admin Penalties	1	1	0										2	4
Inactive Enrollment Motions Filed	0	0	0										0	4
Attorney Enrolled Inactive	0	0	0										0	5
Enforcement Cases Closed	2	0	0										2	29
<i>Cases Paid and Closed</i>	0	0	0										0	19
<i>Cases Closed (Other)</i>	2	0	0										2	10
Cases Open (End of Month)	50	51	51											51

**Committee on Mandatory Fee Arbitration
Calendar of Events
2017-2018**

Date	Event	Type	Location	Participants
Friday, April 20, 2018 10:00 a.m. - 3:00 p.m.	CMFA Meeting	Meeting	The State Bar of California 845 South Figueroa Street Conference Room 2G, 2nd Floor Los Angeles, CA 90017	All members
Friday, July 13, 2018 10:00 a.m. - 3:00 p.m.	CMFA Meeting	Meeting	The State Bar of California 180 Howard Street, 4th Floor Conference Room 4A-C San Francisco, CA 94105	All members
Thursday, September 13, 2018 5:30 p.m. - 7:30 p.m.	Training	Advanced	San Diego County Bar Association 401 West A Street, Suite 120 San Diego, CA 92101	TBD
Friday, September 14, 2018 10:00 a.m. - 3:00 p.m.	CMFA Meeting	Meeting	San Diego County Bar Association Bayview Room, 11th Floor 401 West A Street San Diego, CA 92101	All members

California State Bar

ADVANCED FEE ARBITRATION

TRAINING MATERIALS

HOW TO WRITE A

FEE ARBITRATION AWARD

Committee on Mandatory Fee Arbitration

2018

ADVANCED FEE ARBITRATION TRAINING
HOW TO WRITE AN AWARD

I. Overview-Why Is it Important to Write an Enforceable Award

Fee arbitrations under the Mandatory Fee Arbitration program succeed in resolving disputes without litigation when the parties perceive the arbitrator(s) acted fairly in deciding their case and prepared a comprehensive award. Even a party who is dissatisfied with the amount awarded may choose not to reject it and seek a *de novo* hearing following non-binding arbitration if that party believes the arbitrator(s) listened to his or her position and determined the dispute in a reasoned manner in accordance with the evidence and applicable law.

This advanced program on how to write an award is designed to assist you to achieve that desired result. Preparation of an Award starts from your initial review of the materials you receive from the local bar association or State Bar, your preparation for the hearing, the actual hearing and writing the award.

This program is divided into these three parts: (1) Before the Arbitration Hearing, (2) During the Hearing and (3) After the Hearing-the Award. In addition, we have included a Checklist that is useful as you work on preparing the award.

II. Before the Arbitration Hearing

a. Review of Materials from Local Bar Program or State Bar

You will receive a packet of materials from the local bar program or State Bar once you have been appointed to serve as an arbitrator. These materials

should be used in the eventual preparation of the award. The materials will contain the Request for Fee Arbitration by either the client or attorney. SEE FORM ATTACHED. The form will contain information regarding whether there was a written fee agreement. It will also include information about the total amount in dispute.

This will include:

- (a) how much the client has paid the attorney;
- (b) how much the client is seeking in a refund;
- (c) how much the attorney claims is still owed; and
- (d) how much the client believes is still owed.

These amounts should be verified with the parties and should be included in the award you prepare.

The form will also state how much was paid to file for fee arbitration ("the filing fee"). You will use this amount when you prepare the part of the award allocating the filing fee.

Finally, the form will provide information indicating whether the arbitration is binding or non-binding. If both parties agreed to binding arbitration the materials will include a copy of the signed "Stipulation to Binding Arbitration". You will need to include a recitation in the award indicating whether the award is binding or non-binding. See also Arbitration Advisory No. 2008-01.¹

¹Throughout these training materials Arbitration Advisories are referenced as appropriate. All Arbitration Advisories are available on the California State Bar website. Arbitration Advisories provide detailed consideration of the topics referenced.

**b. Stipulated Award When the Parties Settle
Their Fee Dispute Prior to Arbitrator Taking
Evidence**

You may encounter a case where the parties are able to reach a settlement before you start the hearing and take evidence. If that happens you may issue a Stipulated Award. Below is a list of its requirements and limitations. See also Arbitration Advisory No. 2015-12.

1. The award must meet the State Bar Minimum Standards and ensure it was reached after the settlement between the parties.
2. You must use the State Bar approved form "Award Pursuant to Stipulation of Parties". SEE FORM ATTACHED.
3. The arbitrator may not issue the award if the arbitrator believes the settlement is unethical, illegal, or unconscionable.
4. Only matters properly before the arbitrator under the MFA can be entered as a Stipulated Award and enforced under the MFA statute. See California Business & Professions Code Section 6203(a) for a list of matters which cannot be included in a Stipulated Award.
5. Effect of Settlement on Enforcement of Stipulated Award-Under B&P Section 6203(d), the State Bar can enforce an award when a client is awarded a refund.

If the case is settled and the client obtains a refund and there is no Stipulated Award, the State Bar cannot assist the Client with enforcement. Moreover, under the Business and Professions Code, the parties have no other post-arbitration remedies.

c. Identify Areas of Agreement/Stipulations

As you review the materials in order to prepare for the arbitration hearing, you will find that there are areas of agreement and areas of disagreement. If after review of the materials you find there are areas of agreement, then prepare a list to review with the parties when the hearing commences. You can use this list to confirm with the parties that they are in agreement on the issues specified. You will not need to take evidence at the hearing on any issues on which the parties are already in agreement. This information should be incorporated into your final award. For example, if both the client and attorney agree on the amount the client paid the attorney, you will confirm this at the hearing and will not need to take evidence on the point, and this amount will be used in the final award.

d. Identify Areas of Disagreement

If the materials show there are major areas of disagreement, prepare a list of such issues to review with the parties after the hearing commences. If the client and attorney disagree about the amount the client paid the attorney, you will need to examine the evidence on this issue. For example, you will need to see cancelled checks or receipts for payment and the attorney records which show deposits into the general or trust account and disbursements.

e. Identify Points of Law, Review MFA Arbitration Advisories and/or Perform Legal Research

Under California Business and Professions Code Section 6203(a) you are required to issue an award with findings that determine "all questions submitted". This includes both factual and legal issues. If the parties identify legal issues in the materials they

submit, you should go to the California State Bar website and look to see if there is an Arbitration Advisory on the subject. If there is an Arbitration Advisory, you should review and analyze it in advance of the arbitration hearing. In some cases you may need to update the research in the Arbitration Advisory.

If no Arbitration Advisory exists, you should conduct legal research on the issue which will be used to prepare the part of the award which requires your findings.

f. Prepare A List of Questions to Ask the Parties

It is not uncommon for the parties to omit from their materials submitted in connection with the arbitration important information about their dispute which you will need to prepare the Award. When you are reviewing the materials submitted by the parties, prepare a list of questions you will ask the parties at the hearing. It is your responsibility to obtain all the necessary information to prepare the award. For example, the client may only list a law firm as the responsible party. Since the arbitrator(s) are required to list an attorney who is the responsible attorney in the arbitration award for purposes of enforcement, you must ask both the client and attorney questions on this issue.

g. How to Address A Party's Request for a Continuance and Non-Appearance of a Party

A party may request to continue the hearing. Consult the local program or State Bar rule for the legal standard for a continuance. Most programs require the party to show "good cause". If you agree to the request you should confirm the continuance in writing. In the aware you should include a recitation confirming the continuance.

If a party fails to appear for the arbitration hearing after you grant the continuance, recite your factual findings about when the matter was initially set, the continued date and any other findings of willfulness which the Court can later use to make a legal finding. Willful non-attendance will preclude that party's right to a hearing *de novo* after arbitration pursuant to Business and Professions Code Section 6204.

h. If You Are Serving on A Three Person Panel, Communicate with Other Arbitrators Before the Hearing

If you are serving as an arbitrator on a three-person panel, it is recommended that you have a pre-hearing conference call with the other arbitrators. You should discuss the areas you have identified as disputed issues, how the presentation of evidence will occur, including when each arbitrator can question the parties, and ensure that each arbitrator has reserved time immediately after the hearing to discuss the evidence and potential award.

i. Prepare to Address Legal Malpractice Issues

A client may raise the issue that the attorney committed legal malpractice in the representation which reduces the value of services the attorney provided. The client in such a case will be asking for a refund or a reduction in what is owed. Business and Professions Code Section 6203(a) allows evidence in a fee arbitration of an attorney's wrongful conduct to reduce the value of the fees charged. However, the arbitrator cannot award affirmative relief in the form of damages for the malpractice. You are required to hear evidence on this subject and follow up with any questions of the client and attorney so you can make a finding in your award. See also Arbitration Advisory No. 2012-03.

III. During the Arbitration Hearing

During the arbitration hearing you will be gathering information to use for writing the award. The following is an outline of topics you should consider when you hear the case.

a. Fee Agreement

First, determine whether the parties agree that there is an enforceable fee agreement. You may be able to determine this based on a stipulation of the parties and through your own examination of the fee agreement. Where the parties are not in agreement that there is a binding and enforceable fee agreement, you may still find that the fee agreement does not meet the requirements of California Business & Professions Code §§ 6147 and 6148. If the fee agreement is voidable, consider Arbitration Advisory 2012-01.

In that case, take evidence regarding the fee agreement so that you can determine whether the requirements of the Business and Professions Code are satisfied. Examine the agreement itself and the process of the parties in entering into the fee agreement. Consider the scope and terms of the fee agreement.

b. Fees Incurred

Where the parties contest the fees incurred, determine whether the fees are reasonable or unconscionable. This will vary depending on the enforceability of the fee agreement. Consideration of the Arbitration Advisories published by the Mandatory Fee Arbitration Committee will assist you. If bill padding is an issue, take evidence as appropriate pursuant to Arbitration Advisory 2016-02. As to

reasonableness of fees, see Arbitration Advisory 1998-03.

c. Other Important Considerations In Conducting the Hearing

i. Avoid bias and the appearance of bias

It is important that the parties understand that the hearing is fair. You should introduce the panelists at the start of the hearing and make any necessary disclosures prior to the commencement of the arbitration. Treat the parties fairly throughout the hearing, taking into consideration the participation of unrepresented parties in the process

ii. Establish an appropriate level of formality/informality

Administer an oath at the beginning of the proceeding. Facilitate participation of the arbitration panel by inviting the panelists to ask any questions they may have. Facilitate participation of the parties to the arbitration. Avoid use of legal jargon that would not be understood by non-lawyer participants in the arbitration. Let the parties know that the rules of evidence are not applicable and invite the parties to submit whatever evidence they would like to submit. Obtain facts from parties during hearing, if you believe the information is relevant to a determination of the dispute, even if the parties do not provide all of the information needed during the hearing.

iii. Arbitrator Control of Hearing Process

Introduce the process to the parties in a manner that is understandable to all participants, including those who are unrepresented by counsel. Remind the parties that this is an informal proceeding. Advise

the parties who will go first in the hearing. Allow both sides to present any evidence that they want to provide. If exhibits are used, show all exhibits to both sides so that everyone has a chance to review the evidence submitted by the other party. Proactively address issues that may be needed to resolve the dispute, even if the parties do not present evidence on those issues. Request relevant evidence from the party most likely to have it in their possession. Facilitate agreement as to undisputed issues on which the parties are in agreement. Evidentiary objections are not required.

iii. Who Can Attend Hearing

The hearing is considered confidential and is closed. Attendance is at the discretion of the arbitrator as to non-attorney support persons - get the parties' agreement as to who is in attendance. Witnesses can attend the hearing in the entirety, or can be excluded from the hearing as appropriate while others are testifying, at the discretion of the arbitrator. It is best to get the parties' agreement to this. Interpreters may attend as appropriate. A certified shorthand reporter may attend. Check the local program rules to see if this is permitted.

d. Take notes during the hearing on key points

Bear in mind that normally there is no reporter during a fee arbitration hearing. Based on your preparation for the hearing, be ready to obtain important information needed for the decision. Ask questions on key points, even if the parties to the arbitration do not address the points. Take the time during the hearing to pause to make notes as to important testimony on key points that you will need to establish for purposes of writing the decision.

e. End of Hearing - Post Hearing Discussion

Explain expectations for completion of the arbitration award regarding timing. Explain the process your bar association follows in terms of issuance of the award. Conduct a post-hearing conference after completion of the arbitration while the panel of arbitrators is together. Compare notes regarding the evidence. Come to a tentative agreement in order to address how the award should be made. Discuss the reasoning of the proposed decision with all arbitrators present. Outline key points that should be covered in the award. Note points of agreement. Discuss any points in dispute and how the decision will resolve the dispute.

IV. After the Arbitration-Preparation of the Award

Once the hearing is concluded you will have a short period of time to prepare the award and return it to the program administrator to serve on the parties. The following are matters you should consider when you write the award. The Committee has also prepared a Checklist of Items which you can use in preparing the award.

a. Requirements for Awards

We have attached Sample Awards for you to review.

i. Responsible Attorney

Business & Professions Code Section 6203(d) requires you to list the responsible individual attorney to ensure that the State Bar can enforce the award.

ii. Determine All Questions Submitted For Decision.

The initial question generally should focus on the nature of the fee agreement between the parties and if the agreement is enforceable or not pursuant to Business and Professions Code 6147 or 6148. If the attorney has not complied with the code section, the client may be left with the option of voiding the fee agreement. In that instance, the attorney is only entitled to recover "the reasonable value of services performed," but never more than what the attorney would have received had the fee agreement not been voided. See Arbitration Advisory No. 2012-01.

If the fee agreement is enforceable, then the second question typically focuses on the services performed by the attorney during the course of the representation and whether the fees and costs incurred are substantiated by the actions of the attorney (e.g., providing accurate and detailed billing statements, rendering the services for which the attorney was engaged, communication between the attorney and client).

If the fee agreement is unenforceable, then the question will focus on the reasonable value of the services performed by the attorney during the course of the representation.

The Committee has prepared a comprehensive Arbitration Advisory No. 2016-02 which identifies common problems with attorney invoices. Common billing issues include block billing, duplicate billing, failure to notify the client of an increase in attorney bill rates and charging unconscionable interest.

b. **Use of Findings**

Although findings of fact are not required in an award, they should be used to provide guidance to the parties on how you resolved the questions presented to you and the decision(s) you reached.

In cases where the parties have not agreed to binding arbitration, the findings and rationale can more often than not, convince the parties to accept your decision(s) and allow the award to become binding, bringing finality to the case.

In cases where a party fails to appear you must make specific findings for the Court to later use when it decides the issue whether that party is entitled to a hearing de novo.

c. **Allocation of Program Filing Fees**

Pursuant to Business & Professions Code 6203(a) you may in your discretion allocate the filing fee among the parties.

d. **Attorney's Fees and Other Costs**

The award cannot include any award of attorneys' fees or costs to any party even if the written fee agreement has a "prevailing party" attorney fees provision.

e. **Interest**

You may include "pre-award" interest, if appropriate under Civil Code Section 3287, but only if you can accurately ascertain the date(s) in which the monies are owed to the attorney and become due and payable by the client. If the award is based on the reasonable value of the attorney's services, pre-award interest is not recoverable. Post-award interest is required on all awards in the amount of 10% from the 30th day after service of the award. See also Arbitration Advisory No. 1993-01.

f. **Dissenting Opinion in Award**

In a three person arbitration panel, an arbitrator may dissent to the award issued by the majority. Check the State Bar and local program rules for the requirements.

g. **Use State Bar Form as Template**

The Committee has prepared an Award template in Word for your use in preparing the Award. If you are serving as a State Bar appointed arbitrator you are required to use this form.

h. **Tone/Language in Award**

The award should use terminology that a client will be able to understand. For example the legal term for reasonable value of services is "quantum meruit". Instead of using this phrase which a client may not understand, use the phrase "reasonable value of services".

h. **Local Program or State Bar Will Serve Award**

You do not serve the award. Depending on whether you are a single arbitrator or serve on a three person panel you have a short period of time to return the signed award to the program administrator who will serve it on the parties.

Request for Arbitration of a Fee Dispute

State Bar fee arbitration matters are governed by the State Bar rules of procedure for fee arbitrations which were sent to you with this form. If you do not have a copy of the rules of procedure, contact this office IMMEDIATELY or download the rules from the website: www.calbar.ca.gov. You should read the rules carefully and if you still have questions after you have done so, contact this office for additional information.

Mail this form with the filing fee and requisite number of copies to:

The State Bar of California
Mandatory Fee Arbitration Program
180 Howard Street
San Francisco, CA 94105-1639
Telephone (415) 538-2020
Fax No. (415) 538-2335

Please print or type.

1. (a) CLIENT

Name

Box or street address

City State Zip Code
()

Area Code Telephone Number

Your e-mail address

(b) NAME OF ATTORNEY (with whom there is a fee dispute)

Name

Name of Firm, if any

Box or street address

City State Zip Code
()

(c) PERSON WHO PAID ATTORNEY'S FEES:
(If different from (a) above)

Name

Box or street address

City State Zip Code
()

Area Code Telephone Number

2. If you are, or will be, represented by an attorney in the arbitration, provide the name, address and telephone number:

Name

Address State Zip Code
()

Area Code Telephone Number

3. The hearing in this matter will take place in the county where most of the legal services were provided. In what county were most of the services provided?

County

_____/_____/_____
Month Day Year

4. (a) When did the client first hire the attorney?

(b) When did the attorney stop representing the client or provide a final bill (whichever is later)?

_____/_____/_____
Month Day Year

5. What type of case was the attorney handling for the client (divorce, criminal, etc.)?

6. (a) Is there a written fee agreement? (If yes, **attach a copy.**) Yes No
- (b) Is there a written agreement that fee disputes will be submitted to a Mandatory Fee Arbitration Program?
(If other than the written fee agreement, **attach a copy.**) Yes No
7. (a) Did the attorney give the client or person responsible for payment of the fees a written notice of their right to mandatory fee arbitration?
(If yes, **attach a copy of the notice.**) Yes No
- (b) If yes, when was the written notice received? _____/_____/_____
8. (a) Has a lawsuit been filed to collect the fees or costs?
(If yes, **attach a copy of the complaint.**) Yes No
- (b) If a lawsuit has been filed, has the lawsuit been answered?
(If yes, **attach a copy of the answer.**) Yes No
9. Were the attorney's fees ordered by the court or set by law?
(If yes, explain on a separate sheet.) Yes No
10. What are your reasons for using the State Bar to arbitrate this dispute instead of a local bar program?
- There is no local bar program available in the county where most of the legal services were provided.
 - I believe that I will not receive a fair hearing through the local bar program. (If checked, you must submit a written declaration signed under penalty of perjury or provide a letter from the local bar program to support your belief. The State Bar Program will determine whether your showing is satisfactory. If you do not provide the required written support for your belief, your request for the State Bar program to handle the dispute instead of a local bar program will be rejected.)
 - The local bar does not waive filing fees and you are requesting a waiver of filing fees.
 - The local bar program requires that the arbitration be binding and you do not agree to binding arbitration.
 - The local bar will not arbitrate with incarcerated clients and the client is incarcerated.
 - Other _____.
11. Amount the client already paid the attorney \$ _____
12. Additional amount, if any, the attorney says is still owed \$ _____
13. Add lines 11 and 12 \$ _____
14. Total amount the client or person responsible for fees says the attorney should be paid \$ _____
15. Subtract line 14 from line 13. **This is the disputed amount.** \$ _____
16. Filing Fee:(5% of the disputed amount shown on line 15 with a minimum fee of \$50.00 and a maximum fee of \$5,000.)
\$ _____

Make your check or money order payable to the **State Bar of California**. Do not send cash.

17. Provide a summary description of the fee dispute. Attach additional sheets if necessary.

18. If the fee dispute is for \$15,000 or less, it is heard by one (1) arbitrator. If it is for more than \$15,000, it is heard by three (3) arbitrators. If all parties agree, you can have the dispute heard by one (1) arbitrator even if the dispute is for more than \$15,000. Select one only. **If you request an arbitration hearing with one arbitrator please submit the original Request plus two copies, if three arbitrators, submit the original Request plus four copies.**

- The dispute is for \$15,000 or less, or
- The dispute is for more than \$15,000 and you agree to one arbitrator, or
- The dispute is for more than \$15,000 and you request three arbitrators.

19. Unless both parties agree in writing to BINDING ARBITRATION after the fee dispute arises, this arbitration is NON-BINDING. Non-binding arbitration means that if either party is unhappy with the award, either party has the right to ask for a trial in a *civil court*. Requesting a trial after arbitration will require filing documents with the appropriate court within 30 days from the date the award is mailed, even if damages are not sought from the other party. Unless a party requests a trial after arbitration within 30 days, the award *automatically* becomes *final and binding*.

If both parties agree in writing to make the arbitration BINDING, a new trial may *not* be requested and the award will *immediately* become final and binding on both parties with limited rights to challenge the award in civil court.

Do you agree to binding arbitration? Yes No

20. If you are the client and the attorney represented you in a civil matter, you are entitled to chose an arbitrator who practices civil law. If your attorney represented you in a criminal matter, you are entitled to chose an arbitrator who practices criminal law. Please indicate your choice below.

- I do not have a preference.
- I want an attorney who practices civil law as an arbitrator.
- I want an attorney who practices criminal law as an arbitrator.

I declare under penalty of perjury under the laws of the State of California that my statements on this request and any attachments are true and correct.

Sign here

Signature of _____
(print your name)

Date ____/____/____
Month Day Year

Sign here (if more than one person is requesting arbitration)

Signature of _____
(print your name)

Date ____/____/____
Month Day Year

**AWARD OF THE _____ FEE ARBITRATION PROGRAM
PURSUANT TO STIPULATION OF THE PARTIES**

In the matter of the arbitration between:

Client

Case No. _____

Attorney

INTRODUCTION

This matter was assigned to the undersigned Panel Chair/was not assigned to a Panel Chair and this award is therefore signed by the Program Chair. The Petitioner was/was not represented by counsel, [TYPE NAME HERE]. The Respondent was/was not represented by counsel, [TYPE NAME HERE]. The parties entered into a written stipulated award to resolve their dispute which is the subject of this arbitration and submitted their stipulated award for incorporation in a binding fee arbitration award of this Program. **GOOD CAUSE APPEARING THEREFORE:**

AWARD

The STIPULATED AWARD attached hereto is incorporated herein by this reference, its terms and conditions are approved and made part of this binding award, and the parties are directed to perform its executory terms, all with the same force and effect as a binding award of this Program after an arbitration hearing.

Arbitrator Name (Print)

Arbitrator Name (Signature)

Dated

OR

Program Chair (Print)

Program Chair (Signature)

Dated

REMINDER: The award *must* be sent to the _____ Mandatory Fee Arbitration Program. DO NOT send it directly to the parties. The MFA Program will serve a copy of this award on the parties, and a photocopy will be sent to the arbitrator(s). Thank you.

STIPULATED AWARD

[USE THIS FORM WHERE THE PARTIES ARE SETTling THEIR MATTER AFTER A HEARING HAS BEEN SET OR AT THE TIME OF HEARING]

1. The Parties agree that the total amount of fees, costs or both that should have been charged in this matter are: \$ _____
Of which the client has paid: \$ _____
The subtotal of fees still owed attorney or of any refund due client is: \$ _____

2. The Parties agree that pre-award interest
[] shall be awarded in the amount of \$ _____
[] shall not be awarded

3. The Parties agree that the arbitration filing fee of \$ _____
Which was paid by _____ shall be allocated:
Client: \$ _____
Attorney: \$ _____

4. The Parties agree that the net amount due to attorney or to client is \$ _____

5. Accordingly, the Parties agree that the following payment shall be made:

(a) Client, _____ shall pay attorney, _____
\$ _____

OR

(b) Attorney, _____ shall refund client, _____
\$ _____

The individual responsible attorney(s) is/are _____

OR

(c) Nothing further shall be paid by either attorney or client.

6. [] Plus interest in the amount of 10% per annum from the 30th day after the date of service of this award.

7. The Parties have read and understand the terms and conditions of this agreement and intend to be bound by this Stipulated Arbitration Award.

8. If any party to this agreement is an entity the individual executing this agreement represents that he or she has full authority and consent to enter into this agreement on behalf of such entity.

9. This is intended to be a fully integrated agreement that may not be modified other than in a writing signed by all parties.

Party Name (Print)

Signature of Party

Dated

Party Name (Print)

Signature of Party

Dated

ARBITRATION AWARD CHECKLIST

This one-page checklist includes matters that an Arbitrator may consider in preparing a fee arbitration award. Instructions and references to additional materials are provided on the following pages.

- ___ **Step 1.** Correctly state the full names of the parties and individual responsible attorney(s). If the existence of an attorney-client relationship is disputed, attach the parties' stipulation to submit the issue to arbitration.
- ___ **Step 2.** If a party failed to appear, make findings on willfulness.
- ___ **Step 3.** Indicate whether the matter is binding or non-binding arbitration, and attach a signed stipulation form, if applicable.
- ___ **Step 4.** If the defense of the Statute of Limitations has been raised, is the claim barred? If no, go to **Step 5**; if yes, award nothing on the barred claim and go to **Step 13**.
- ___ **Step 5.** Is there a valid fee agreement (and billings if B&P 6148 applies)? If yes, go to **Step 6**. If no, go to **Step 10**.
- ___ **Step 6.** Calculate the amount fees and costs billed under the fee agreement.
- ___ **Step 7.** Are the agreed fees unconscionable? If no, go to **Step 8**. If yes, go to **Step 10**.
- ___ **Step 8.** Deduct the appropriate amount, if any, for unnecessary or unauthorized services and costs.
- ___ **Step 9.** If any of the services were negligently performed, adjust the fees to reflect the value of the negligently performed services. Do not award damages or use them as an offset.
- ___ **Step 10.** Calculate reasonable fees and costs in cases where there is no valid fee agreement or if the agreement provides for unconscionable fees.
- ___ **Step 11.** Did attorney commit a serious violation of the Rules of Professional Conduct or otherwise act unethically or illegally charge fees? If yes, determine effect on fees and costs.
- ___ **Step 12.** Deduct for payments/credits on account.
- ___ **Step 13.** Allocate the arbitration filing fee, at the discretion of arbitrator(s).
- ___ **Step 14.** Calculate the balance due to attorney or client, including any allowed interest.
- ___ **Step 15.** Write and sign the award and any dissent, deciding all issues submitted. Send the award to the Program for review and transmission to parties with proof of service and notice of rights.

ARBITRATION AWARD INSTRUCTIONS and REFERENCES

Step 1. Names of Parties and Identification of Responsible Attorney(s).

Be sure that the client and attorneys are correctly named, taking into account marriages and restoration of former names on dissolution of marriage, correct corporate and partnership firm names, and other details needed in any subsequent litigation over the fee dispute. B&P Section 6203(d) provides for enforcement of an award in favor of a client. The State Bar can request the attorney be enrolled on inactive status until the award is paid. The responsible party cannot be a partnership or corporation. Rather you must list the attorney(s) personally responsible for making or ensuring payment of the award. See Arbitration Advisory No. 1994-04. If the existence of the attorney-client relationship is disputed, any award is subject to being vacated unless the parties stipulate to submitting that issue to arbitration. See Arbitration Advisory No. 2005-01. Attach the original of the stipulation to the award.

Step 2. Findings on Willfulness of Non-Appearance of Party at Arbitration Hearing.

A party may not request trial de novo after non-binding arbitration if that party willfully failed to appear at the arbitration hearing noticed under the rules of the Program. B&P 6204(a) provides that it is the court that determines willfulness, but in making that determination, “the court may consider any findings made by the arbitrators on the subject of a party’s failure to appear.” B&P 6203(c) also provides that a party who did not appear at an arbitration hearing shall not be entitled to attorney’s fees or costs even if he or she is the prevailing party obtaining court confirmation, correction or vacation of the award. Therefore, you should list in the award what notice was given and any information regarding the non-appearance of the party.

Step 3. Indicate Whether Binding or Non-Binding Arbitration, and Attach Any Stipulation.

B&P 6204(a) provides that a fee arbitration is binding only when the parties have agreed in writing after the dispute arose. The packet you receive from the local program or State Bar may include a notation whether the parties have agreed to binding arbitration. Occasionally the agreement for binding arbitration is reached at the commencement of the hearing. If this occurs the agreement must be reduced to a writing which the parties must sign. The original should be attached to the award.

Step 4. Statute of Limitations.

B&P 6206 provides that an arbitration shall not be commenced if a civil action requesting the same relief would be barred by the statute of limitations, unless the client requests arbitration after the attorney has filed a civil action. See Arbitration Advisory No. 2016-01 which discusses the applicable limitations periods and provides a framework for analysis of the issue. You should hear the matter and obtain information regarding the elements of CCP Section 340.6. If the claim is barred, the claimant is denied a recovery, and the arbitrator(s) will need to determine whether to allocate the filing fee.

Step 5. Is There a Valid Fee Agreement?

B&P 6147 requires all contingent fee agreements to be in writing. Under B&P 6148 all other fee agreements with non-corporate clients must be in writing if the fees are expected to exceed \$1,000. That section also sets standards for billings. If the requirements for written fee agreements and billings are not met, the agreement is voidable at the option of the client. The arbitrator(s) should treat the agreement as voided if it results in a lower fee. See Arbitration Advisory 2012-01 on voidability of fee agreements. If there was no fee agreement, or the writing requirements were not met, the attorney is only entitled to an award of a reasonable fee. You should proceed to paragraph 10 below. See Arbitration Advisory No. 1993-02 for discussion of the requirements for written fee agreements and Advisory No. 1995-02 for a discussion of billing requirements.

Step 6. Determining Fees and Costs Under Valid Fee Agreement.

When the arbitrator(s) find that a valid fee agreement exists, and the fees are not unconscionable, the attorney will ordinarily be entitled to fees and costs charged under the fee agreement. See Arbitration Advisory No. 1993-02 on the standard of review when a valid fee agreement exists. Examine billings and any settlement statements to determine whether the fees and costs charged conform to the terms of the agreement. Discrepancies arise with some frequency when the attorney's billing rate goes up during the representation, or the attorney charges staff services as costs contrary to the agreement. Arbitration Advisory No. 1995-02 discusses billing requirements of B&P 6148(b), and Advisory No. 2016-02 provides helpful insights in detection of bill-padding practices.

Step 7. Unconscionable Fees.

California Rule of Professional Conduct 4-200(A) states that an attorney “shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee.” To be unconscionable, a fee must be so far beyond the realm of reasonableness that it shocks the conscience. Subpart (B) of Rule 4-200 requires consideration of all the facts and circumstances existing at the time the agreement is entered into, except where the parties expect that the fee will be affected by later events, and lists eleven factors to be considered. If the fee is unconscionable, the attorney is still entitled to recover a reasonable fee, as discussed in paragraph 10. If only part of the fee is unconscionable, the agreed fee for the remainder of the fee may be awarded and reasonable fees awarded for the portion of the services found to be unconscionable.

Step 8. Deducting for Unnecessary or Unauthorized Services and Costs and Fee Arbitration and Other Collection From Client.

The attorney should be denied compensation for unrequested services beyond the scope of the agreed representation or for services and costs that were not reasonably necessary to the proper representation of the client. Subsection (c) of B&P 6203 provides that neither party may recover costs or attorney’s fees in a fee arbitration. The arbitrator(s) can allocate the filing fee.

Step 9. Adjustment for Professional Negligence in Performance of Services.

B&P 6203 states that evidence relating to claims of malpractice and professional misconduct are “admissible only to the extent that those claims bear upon the fees, costs, or both, to which the attorney is entitled”, but no affirmative relief in the form of damages or offset can be awarded for injuries claimed to have resulted from the malpractice or professional misconduct. If you find malpractice did occur, you may determine that there was a reduced value, or no value for the services, and adjust the fees accordingly, but no other affirmative damages resulting from the negligence may be awarded.

Step 10. Determining Reasonable Fees When There is no Valid Agreement.

If there is no valid fee agreement, or the writing and billing requirements of B&P 6147 or 6148 have not been satisfied, the attorney is still entitled to an award for the reasonable value of the services rendered. The award cannot exceed the compensation due under the written agreement the client has elected to void. The factors to consider in making an award of reasonable compensation are discussed in Arbitration Advisory No. 1998-03 which was update on March 20, 2015. The arbitrator(s) will deny compensation for unnecessary service and costs, and services and costs incurred in the arbitration or other collection efforts against the client, as discussed in paragraph 8. The arbitrator can also

take into account any professional negligence in valuing the services rendered, as discussed in paragraph 9.

Step 11. Serious Violation of Rules of Professional Conduct or Statutes or Illegal Fees.

The attorney should be denied compensation for any activity which is a serious violation of the Rules of Professional Conduct or statutes regulating the practice of law. Representing the client while having an impermissible conflict of interest leads to a denial of all fees while the conflict exists. The arbitrator(s) will need to determine the extent that other violations were serious and led to fees and costs being charged to the client, and what should be disallowed. If the attorney has charged or collected a fee which an attorney is entitled to receive only by court order, such as fees for representing a minor, probate fiduciary, or workers' compensation claimant, then compensation should be denied without prejudice to obtaining the required court order. In some circumstances, such as medical malpractice cases, maximum fees are prescribed by statute, and the amount of any claim exceeding the limit should be denied. See Arbitration Advisory No. 2012-03 for a discussion of legal malpractice and ethical issues.

Step 12. Deduct for Payments/Other Credits.

Be sure that the attorney has properly credited the client for payments on account and any other credits the attorney may have agreed to in the course of the representation.

Step 13. Allocation of Arbitration Filing Fee.

B&P 6203(a) gives the arbitrator(s) discretion to allocate the filing fee between the parties. No standard is given, but in practice the allocation is based on the extent to which the parties claim is found to be supported and the basis of the award. That section provides that no award should be made for other costs or attorney's fees incurred in preparation for and participation in the arbitration, even if the fee agreement provides for an award of such costs and fees.

Step 14. Determine Balance Due Attorney or Client, Including Any Interest.

The arbitrator(s) should carefully calculate the amount due to the attorney or client taking into account the debits and credits listed above. B&P 6203(a) expressly provides that the arbitrator(s) may award "a refund of unearned fees, costs, or both previously paid to the attorney." The fee arbitration statutes do not provide for "pre- award" interest but the practice is follow the requirements of Civil Code Section 3297 which governs pre-award interest in a civil action. See Arbitration Advisory Nos. 1993-01 and 2001-01.

Step 15. Write and Sign Award, and Any Dissent, Deciding All Issues Submitted, and Send Award to Program.

B&P 6203(a) requires that the arbitrator(s) sign the award and that it include “a determination of all the questions submitted to the arbitrators, the decision of which is necessary in order to determine the controversy.”

On the other hand, B&P 6202 provides that confidential communications are admissible at the arbitration hearing, but such disclosures are not deemed a waiver of the confidentiality of such information for other purposes. Therefore, you must avoid disclosing privileged attorney-client communications in the award because they may become public in post-arbitration proceedings.

Any dissent should also be in a writing signed by the dissenting arbitrator as provided in paragraph 15. The arbitration award is usually in the form of a civil action award and may include the following:

- 1) a caption showing the name of the arbitration forum, the names of the parties, and any case number assigned to the arbitration;
- 2) an introductory paragraph showing the date(s), time(s) and place(s) of the hearings, the notice given for the hearing, and the names of the arbitrator(s), parties, witnesses who testified, and any other persons in attendance. If a party fails to appear, it should include a statement of the facts concerning the willfulness of the non-appearance and whether permission was given by the arbitrators in advance;
- 3) a statement of any agreed facts to which the parties have stipulated in writing or orally in the course of the hearing, and the remaining issues to be determined;
- 4) a statement of the factual findings and conclusions, covering all issues submitted. The arbitrator should avoid directly accusing a party of lying;
- 5) the award itself, which should include the following language:

The total amount of fees, or costs, or both, that should have been charged in this matter are: \$ _____

The Client is found to have paid: \$ _____

Subtotal \$ _____

In addition, the fee arbitration filing fee of \$ _____ shall be allocated:

Client: \$ _____

Attorney \$ _____

Pre-award interest [] is not award
[] is awarded in the amount of \$ _____

for a net amount of: \$ _____

Accordingly, the following award is made:

a) Client, _____, shall pay Attorney, _____, \$ _____ plus interest in the amount of ten percent per annum from the 30th day after the date of service of this award.

OR

b) Attorney, _____, shall pay Client, _____, \$ _____ plus interest in the amount of ten percent per annum from the 30th day after the date of service of this award.

OR

c) Nothing further shall be paid by either attorney or client/third party payor.

The individual responsible attorney(s) is/are _____.

Send the original signed award and any dissent to the Program for review and service. The arbitrator(s) should not serve the award on the parties.

ARBITRATION ADVISORY

2018-xx (replacing 1993-01)

AWARDS OF INTEREST BY THE

ARBITRATOR ~~July 30, 1993~~ April 6, 2018

Points of view or opinions expressed in this document are those of the Committee on Mandatory Fee Arbitration. They have not been adopted or endorsed by the State Bar's Board of Trustees and do not constitute the official position or policy of the State Bar of California.

INTRODUCTION

This is intended to summarize existing law and to provide guidance on the awarding of interest as part of the fee arbitration award (the "Award"), including when interest may be awarded and the method of calculating interest. This does not apply to situations where the attorney is retained by the client on a contingency fee basis.

ANALYSIS

1. May interest be awarded as part of the Award? Yes.

Business & Professions Code ("B&PC") Sections 6200-6206 provide for the arbitration of fee disputes between attorneys and their clients. Attorneys are required to arbitrate fee disputes when timely requested by the client [B&PC Section 6200(c)]. The arbitrators may resolve all disputes concerning fees, costs or both.

While ~~the~~ fee arbitration statutes do not mention an award of interest, ~~nor do they~~ likewise do not ~~they~~ preclude an award of interest. The statutes specify circumstances when fee arbitration is not available (for instance, when fees are awarded pursuant to statute or court order - B&PC Section 6200(b)(3)) and preclude the recovery of certain types of damages (for instance, attorneys' fees cannot be awarded to either party - B&PC Section 6203(a)). Since the arbitration statutes carefully define those situations when arbitration is available and preclude certain elements of damages, any elements of damages not specifically precluded which are otherwise recoverable at law may, therefore, be included in the Award.

"Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, *is entitled also to recover interest* thereon from that day . . ." [CCP § 3287(a)] (Italics added). "The detriment caused by the breach of an obligation to pay money only, is deemed to be the amount due by the terms of

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the obligation, *with interest thereon.*" [CCP § 3302] *(Italics added.)*;

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An attorney may ethically charge interest and impose late charges on past-due fees and costs, provided the attorney obtains the client's informed consent and complies with applicable law. [Cal. State Bar Form.Opn. 1980-53; ABA Form.Opn. 388 (1974); Los Angeles Bar Ass'n Form.Opns. 370 (1978) & 374 (1978) & 499 (1999) (interest on costs); Bar Ass'n of San Francisco Form.Opn. 1970-1; San Diego Bar Ass'n Form.Opn. 1983-1; Rest.3d Law Governing Lawyers § 38, Comment "h"]

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2. May interest be awarded regardless of the existence of a written contract?

Where a useful service of a kind usually charged for is performed for another with the latter's knowledge, a promise to pay its reasonable value may be implied from the fact that the recipient avails him or herself of the service [Gray v. Whitmore (1971) 17 Cal.App.3d 1, 24]. Moreover, where services are rendered by one from which another derives benefit, a presumption of law arises that the person enjoying the benefit is bound to pay what they are reasonably worth [Meredith v. Marks (1963) 212 Cal.App.2d 265, 272]. There is an implied agreement on the part of a client to pay for services and advances of the client's counsel; no agreement in so many words is necessary [Pierce v. Kalmus (1955) 133 Cal.App.2d 437, 439].

When an attorney performs services with the client's knowledge that are useful to the client and are services that are generally charged to the client, an implied agreement is created requiring the client to pay the reasonable value of the services therein rendered [Gray v. Whitmore, supra].

The right to recover interest for breach of contract is not predicated on the existence of a written contract. In fact, ~~the Civil Code CCP §§ 3287 and 3302 does do~~ not distinguish between a written agreement, oral agreement or implied agreement for purposes of the right to recover interest ~~[CCP §§ 3287 and 3302]. Therefore, the arbitrators may award interest as part of any Award (whether to the attorney for money owed or the client for a refund on fees already paid) regardless of the existence of a written agreement or an express oral agreement.~~

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~~Where B&PC §6148 requires a written agreement, but there is no written agreement, or where the attorney is proceeding on quantum meruit, whether or not interest may be awarded is subject to differing interpretations of the authorities. Marine Terminals Corp v. Paccoco, Inc., (1983) 145 Cal.App.3d 991 can be read to support an award of interest where, as noted above, the invoices are reasonably accurate and sufficient to apprise the client of the amount the attorney seeks to recover and the amount billed is not significantly different from the award. On the other hand, some cases under Civil Code Section 3287 do not allow prejudgment interest where the amount of damages can be resolved only by account, verdict or judgment [Stein v. Southern California Edison Company (1992) 7 Cal.App.4th 565, 573]. In Fitzsimmons v. Jackson (BAP, 9th Cir. 1985) 51 B.R. 600, 612-613, the court denied prejudgment interest to an attorney because the basis of the attorney's claim was quantum meruit. The court cited Parker v. Maier Brewing Company (1960) 180 Cal.App.2d 630, 634 for the proposition that where there is no express contract and the action is for quantum meruit to recover the reasonable value of~~

~~services rendered, prejudgment interest is not recoverable.~~

When there is no written agreement, interest shall only be awarded when the principal damages are *readily ascertainable* within the meaning of Civil Code Section 3287 [Macomber v. State of California (1967) 250 Cal.App.2d 391, 400]. As long as the principal amount owing can be calculated from statements rendered by the attorney, interest should be awarded [Macomber v. State of California, supra at 401]. This is true even if the client disputes the fees. As long as the invoices are reasonably accurate, in compliance with B&PC Section 6148(b) and sufficient to apprise the client of the amount the attorney seeks to recover, then the damages are readily ascertainable [Marine Terminals Corp. v. Paceco, Inc. (1983) 145 Cal.App.3d 991, 998].

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~~Where the proceeding is a “reasonable fee” analysis, on the other hand, generally the amount owing is not and cannot be ascertainable until the arbitrator(s) determine the reasonable value of the attorney’s services. Similarly, where the arbitrator(s) may make any significant reduction in the amount the attorney claims is owing, the valuable of the final fee is only ascertained after the outcome of the hearing is known. In these situations, no pre-award interest may be included in the award because the amount owing only became “ascertainable” when the award is issued.~~

~~Arbitrators considering an award of interest in these situations are urged to consult these authorities and any authorities published after the date of this advisory to resolve these issues.~~

3. What rate of interest should be used and how should interest be calculated?

When there is *no written agreement* which specifies a rate of interest, the arbitrators shall award simple interest at the rate of 10% per annum from the date of breach [CCP § 3289(b)].

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When there *is a written contract* which specifies the rate of interest, then the rate set forth in the contract shall apply [CCP § 3289(a)]. However, the rate of interest charged or late penalty imposed must not be illegal or amount to an “unconscionable” fee. [See CRPC 4-200(A).]

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Interest should be awarded from the date of breach through the date of the Award [CCP § 3289]. The date of breach is a question of fact primarily based on when the obligation was due. Frequently, the written fee agreement will provide when the obligation is due or on what date a breach is deemed to occur.

In calculating interest, absent a written agreement providing for the compounding of interest, the obligation shall bear simple interest. Without an express written agreement to the contrary, “[t]he compounding of interest has not been approved, legislatively or judicially, in this state.” [State of California v. Day (1946) 76 Cal.App.2d 536, 554].

To summarize and explain by way of example, if there is no written agreement which specifies a rate of interest, then the arbitrators may award interest of 10% per annum from the date of breach through the date of the Award. Interest shall be calculated by multiplying the principal amount of the Award by 10%, dividing that number by 365 days (1 year) and then multiplying the resulting number by the number of days which have elapsed from date of breach until date of the Award (e.g., attorney has a written fee agreement which specifies that all fees are to be paid

within 30 days of invoice date. No interest rate is specified in the fee agreement. Attorney invoices client monthly on the first day of each month. On May 1, 1992, attorney sent client an invoice for \$3,000. Client has never paid any part of the invoice. The resulting Award is in the sum of \$3,000.00 in favor of attorney. ~~and the~~ The arbitrators determine attorney was entitled to be paid by May 31, 1992, and a default occurred on June 1, 1992. The Award is prepared on April 30, 1993. Therefore, 334 days have elapsed between June 1, 1992 and April 30, 1993. Interest is calculated by multiplying \$3,000.00 times 10% (\$300.00), dividing that number by 365 days (.8219) and multiplying that number by 334 days (\$274.52). Therefore, the arbitrators will include in the Award the principal sum of \$3,000 and interest of \$274.52.)

4. What happens in circumstances when there is a written fee agreement which provides for interest at a rate other than 10% per annum?

Civil Code Section 3289(a) provides that parties may contract to any "legal rate of interest." Reference to the phrase "legal rate of interest" is not to a rate of 10% per annum but rather to any interest rate which is legally collectible under California law. If the rate specified in the written agreement is 10% per annum or less, the arbitrators should award the contract rate of interest.

If the rate of interest specified in the written agreement is greater than 10% per annum and the services rendered were for business (rather than personal), then the arbitrators may award the specified rate of interest (regardless of the amount as long as the rate is not unconscionable) [Southwest Concrete Products v. Gosh Construction Corp. (1990) 51 Cal.3d 701]. The rate of interest charged or late penalty imposed must not be illegal or amount to an "unconscionable" fee. [See CRPC 4-200(A).] The reasonableness of the interest rate charged will be determined at the time the attorney and client make the agreement. [See CRPC 4-200(B)]

Some parties may raise the issue of Usury law violations in trying to avoid an award of interest. The usury provisions of the California Constitution (Cal. Const. Art. XV, § 1) do not apply to interest on past-due *receivables*. Usury laws apply only to "the loan or forbearance of any money"; a transaction not usurious at its inception cannot become so because of the debtor's default. [See *Southwest Concrete Products v. Gosh Const. Corp.* (1990) 51 C3d 701, 709, 274 CR 404, 409].

However, care must be taken to distinguish a bona fide credit sale of legal services (not subject to usury law) from a money loan, which is subject to usury law. [Boerner v. Colwell Co.(1978) 21 C3d 37, 45, 145 CR 380, 385].

CAUTION: A fee agreement that violates the usury laws, Unruh Act or Federal Truth-in-Lending Act would amount to charging an illegal fee in violation of CRPC 4-200(A).

If the written agreement specifies a rate of interest in excess of 10% per annum and the services rendered were personal (rather than business), we recommend, due to the difficulty of determining the application of existing federal and state laws, that the arbitrators award simple interest at the rate of 10% per annum consistent with Civil Code Section 3289(b). This recommendation is not based on an opinion that a rate of interest specified in excess of 10% per

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annum is improper, illegal or otherwise uncollectible. Rather, the recommendation is based on the difficulty in determining on a case-by-case basis whether the attorney is required to comply with federal (Truth In Lending Laws) and state (Unruh Act) statutes. When these statutes are not applicable, the attorney should be able to recover any rate of interest specified in a written agreement which is otherwise not unconscionable. When these statutes do apply, the attorney can only recover interest if the attorney has complied with the statutes.

5. Post Award Interest

Post award interest is almost always appropriate, where it is awarded at the statutory rate and commences to run 30 days from the issuance of the award. The award of post-award interest serves two important purposes. First, it represents fair compensation to the prevailing party for the failure of the other party to pay the award promptly. Second, where the award requires the attorney to make a refund of some or all of the fee already paid, the award of post-award interest provides a valuable tool to the State Bar and the client when enforcement procedures become appropriate under B&P Code 6203(d).

CONCLUSION

In any civil action based on a contract (express or implied) the prevailing party is generally entitled to recover interest *from the date the underlying debt became due until either entry of judgment or the date paid*. Nothing in the fee arbitration statutes limit the awarding of interest. Therefore, the arbitrators may award interest from the date of breach through the date of the Award. Unless the written agreement provides for compounding of interest, the obligation should only bear simple interest. The interest rate should be 10% unless there is a written agreement which provides otherwise and, in such circumstance, the written contract rate should apply, unless the interest charged is illegal or unconscionable. In circumstances where there is a written contract rate in excess of 10% and the services rendered are for personal purposes rather than for business, the arbitrators may wish to award interest at the rate of 10% per annum.

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ARBITRATION ADVISORY

2018-0x

HANDLING DISPUTES REGARDING COSTS AND EXPENSES

Date

Disclaimer Box

INTRODUCTION

Business & Professions Code §6200, et. seq., confers jurisdiction upon Mandatory Fee Arbitration (MFA) arbitrators to consider and make awards regarding disputes over costs and expenses billed to clients, in addition to disputes over fees. The purpose of this Advisory is to provide guidance to MFA arbitrators regarding such disputes that arise from time to time in connection with MFA arbitrations.

DISCUSSION

A. Key Authorities:

Generally, the following California statutes, rules and authorities provide guidance regarding the obligations and duties of an attorney to a client regarding billing for costs and expenses during the course of the representation:

California Rules of Professional Conduct, Rule 4-200
Business and Professions Code §6148 (billing for costs in hourly fee cases)
Business and Professions Code §6147 (billing for costs in contingency cases)
The California case law cited below.

In addition, non-California statutes, rules and authorities that are cited below can provide secondary guidance, but are not binding authority upon California practitioners.

B. General Considerations:

The right of an attorney to charge a client for costs generally is a matter of contract. However, the attorney should make a clear disclosure of the basis for the fee and any other charges to the client. This is a two-fold duty, including not only an explanation at the beginning of engagement of the basis on which fees and other charges will be billed, but also a sufficient

explanation in the billing statements so that the client may reasonably be expected to understand what fees and other charges are actually being billed to the client. *See*, Business & Professions Code section 6148(b).

In all events, fee agreements regarding costs and expenses will be strictly construed against the attorney, and must be fair and reasonable and fully explained to the client, and will be construed in light of the client's reasonable expectations. *See*, *Alderman v. Hamilton* (1998) 205 Cal.App.3d 1033, 1037; *Severson & Werson v. Bolinger* (1991) 235 Cal.App.3d 1569, 1572; *In the Matter of Brockaway* (2006) 4 Cal. State Bar Ct. Rptr. 668,676.

In addition, even in the absence of a specific agreement as to costs in the engagement contract, the attorney's fiduciary obligations to the client include the treatment and handling of costs such that the attorney's charges for costs during the course of the representation may be scrutinized for necessity, reasonableness and fairness. *See*, *Gutierrez v. Girardi* (2011) 194 Cal.App.4th 925, 932-933.

An attorney may not charge a client for overhead expenses generally associated with properly maintaining, staffing, expenses and equipping an office, including the expense of maintaining a library. On the other hand, the attorney may recoup non-overhead costs and expenses reasonably incurred in connection with the client's matter for services performed in-house, such as photocopying projects specifically related to a client matter (as opposed to, for instance, photocopying of general correspondence, pleadings, etc.), special deliveries, special secretarial overtime incurred due to the client's specific needs, and other similar services. While the line between costs and overhead is an ever evolving one, items such as photocopying, word processing, computer research charges and postage and messenger costs are more and more likely to be considered general overhead rather than costs. In all events, what the attorney may claim as costs must be fully disclosed and explained to the client at the outset of the relationship. *See*, California Practice Guide on Professional Responsibility, The Rutter Group, 5:550-5:552.

When charging for non-overhead costs and expenses, the charges must reasonably reflect the attorney's actual cost for the services rendered or billed. The attorney may not add a profit element on top of such actual cost, except where the client gives informed written consent to such profit element. American Bar Association (ABA) Formal Opinion 93-379 (1993).

Initial disclosure of the basis for charges for costs and expenses, in addition to how fees are to be calculated, fosters communication that will promote the attorney-client relationship. The relationship will be similarly benefitted if the billing statements for services explicitly reflect the basis for the charges so that the client understands how the fee bill was determined. ABA Formal Opinion 93-379 (1993). In addition, billing statements reflecting non-overhead costs and expenses must break down the charges by type, and otherwise provide the client the information the client needs to understand the basis for the charges.

The question of whether a cost or expense may be incurred generally is within the implied authority of the attorney, as an agent for the client, unless specifically prohibited by the fee agreement. *See*, Civil Code section 2319 ["An agent has authority . . . to do everything necessary or proper and usual, in the ordinary course of business, for effecting the purpose of the agency."]. Thus, absent specific client instructions not to incur a particular cost or expense, the

arbitrator's review will be only as to the necessity, reasonableness and fairness, or the unconscionability of the disputed cost or expense item.

C. Charges for Specific Costs and Expenses

Percentage of Fees Administrative Charges: Such charges are valid if fully explained to the client and agreed to in advance in writing, but should be scrutinized for unconscionability pursuant to California Rules of Professional Conduct, Rule 4-200, such as where it can be established that the administrative charges are unduly high due to the size of the bill unrelated to the actual overhead consumed in support of the billed fees. *See, e.g.,* Va. LE Op. 1056 (1988) [approving a four percent overhead charge based upon the amount of the fee pursuant to a written fee agreement in matters not involving litigation]; *but, see,* Florida Bar Staff Opinion 30989 (2912) [a 4% administrative charge may not be imposed for each file even if it is disclosed in the client's contract]. In addition, what services the client is to receive included in the charge must be fully explained to the client. *See,* ABA Model Rules 1.5, 7.1(a)(1); 8.4(c). Such charges also must be justifiable and not duplicative of the attorney's general overhead factored into the attorney's hourly rate or other method of compensation. And, such charges must not be unconscionable.

Overhead: When a client has engaged an attorney to provide professional services for a fee (whether calculated on the basis of the number of hours expended, a flat fee, a contingent percentage of the amount recovered or otherwise) the reasonable expectation of the client would be additional charges for general office overhead are included in the attorney's hourly fee. Thus, in the absence of disclosure to the client in advance of the engagement to the contrary, the client should reasonably expect that the attorney's cost in maintaining a library, securing malpractice insurance, renting of office space, purchasing utilities and the like would be subsumed within the charges the attorney is making for professional services. ABA Formal Opinion 93-379 (1993); *see, also, In the Matter of Kroff* (1996) 3 Cal. State Bar Ct. Rptr. 838 (1998) [failure to disclose actual costs and how they were determined in the fee agreement and in the attorney's billing statements violates CRPC Rule 4-100(B)(3)].

In addition, general overhead is not recoverable from a bankruptcy estate. *See, In re Tom Carter Enterprises, Inc.,* 55 B.R. 548 (1985).

Travel and Parking: Normally, where the engagement reasonably requires the attorney to travel on behalf of the client in the course of the representation the client can reasonably expect to be billed as a disbursement the reasonable amount of the airfare, taxicabs, meals, parking and hotel room. ABA Formal Opinion 93-379 (1993). However, the general rule of informed consent of the client applies. *But see, e.g., In re Tom Carter Enterprises, Inc.,* 55 B.R. 548 (1985) [parking is considered general overhead not recoverable from a bankruptcy estate].

Luncheons: These are considered general overhead, not recoverable from a bankruptcy estate. *See, e.g., In re Tom Carter Enterprises, Inc.,* 55 B.R. 548 (1985); *see, also, In re Maruko Inc.,* 160 B.R. 633 (1993); [in house luncheons among attorney staff alone are considered overhead].

Secretarial: Regular secretarial services are normally considered general overhead, and are not recoverable from a bankruptcy estate. See, e.g., *In re Tom Carter Enterprises, Inc.*, 55 B.R. 548 (1985).

Messenger Services: Such charges may be billed properly where the needs of the matter or of the client legitimately and reasonably require the service and where the client may agree in advance to such charges. ABA Formal Opinion 93-379 (1993). However, such charges are not reasonable where the need for such delivery services arises from the attorney's procrastination or inattention.

Overtime: Staff overtime generally is considered part of general attorney overhead except where actions of the client may require extraordinary overtime and where the client agrees in advance to such charges.

Computer Assisted Research: Such charges have been found to be recoverable from a bankruptcy estate. See, *In re Maruko Inc.*, 160 B.R. 633 (1993); *In re Tom Carter Enterprises, Inc.*, 55 B.R. 548 (1985). However, it is the opinion of the Committee that, since these cases were decided, computer assisted research has become much more commonplace and, in many cases, represent the attorney's only library resource. Accordingly, absent some extraordinary need for computer assisted research, a full explanation of how the charge was calculated and a demonstration of the reasonableness of the charge, it should be considered as general overhead not appropriately billed to the client.

Photocopying: It is the opinion of the Committee that charges for photocopying, along with computer research, on-site meals, deliveries and other similar items are part of general overhead except where there is some extraordinary need for such services and where the client agrees in advance. In such exceptional cases, the attorneys may pass on reasonable charges for these services to the client. Thus, the attorney and the client may agree in advance that, for example, photocopying will be charged at \$.15 per page. However, the question arises what may be charged to the client, in the absence of a specific agreement to the contrary, when the client has simply been told that costs for these items will be charged to the client. We conclude that under those circumstances the attorney is obliged to charge the client no more than the direct cost associated with the service (i.e., the actual cost of making a copy on the photocopy machine) plus a reasonable allocation of overhead expenses directly associated with the provision of the service (e.g., the salary of a photocopy machine operator). See, ABA Formal Opinion 93-379 (1993); SDCBA Legal Ethics Opinion 2013-3. On the other hand, where a large photocopying project may be completed by an outside provider at a page rate less than the general page rate agreed upon by the attorney and client at the outset of the representation, the attorney should retain the outside service to complete the project and bill the client only for the actual cost of the project charged by the outside provider.

Long Distance Calls: Given the current state of telephonic communication, it is the opinion of the Committee that long distance calls are part of general overhead and should not be billed as separate expenses. An exception would be where the call charge is for an attorney's out-of-contract call (such as international calls may be) or part of a video conference or involving multiple parties where the attorney will be billed in addition to the attorney's general telephone cost.

Process Service: It is appropriate to bill the client for such charges where provided by an outside service. *See, e.g., In re Tom Carter Enterprises, Inc.*, 55 B.R. 548 (1985). Where such service is provided by in-house employees, the charge to the client should be no more than the reasonable cost to the attorney measured by a reasonable percentage of the employee's overall salary.

Witness Fees: These fees are expenses that properly may be charged to the client. *See, e.g., In re Tom Carter Enterprises, Inc.*, 55 B.R. 548 (1985).

CONCLUSION

The reasonableness, fairness or unconscionability of an attorney's charges for costs can never be a matter of exact mathematical calculation. Rather, the attorney's charges for costs should be examined pursuant to the fee agreement, and examined also for necessity, reasonableness, disclosure, method of calculation and the reasonable expectations of the client, including reference to the foregoing guidelines of what the arbitrator may consider when the client may dispute the attorney's charges for costs.

1 BEFORE THE STATE BAR OF CALIFORNIA
2 FEE ARBITRATION FINDINGS AND AWARD
3
4

5 In the Matter of the Arbitration Between)
6 [Petitioner's Name]) CASE NO. [Case Number]
7 Petitioner,)
8) **STATEMENT OF DECISION**
9 and) **AND AWARD**
10 [Respondent's Name]) Date of Hearing:
11 Respondent.) Time of Hearing:
12)
13)
14)

15 INTRODUCTORY STATEMENT

16 A mandatory fee arbitration hearing between [name] ("Petitioner") and [name], an attorney-at
17 law ("Respondent"), was held on [date] at [address], [city], California [zip code] before [name], Esq.,
18 [Sole Arbitrator/Panel Chair] ([name], Esq. and [name]).

19 Petitioner, [name], appeared in person with(out) his/her legal representative, [name], and
20 agreed to binding/non-binding arbitration [if binding – describe writing in which agreement is set—
21 either in Petition or by written stipulation or other writing; if binding agreed to by the parties before
22 any evidence was taken, attach the signed stipulation].

23 Respondent, [name], [firm's name], an attorney at law, appeared in person with(out) counsel,
24 and has agreed to binding/non-binding arbitration.

25 [Accordingly, this Statement of Decision and Award is BINDING. OR
26 Accordingly, this Statement of Decision and Award is NON-BINDING.]

27 All parties were sworn, testified, cross-examined, and otherwise participated in the
28 proceedings. [If there were any issues with presentation of evidence, include that information; if the

1 parties were permitted to introduce further evidence or briefing after the arbitration hearing was held,
2 include that information.]

3 For purposes of this arbitration Award, the “responsible attorney” is Respondent [name].
4

5 **FEES INCURRED AND AMOUNT IN DISPUTE**

- 6 1. The amount that the Petitioner claims should have been charged: \$
7 2. The amount that the Respondent claims should have been charged: \$
8 3. The amount that Petitioner has paid to Respondent: \$
9 4. If there was a written fee agreement, under the agreement,
10 what fees were charged: \$
11 5. Amount of the filing fee paid by [Petitioner/Respondent/waived] \$

12
13 **UNDISPUTED FACTS**

14 Petitioner retained Respondent, an attorney, for assistance in connection with [type of case].
15 The fee and cost agreement was/was not in writing. [INCLUDE ALL UNDISPUTED FACTS]

16 **CLAIMS OF PARTIES**

17
18 [INCLUDE ALL CLAIMS BEING MADE BY THE PARTIES – SUCH AS THE FEE
19 AGREEMENT IS OR IS NOT VALID; THE AMOUNT CLAIMED IS OR IS NOT
20 REASONABLE; ETC.]

21 **ISSUES**

22 The matters placed in issue by the Petition, Response and the testimony of the parties, are the
23 following:

- 24 1. The nature of the fee agreement between the parties.
25 2. The actual time expended by Respondent.
26 3. Whether the time expended was reasonable and necessary.
27
28

1 [- THE ABOVE EXAMPLES MAY NOT BE THE ISSUES IN YOUR PARTICULAR
2 CASE OR THEY MAY NOT BE ALL THE ISSUES. MODIFY AS THE CASE MAY
3 REQUIRE]

4 FINDINGS

5 Statement, Stipulations, Reasoning and Determination of Questions Presented

6 [Business & Professions Code §6203(a)]

7 [TRACK THE ISSUES, DISCUSS THEM – including the evidence presented and include
8 any law or Advisories as needed – AND DETERMINATION OF QUESTIONS SUBMITTED. BE
9 AS DETAILED AS POSSIBLE SO THAT YOUR REASONING IS SUPPORTED BY THE
10 EVIDENCE PRESENTED]

11 [FOR EXAMPLE:

12 1. What is the nature of the fee agreement?

13 The written fee agreement between the parties is determined to be invalid as Respondent
14 failed to provide Petitioner with any itemized billing when requested to do so. As such,
15 Respondent is only entitled to compensation measured on the reasonable value of services
16 rendered.

17 2. What is the reasonable value of Respondent's services?

18 3. [In the event the case involves a contingency agreement, and no amounts have been
19 collected by attorney but the matter has been tried/adjudicated/settled, make a
20 determination of what the Attorney is entitled to receive if and when money is collected]

21 4. ETC.

22 ALLOCATION OF FILING FEE

23 Rule 36 of the Rules of Conduct permits the allocation of the arbitration filing fee paid by
24 [Client or Attorney]. However, the Rules of Conduct are silent as to when and how
25 arbitration filing fees should be allocated. Given the facts of this fee dispute, [Attorney and/or
26 Client – Arbitrator makes this determination based on what the evidence revealed to the
27
28

1 Arbitrator] shall bear the cost of the arbitration filing fee of [Insert Financial Information
2 Here] (\$X,XXX.XX).

3 **AWARD**

4 The Arbitrator(s) finds that the total amount of fees and/or costs which should have been
5 charged in this matter is: \$[amount]

6 Of which the Petitioner is found to have paid: \$[amount]

7 In addition, the fee arbitration filing fee shall be allocated:

8 Petitioner: \$[amount]

9 Respondent: \$[amount]

10 For a net amount of: \$[amount]

11 Accordingly, the following award is made:

12 Petitioner, [name], shall pay Respondent, [name]: \$[amount]

13
14 plus interest in the amount of ten percent per annum from the 30th day after the date of
15 service of this award

16 **OR**

17 Respondent, [include both the responsible attorney and the firm if there is a firm
18 name], shall refund to Petitioner, [name]: \$[amount]

19 plus interest in the amount of ten percent per annum from the 30th day after the date of
20 service of this award

21 **OR**

22 Nothing further shall be paid by either Petitioner or Respondent.

23 Respectfully submitted,

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25 Dated: [date]

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27 _____
28 , Arbitrator/Panel Chair

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, Arbitrator

, Arbitrator

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1 BEFORE THE STATE BAR OF CALIFORNIA
2 FEE ARBITRATION FINDINGS AND AWARD
3
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5 In the Matter of the Arbitration Between)
6 TALOR CLIENT) CASE NO. A-123-45-AA
7 Petitioner,)
8) FEE ARBITRATION
9 and) FINDINGS AND AWARD
10) Date of Hearing: April 5, 2018
11 ALEX LAWYER, ESQ.) Time of Hearing: 10:00 AM
12 Respondent.)
13 _____)

14 **INTRODUCTORY STATEMENT**

15 A mandatory fee arbitration hearing between Taylor Client (“Petitioner”) and Alex Lawyer,
16 Esq., an attorney-at law, who currently practices at Lawyer & Lawyer, LLC (“Respondent”), was
17 held on April 5, 2018 at 123 Grand Avenue, Los Angeles, California 90019 before Jamie Smith, Esq.,
18 Sole Arbitrator. Petitioner appeared in person without legal representation. Respondent appeared in
19 person without legal representation.

20 Petitioner agreed to binding arbitration in the Request for Arbitration of a Fee Dispute.

21 Respondent agreed to binding arbitration in the Attorney’s Reply to Client’s Request for
22 Arbitration. Therefore, the arbitration is binding. Either party may convert this Award into a
23 judgment pursuant to the provisions of Section 6200 and following of the Business and Professions
24 Code and/or Section 1280 and following of the Code of Civil Procedure of the State of California.

25 For purposes of this arbitration Award, the “responsible attorney” is Respondent, Alex
26 Lawyer, Esq.

27 All parties were sworn, testified, cross-examined, and otherwise participated in the
28 proceedings.

1 **FEES INCURRED AND AMOUNT IN DISPUTE**

2 1. The amount that the Petitioner claims should have been charged: \$18,500.00

3 2. The amount that the Respondent claims should have been charged: \$32,920.50

4 3. The amount that Petitioner has paid to Respondent: \$18,500.00

5 4. If there was a written fee agreement, under the agreement,

6 what fees were charged: \$32,920.50

7 5. Amount of the filing fee paid by Petitioner: \$1,052.67

8

9 **UNDISPUTED FACTS**

10 On March 20, 2017, Petitioner engaged Respondent in connection with a

11 petition for dissolution of marriage. The parties executed an hourly written fee agreement

12 setting forth the terms of their agreement (e.g., initial deposit, hourly fee rates, etc.) (the

13 “Written Fee Agreement”). Petitioner remitted to Respondent a refundable initial retainer in

14 the amount of Three Thousand Five Hundred Dollars (\$3,500). In addition, Petitioner paid

15 Respondent a total of Fifteen Thousand Dollars (\$15,000) over the course of the

16 representation.

17 From March 20, 2017 to July 16, 2017, Respondent actively participated and represented

18 Petitioner pursuant to the terms of the Written Fee Agreement. Despite multiple attempts by

19 Respondent to meet and confer with Petitioner on the remaining outstanding balance owed to

20 Respondent, such meetings never took place and Respondent ultimately substituted out of the case

21 due to non-payment for services rendered.

22

23 **CLAIM OF PARTIES**

24 Petitioner is requesting that Respondent not be awarded any further fees and costs

25 allegedly owed in the amount of Fourteen Thousand Four Hundred Twenty Dollars Fifty

26 Cents (\$14,420.50). Petitioner believes that Respondent did more work than was necessary

27 and Petitioner was not aware of the fees and costs that were accumulating in connection with

28 the case as it was proceeding. Petitioner contends that Respondent could have handled the

1 matters that came up during the case in a more efficient manner, which would have resulted in
2 lower legal fees and costs.

3 Respondent is requesting that Petitioner be required to pay Respondent Fourteen Thousand
4 Four Hundred Twenty Dollars Fifty Cents (\$14,420.50), which represents the outstanding balance of
5 the fees and costs incurred by Respondent in connection with Respondent's representation of
6 Petitioner. Respondent contends that Petitioner's dissolution of marriage was anything but basic, but
7 rather was incredibly complex and terribly acrimonious, which led to additional pleadings,
8 appearances and time expended in representing Petitioner's interests and those of the small children
9 of the marriage.

11 ISSUES

12 The matters placed at issue by the Request for Arbitration of a Fee Dispute, Attorney's
13 Reply to Client's Request for Arbitration and the testimony of the parties, are the following:

- 14 1. The nature of the Written Fee Agreement between the parties.
- 15 2. The services performed by the Respondent and the additional fees and costs due
16 Respondent, if any.

18 FINDINGS

19 Statement, Stipulations, Reasoning and Determination of Questions Presented
20 [Business & Professions Code §6203(a)]

- 22 1. What is the nature of the Written Fee Agreement between the parties?

23 On March 20, 2017, Petitioner and Respondent entered into the Written Fee
24 Agreement, which set forth an hourly rate of Three Hundred Fifty Dollars (\$350) per hour for
25 the services of Respondent. The scope of services as set forth in the Written Fee Agreement
26 provided, among other things, the following:

- 27 (a) Respondent would provide legal services to Petitioner in connection with a
28 petition for dissolution of marriage;

- 1 (b) Petitioner would pay Respondent Three Hundred Fifty Dollars (\$350) per hour
2 in fees, in addition to all out-of-pocket costs and filing fees incurred;
3 (c) Respondent would provide Petitioner with monthly billing statements setting
4 forth the services performed and applicable fees incurred, as well as any costs;
5 and
6 (d) Any modification to the Written Fee Agreement required a writing executed by
7 both parties setting forth any such modification.

8 Pursuant to Business and Professions Code §6148, an attorney who contracts to
9 represent a client in which it is reasonably foreseeable that the total expense to a client,
10 including attorney's fees, will exceed one thousand dollars (\$1,000), the contract for services
11 must be in writing. At the time the contract is entered into, the attorney shall provide a
12 duplicate copy of the contract, signed by both the attorney and the client, to the client. The
13 written contract shall contain all of the following:

- 14 (a) Any basis of compensation including, but not limited to, hourly rates, statutory
15 fees or flat fees, and other standard rates, fees and charges applicable to the
16 case.
17 (b) The general nature of the legal services to be provided to the client.
18 (c) The respective responsibilities of the attorney and the client as to the
19 performance of the contract.

20 The Written Fee Agreement herein complied with the statute and is a valid agreement
21 between the parties. Further, the parties orally stipulated at the Hearing that neither party was
22 contesting the validity of the Written Fee Agreement. In addition, the parties stipulated that
23 the funds paid by Petitioner to Respondent are accurate and correct.

24 2. What are the services performed by the Respondent and are any additional fees
25 and costs due Respondent?

26 Once Petitioner retained Respondent in the dissolution of marriage proceedings,
27 Respondent provided the following legal services on Petitioner's behalf, in addition to the
28 expected legal services in connection with Petitioner's petition for dissolution of marriage
(e.g., preparation of the Petition for Dissolution of Marriage, mandatory settlement
conferences, responding to Petitioner's e-mails and phone calls, preparing form
interrogatories, preparing declarations and in-person meetings with Petitioner):

- 1 • Successfully petitioned the Court for an Order granting Petitioner with
2 exclusive control of the family residence.
- 3 • Successfully petitioned the Court for an Order which sought to prevent the
4 spouse from consuming narcotics while caring for and driving around the
5 minor children.
- 6 • Successfully defended the spouse's attempt to impute income to Petitioner, due
7 to the fact that Petitioner's income had been reduced due to health issues.
8 Respondent was successful in obtaining guideline pendent lite spousal support
9 and not based on a reduced amount.
- 10 • Successfully petitioned the Court for an Order to allow Petitioner control and
11 exclusive use of the community BMW 325i automobile.
- 12 • Successfully petitioned the Court for an Order for joinder of the community
13 retirement accounts so that the spouse would cease unilateral withdrawals.

14 Petitioner contends that even though monthly invoices were being mailed to the
15 correct address, they were not received. Respondent pointed out that on or about May 9,
16 2017, a declaration signed by Petitioner in connection with documents submitted to the Court
17 in connection with the dissolution of marriage proceedings included all the invoices generated
18 to that date so that Petitioner was in possession of all invoices. As such, Respondent argued
19 that Petitioner was aware on or about May 9, 2017, that fees and costs of almost Ten
20 Thousand Dollars (\$10,000) were then due over and above the Eighteen Thousand Five
21 Hundred Dollars (\$18,500) in fees and costs that Petitioner had previously paid in connection
22 with Respondent's services on Petitioner's behalf.

23 Furthermore, Respondent argued that Petitioner was aware that Respondent was
24 rendering extensive legal services at Petitioner's direction, which were complex and time
25 consuming, due to the antagonistic nature of the divorce proceedings. Based on the Written
26 Fee Agreement, Petitioner was also aware that Respondent's hourly rate was Three Hundred
27 Fifty Dollars (\$350) per hour.

1 Respondent had an initial conversation with Petitioner the mounting legal bill on May
2 30, 2017 and then subsequently had additional follow-ups in June of 2017. Due to Petitioner
3 being nonresponsive to Respondent's request to bring the account current, ultimately
4 Respondent filed a motion with the Court to withdraw as counsel of record for Petitioner.
5 Respondent followed Rule 3-700 of the Rules of Professional Conduct and did not prejudice
6 the rights of the Petitioner. Shortly thereafter, Respondent was substituted out of the case
7 with Petitioner's consent and the motion to withdraw was taken off-calendar.

8 Petitioner acknowledged that Respondent rendered all of the legal services set forth in
9 the monthly invoices and did so successfully. Other than testifying that Petitioner was
10 "shocked" at the rising costs, Petitioner was unable to point out any specific charge or service
11 that was excessive or that Respondent was not requested to do.

12 Given the nature of the dissolution of marriage action, Respondent has provided
13 evidence that Petitioner was sent monthly billing statements. In the event Petitioner did not
14 receive a statement for the month of March 2017 or April 2017, by virtue of the documents
15 filed with the Court on or about May 9, 2017, Petitioner was made aware of the legal fees and
16 costs that were mounting in the case. In addition, Petitioner was an active participant in all
17 matters surrounding the case and for the series of meetings and hearings that took place over
18 the rest of May and June of 2017. Petitioner should have been aware that legal fees and costs
19 were continuing to mount as Respondent vigorously represented Petitioner's interests,
20 including agreeing to advance costs for an expert witness to prepare a declaration on the
21 effects of Hydrocodone. Furthermore, Respondent was continuing to send Petitioner monthly
22 statements by U.S. Mail and Electronic Mail. Petitioner's position that they were not received
23 was found to be unpersuasive.

24 Petitioner's divorce proceedings were not harmonious. Respondent expended a great
25 amount of time on Petitioner's case. Based on the various issues handled by Respondent, the
26 fees and costs were reasonable and there was no excessive billing. Therefore, Respondent is
27 entitled to the fees and costs that were billed.

1 **ALLOCATION OF FILING FEE**

2 Based on the facts of this fee dispute, Petitioner shall bear the cost of the arbitration filing fee
3 of One Thousand Fifty-two Dollars Sixty-seven Cents (\$1,052.67).

4
5 **AWARD**

6 The Arbitrator(s) finds that the total amount of fees and/or costs which should have been
7 charged in this matter is: \$32,920.50

8 Of which the Petitioner is found to have paid: \$18,500.00

9 In addition, the fee arbitration filing fee shall be allocated:

10 Petitioner: \$ 1,052.67

11 Respondent: \$ 0.00

12 For a net amount of: \$14,420.50

13 Accordingly, the following award is made:

14
15 Petitioner, Taylor Client, shall pay Respondent, Alex Lawyer, Esq.: \$14,420.50

16 plus interest in the amount of ten percent per annum from the 30th day after the date of
17 service of this award

18 **OR**

19 Nothing further shall be paid by either Petitioner or Respondent.

20 Respectfully submitted,

21
22 Dated: April 10, 2018

23 _____
24 Jamie Smith, Esq., Sole Arbitrator
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Rules of Procedure for Fee Arbitrations for the Western San Bernardino County Bar Association

SECTION 1: DEFINITIONS

RULE 1.0. Definitions. As used in this chapter:

- 1.1 ACTION: A civil judicial proceeding brought to enforce, redress or protect a right.
- 1.2 ADMINISTRATOR: The staff person responsible for administering the local bar association's Mandatory Fee Arbitration Program.
- 1.3 AWARD: The decision of the arbitrator or arbitrators in the fee arbitration proceeding.
- 1.4 CLIENT: A person who directly or through an authorized representative consults, retains or secures legal services or advice from an attorney in the attorney's professional capacity.
- 1.5 COMMITTEE CHAIR: The person on the Mandatory Fee Arbitration program responsible for supervising the program's fee arbitrators and for ruling on matters as set forth in these rules.
- 1.6 DECLARATION: A declaration is a document in compliance with the requirements of Code of Civil Procedure section 2015.5, or an affidavit.
- 1.7 FILE: Fee arbitration records and papers in a specific fee arbitration case.
- 1.8 HEARING PANEL: One or three arbitrators assigned to hear the fee dispute and to issue the award.
- 1.9 PANEL CHAIR: Refers to either the sole arbitrator or Panel Chair of a three-member panel assigned to hear a matter. The Panel Chair is responsible for ruling on matters pertaining to the individual case assigned as set forth in these rules.
- 1.10 PARTY: A person who initiates or is named in an arbitration proceeding under these rules, including an attorney, a client or other person who is not the client but may be responsible for payment of, or entitled to a refund of attorney's fees.
- 1.11 PROGRAM: Unless indicated otherwise, reference to the program means the Mandatory Fee Arbitration Program of the Western San Bernardino County Bar Association.
- 1.12 STATE BAR: The State Bar of California. Unless indicated otherwise, reference to the State Bar means the State Bar's Office of Mandatory Fee Arbitration.

SECTION 2. ARBITRATION GENERALLY

RULE 2.0 Arbitration Mandatory For Attorneys.

Arbitration under Business and Professions Code sections 6200-6206 is voluntary for a client, unless the parties agreed in writing to submit their fee disputes to arbitration, and mandatory for an attorney if commenced by a client.

RULE 3.0 Party's Failure To Respond Or Participate.

In a mandatory fee arbitration, if a party fails to respond to a request for arbitration or refuses to participate, the arbitration will proceed as scheduled and an award will be made on the basis of the evidence presented to the hearing panel. The award may include findings on the subject of a party's failure to appear at the arbitration.

RULE 4.0 Disputes Covered.

Disputes concerning fees, costs, or both charged for professional services by an attorney are subject to arbitration under these rules, except for:

- 4.1 disputes where the attorney is admitted to practice in another jurisdiction, or where the attorney is only admitted to practice in another jurisdiction, and he or she maintains no office in the State of California, and no material portion of the services was rendered in the State of California;
- 4.2 claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct;
- 4.3 disputes where the fees or costs to be paid by the client or on the client's behalf have been determined or are determinable pursuant to statute or court order;
- 4.4 disputes where the request for arbitration is made by a person who is not liable for or entitled to a refund of attorney's fees or costs.; or
- 4.5 disputes where the claim has been assigned by the client.

RULE 5.0 Non-Binding and Binding Arbitration.

5.1 Arbitration is not binding unless all parties agree in writing after the fee dispute arises. Such agreement shall be made prior to the taking of evidence at the hearing. If any party has not agreed in writing to binding arbitration, the arbitration is non-binding, and any party may request a trial after arbitration in a civil court pursuant to Business and Professions Code section 6204 within 30 days after the non-binding arbitration award has been served. If a trial after arbitration is not requested, the non-binding award automatically becomes binding 30 days after the award is served, except that if any party willfully fails to appear at the hearing as provided for under these rules, that party shall not be entitled to a trial after arbitration. The decision as to whether the non-appearance was willful is made by the court. The party who failed to appear at the hearing shall have the burden of proving that the failure to appear was not willful. An award may be corrected, vacated or confirmed pursuant to Code of Civil Procedure section 1285 et seq.

5.2 If all parties agree in writing, after the fee dispute arises, that the arbitration is binding, the award is binding and there can be no trial after arbitration in a civil court on the issue of fees and costs. A binding award may be corrected, vacated or confirmed pursuant to Code of Civil Procedure section 1285 et seq.

RULE 6.0 Withdrawal of Binding Arbitration Election.

6.1 If the parties agree in writing, after the fee dispute arises, to binding arbitration, the arbitration shall proceed as binding. The parties may request binding arbitration as provided on the program forms. In the absence of a written agreement made after the fee dispute arises to submit to binding arbitration, the arbitration shall be non-binding.

6.2 A party who has requested binding arbitration may withdraw that request and request a change to non-binding arbitration in writing to the program and the other parties, so long as the other parties have not already agreed to binding arbitration.

6.3 If the party who initially requests arbitration requests that the arbitration will be binding, and the respondent party's Reply agrees to binding arbitration but also seeks to materially increase the amount in dispute, then the party who requested arbitration may withdraw his request that the arbitration be binding. Such withdrawal of consent to binding arbitration, by the initiating party, must be communicated in writing to the Program within ten days of that party's receipt of the Reply.

6.4 Except as provided above, if the parties have already agreed to binding arbitration, the binding election may be changed to non-binding arbitration only by written agreement signed by all parties and sent to the program.

RULE 7.0 Right To Counsel.

All parties, at their expense, may be represented by an attorney.

RULE 8.0 Waiver Of Right To Request Or Maintain Arbitration.

A client's right to request or maintain arbitration is waived if the client:

8.1 answers a complaint in a civil action or other equivalent response to the civil action before filing a request for arbitration, after the required form entitled "Notice of Client's Right to Arbitration" was given pursuant to Business and Professions Code section 6201(a);

8.2 commences an action or files any pleading seeking judicial resolution of a fee or cost dispute or seeking affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct;

8.3 fails to deliver to the program a request for arbitration on the approved program form that is postmarked or received on or before the 30th day from the date of the client's receipt of the form entitled "Notice of Client's Right to Arbitration" given pursuant to Business and Professions Code section 6201, subdivision (a). Should the fee dispute transfer to a different fee arbitration program after the request for arbitration is filed, the original date of postmark or receipt of the arbitration request will be preserved for purposes of determining whether the request for arbitration was made within the 30-day time period.

RULE 9.0 Stay Of Proceedings.

If an attorney, or the attorney's assignee, commences an action to collect fees or costs in any court or other proceeding, with limited exceptions including provisional remedies, the court action or other proceeding is automatically stayed upon filing a request for fee arbitration with a State Bar approved fee arbitration program. The party who requested fee arbitration has a duty to notify the court of the stay and attach a copy of the arbitration request form. If the person who requested or caused the stay has not appeared in the action or other proceeding, or is not subject to the jurisdiction of the

court, the plaintiff must immediately file a notice of stay and attach a copy of the arbitration request form showing that the proceeding is stayed. Upon request, the program may provide a copy of a notice of automatic stay to the party.

SECTION 3. PROGRAM

RULE 10.0 Determination Of Jurisdiction.

10.1 The program shall reject any request for arbitration when it is clear from the face of the request that the provisions of Business & Professions Code section 6200 have not been met or the matter is time barred under Business & Professions Code section 6206. Where the existence of an attorney-client relationship is in dispute, the parties may stipulate to submit the issue for a determination by the program, which otherwise lacks jurisdiction to determine that issue.

10.2 The Committee Chair may request that the parties submit written statements supporting their respective positions on the issue of whether the program has jurisdiction over their fee dispute or whether the dispute is time barred. For good cause, Committee Chair may assign the matter to a hearing panel to take evidence and make a determination of whether jurisdiction should be accepted.

10.3 Within 15 days from service of notice of a ruling on a challenge to jurisdiction or claim that the matter is time barred, a party may file a written request for reconsideration based on new evidence. The Committee Chair shall rule on the request for reconsideration.

10.4 There is no appeal of the Committee Chair's decision following reconsideration. Any ruling on reconsideration by the local bar program is final.

10.5 If there is an approved local bar association program that is willing to accept jurisdiction where the parties consent in writing to submit to such jurisdiction, a program may assume jurisdiction over a matter even if the program does not have original jurisdiction.

RULE 11.0 Jurisdiction by the Program.

11.1 The Program shall have jurisdiction over a fee dispute submitted by the client if at least two of the following conditions apply: a substantial portion of the legal services was performed in San Bernardino County; at least one of the attorneys involved in the dispute has an office in San Bernardino County or maintained an office in San Bernardino County at the times the services were

rendered; the client resides in San Bernardino County.

11.2 In the event of a dispute between the parties as to which program should hear the matter, the program where the arbitration request was first filed shall determine that the arbitration will be conducted in the county where "the majority of legal services were provided," and such ruling is final and not appealable to the State Bar. Should the fee dispute transfer to a different fee arbitration program after the request for arbitration is filed, the original date of postmark or receipt of the arbitration request will be preserved for purposes of determining whether jurisdiction exists.

RULE 12.0 Removal to the State Bar of California.

12.1 If a request for arbitration has been filed with the program and a party to the arbitration requests removal to the State Bar program,

a) The party seeking removal from the program must submit a declaration signed under penalty of perjury asserting the factual basis for the removal. That party need not submit an additional filing fee to the State Bar until there has been a final ruling by the State Bar's Presiding Arbitrator granting removal to the State Bar.

b) The State Bar will serve the request for removal and supporting declaration on the other parties and the program. Any written response must be received by the State Bar within 15 days of service of the request for removal and declaration for consideration by the State Bar's Presiding Arbitrator.

c) The party seeking removal must provide all additional information requested by the State Bar within the time limits set by the State Bar. d) A request for removal to the State Bar will be decided by the State Bar's Presiding Arbitrator under the applicable rules of procedure of the State Bar. Upon service of an order granting a request for removal, the party who paid the filing fee to the program shall receive a refund of the filing fee from the Program.

12.2 The State Bar's Presiding Arbitrator shall deny a request for removal if he or she determines that: a) The other parties to the local bar program's arbitration or the program itself would be prejudiced by removal and such prejudice outweighs the allegations by the party seeking removal that the party believes that a fair hearing through the local bar's program cannot be obtained; or b) The conduct of the party seeking removal during the course of the arbitration proceedings before the local bar program is clearly inconsistent with a bona fide belief by that party that he or she cannot obtain a fair hearing in that forum; or c) The party seeking removal has waived any claim that

the party cannot obtain a fair hearing before the local bar's arbitration program.

RULE 13.0 Effect of Failure to Adhere to Time Requirements.

The program shall neither lose jurisdiction, nor shall any arbitration be dismissed nor any award invalidated or modified in any way, solely because of the program's or the hearing panel's failure to comply with time requirements as set forth in these rules.

**SECTION 4.
INITIATION OF ARBITRATION PROCEEDING**

RULE 14.0 Request For Arbitration.

14.1 Arbitration may be initiated by a client, an attorney or a third party entitled to request mandatory fee arbitration.

14.2 An arbitration is initiated by filing a written "Request For Arbitration" with the program on the approved program form and paying the appropriate filing fee as established by the program. Service of the request on the other party with whom there is a fee dispute named on the request form shall be made by the program.

14.3 At the time of service of a request on an attorney, the program shall serve with it a copy of the approved "Notice of Attorney Responsibility" form.

14.4 The party requesting arbitration may amend the request up to 15 days after mailing it to the program, unless a request for clarification is made by the program. Thereafter, it may be amended only with the approval of the Committee Chair or by the Panel Chair, if a notice of assignment of the hearing panel has been served on the parties.

14.5 The request for arbitration may be made by (i) a person who is not the client but who may be liable for or entitled to a refund of attorney's fees or costs ("non-client"), or (ii) the attorney claiming entitlement to fees against a non-client. A fee arbitration between an attorney and a non-client is not intended to abrogate the requirement that the attorney exercise independence of professional judgment on behalf of the client or the protection of client confidences and secrets. Absent the client's written consent to disclosure of confidential information, a fee arbitration with a non-client is not intended to abrogate the attorney's duty to maintain client confidences and secrets, unless such disclosure is otherwise permitted by law. Absent the client's signature on the request for arbitration, when an arbitration with a

non-client is initiated, the program will give notice of the request to the client by first class mail at the client's last known address.

RULE 15.0 Filing Fee.

15.1 The party requesting fee arbitration shall pay a filing fee with the request form. The arbitrator shall, at his or her discretion, allocate the entire amount of the filing fee, or a portion thereof, to one or more of the parties. Such allocation shall be clearly stated in the Award.

15.2 The joining of additional parties as petitioner or respondent shall not increase the filing fee.

15.3 Filing Fee Schedule.

The filing fee is:

\$100 (minimum fee) for disputes up to \$2,000;
5% of amount in dispute for disputes from \$2,001 to up to \$50,000;
\$3,000 (maximum fee) for disputes over \$50,000

RULE 16.0 Request For Filing Fee Waiver.

16.1 For good cause shown, the Committee Chair may grant or deny a request for a filing fee waiver or order a reduced fee. The order of the Committee Chair shall be final.

RULE 17.0 Response To Request For Arbitration.

17.1 The respondent party's reply to a Request for Arbitration, together with any response, if the respondent party is an attorney, to the issue of the attorney's responsibility for any award that refunds fees or costs or both to the client, shall be submitted to the program on its approved form within 30 days of the service of the request, unless an extension of time to reply is obtained from the program.

17.2 If the attorney seeks arbitration, and there is no written agreement between the parties that fee disputes be submitted to fee arbitration, arbitration shall proceed only if the client consents in writing on the approved form within 30 days of service of the request, unless the attorney is seeking removal from a local bar program under rule 10.2 of a matter in which the client has already requested arbitration or has consented to an attorney's request for arbitration.

RULE 18.0 Requests and Responses to Requests for Arbitration.

Parties filing or responding to a Request for Arbitration shall file one original and the required number of copies of all forms and supporting documentation with the program. Copies of materials filed with the program will be forwarded to the other party and the hearing panel assigned to hear the matter.

RULE 19.0 Settlement Of Disputes; Withdrawal From Arbitration; Refund Schedule.

19.1 Upon confirmation by the parties or the hearing panel if one has been assigned that the dispute has been settled, the matter shall be dismissed by the program in the absence of an assigned hearing panel, or by the panel chair if a notice of assignment of the hearing panel has been served on the parties.

19.2 (a) If a party wishes to withdraw from a binding arbitration and the matter has not been settled, all other parties must agree to the matter being withdrawn.

(b) If there is a written agreement between the parties requiring arbitration of the fee dispute through the Mandatory Fee Arbitration Program, all other parties must consent to a request for withdrawal before the proceeding is dismissed.

(c) If arbitration has been requested by the attorney, the matter may only be dismissed with the agreement of the other parties.

(d) In all other cases, the party who requested arbitration may withdraw from the arbitration proceeding without the consent of other parties at any time before evidence is taken.

19.3 Refund of the filing fee: If the matter is settled or dismissed based on withdrawal at any time before assignment of a panel, the program shall refund 100 percent of the filing fee. After assignment of a hearing panel, if written notice of the settlement is received by the program at least 15 days prior to the date of the scheduled hearing, the program shall retain 75% percent of the filing fee. The remaining fee shall be refunded to the party who paid it. After hearing panel assignment and less than 15 days prior to the hearing, there shall be no refund of filing fees.

19.4 If the parties settle the fee dispute and wish to obtain a stipulated award incorporating the terms of a written settlement agreement, the Committee Chair, if no hearing panel has been assigned, or the Panel Chair, if the hearing

panel has been assigned, may issue a stipulated award incorporating by reference the parties' written settlement agreement. The Program will serve the stipulated award in the same manner as it would serve an arbitration award as prescribed elsewhere in these rules.

RULE 20.0 Consolidations.

A party may request, in writing, that two or more arbitration matters be consolidated for hearing. The Program will serve the other party with a copy of the request. A written reply may be filed with the program within 15 days of service of the request for consolidation. The Committee Chair shall rule on all written requests to consolidate. The order of the Committee Chair shall be final. Consolidation will not result in a refund of filing fees paid or reduction of filing fees owed to the Program. If a client requests fee arbitration against an attorney who is already a party in a non-client fee arbitration relating to the client's matter or joins a fee arbitration as a party in a fee dispute between the client's attorney and a non-client, consolidation of the arbitration matters is automatic absent a showing of good cause to the contrary.

**SECTION 5.
PANELS**

RULE 21.0 Appointment Of Panel.

21.1 For each dispute, the Program shall assign a hearing panel from the program's roster of fee arbitrators. A hearing panel shall consist of one attorney arbitrator if the amount in dispute is \$25,000 or less, and three arbitrators if the amount in dispute is more than \$25,000, one of which shall be a non-lawyer. An attorney arbitrator shall be designated as Panel Chair. If the amount in dispute is more than \$25,000, the parties may agree, in writing, to have the matter heard by a single attorney arbitrator.

21.2 Upon the client's request, the program shall assign a sole arbitrator, or in the case of a three person panel, one of the attorney arbitrators, whose area of practice is in the field of the attorney involved in the dispute. Any such designation made by the client shall be of an arbitrator who practices in the same area of law as was involved in the matter for which the attorney was retained by the client. Any such request made pursuant to Business and Professions Code section 6200, subdivision (e) must be submitted by the client at the time the written "Request for Arbitration" on the approved program form is submitted to the program.

21.3 Any vacancy of an arbitrator, by way of disqualification or inability to serve, may be filled by the program, but in no event shall the arbitration proceed with

only two arbitrators.

RULE 22.0 Notice Of Appointment Of Panel.

A notice identifying the arbitrator(s) who will hear the dispute shall be served on the parties within 60 days of the date on which the reply to the arbitration request is received, or as soon thereafter as is reasonably possible. If no reply is received, the notice of appointment of panel will be served within 60 days of the date on which the time to file the response expired, or as soon thereafter as is reasonably possible.

RULE 23.0 Challenge Disqualification of Arbitrator(s).

Each party may disqualify one arbitrator without cause and shall have unlimited challenges for cause. Any disqualification without cause of an arbitrator shall be ineffective unless made in writing and served on the program within 10 days of the service of a notice of assignment of panel or substitute arbitrator(s) if there is a disqualification or successful challenge. An arbitrator who believes that he or she cannot render a fair and impartial decision or who believes that there is an appearance that he or she cannot render a fair and impartial decision, shall disqualify themselves or shall accede to a party's challenge for cause. If an arbitrator does not agree to be disqualified, the challenge shall be decided by the Committee Chair.

RULE 24.0 Discharge Of Arbitrator Or Panel.

The Committee Chair shall have the authority to discharge an arbitrator or panel of arbitrators from further proceedings on a matter whenever the Committee Chair, in his or her sole discretion, determines that there has been an unreasonable delay in performing duties under these rules, or for other good cause shown.

RULE 25.0 Prohibited Contacts With Arbitrators.

A party or an attorney or representative acting for a party shall not directly or indirectly communicate with an arbitrator regarding a matter pending before such arbitrator, except: a) At scheduled hearings; b) In writing with a copy to all other parties, or their respective counsel, if any, and the program; c) For the sole purpose of scheduling a hearing date or other administrative procedures with notice of same to the other parties; d) For the purpose of obtaining the issuance of a subpoena as set forth in these rules; or e) In an emergency.

**SECTION 6.
THE HEARING**

RULE 26.0 Confidentiality.

26.1 All hearings shall be closed to the public. However, in the discretion of the hearing panel and in the absence of any objections by the parties, witnesses may be present during the hearing.

26.2 The hearing panel, upon request of the client, shall permit the client to be accompanied by another person and may also permit additional persons to attend. Any such person shall be subject to the confidentiality of the arbitration proceedings.

26.3 The arbitration award is public; the arbitration case file, including the request, reply, exhibits and transcripts, remains confidential.

RULE 27.0 Waiver Of Personal Appearance.

27.1 Upon advance approval of the Panel Chair, any party may waive personal appearance and submit to the hearing panel testimony and exhibits by written declaration under penalty of perjury.

27.2 Any party unable to attend a hearing may designate a lawyer or non-lawyer representative.

27.3 Any party may request to appear by telephone, subject to the advance approval of the Panel Chair.

27.4 A request for waiver of appearance or designation of a representative and the submission of testimony by written declaration or request for telephonic appearance pursuant to this rule shall be filed with the Panel Chair and served on all parties at least 10 days prior to the hearing.

RULE 28.0 Death or Incompetence of a Party.

In the event of death or incompetence of a party, the personal representative of the deceased party or the guardian or conservator of the incompetent may be substituted.

RULE 29.0 Discovery.

No discovery is allowable except as specifically set forth in these rules.

RULE 30.0 Subpoenas.

The Committee Chair may issue subpoenas and/or subpoenas duces tecum at the request of a party. The Committee Chair or Panel Chair shall provide signed, blank subpoenas to the requesting party who shall be responsible for service of the subpoenas. The party requesting subpoenas will be responsible for any witness fees and any costs of service of the subpoenas.

RULE 31.0 Commencement of Hearing; Notice; Attendance.

31.1 The hearing shall commence within 45 days for a single arbitrator panel or 90 days for a three-member panel after the date of service of the "Notice of Assignment of Panel Arbitrators" or "Notice of Assignment of Single Arbitrator". A disqualification or allowed challenge of an assigned arbitrator will result in a 15- day extension from the date of the assignment of replacement member(s). Upon stipulation or application to the Panel Chair, the matter may be continued for good cause shown except in the instance where the continuance is for 30 days or more, in which case the continuance must be approved by the Committee Chair.

31.2 The Administrator shall serve written notice of hearing on each party and the program within 30 days of its assignment and at least 15 days prior to the hearing date. Appearance by a party at a scheduled hearing shall constitute waiver by said party of any deficiency with respect to the giving of "Notice of Fee Dispute Hearing." Notwithstanding the failure of either party to attend, the hearing shall proceed as scheduled and a decision made on the basis of evidence submitted.

31.3 An award shall not be made against a party solely because of the party's absence. The panel shall require the party who is present to submit such evidence as may be required to support the making of an award.

31.4 An award may be made in favor of a party who is absent if the evidence so warrants. If neither party appears and the Panel Chair has not approved waiver of personal appearance, the panel will issue an award based on the evidence submitted.

31.5 If one of the panel members fails to appear, upon written stipulation of the parties, the hearing may proceed with either of the attorney arbitrators acting as the sole arbitrator. Under no circumstances will the hearing proceed with two arbitrators or with one lay arbitrator.

31.6 If all parties so stipulate, the sole arbitrator or Hearing Panel shall decide all matters without a hearing

based upon the Petition, Reply and any other written materials provided by the parties. All such written materials shall be filed with the hearing panel and served on all other parties.

RULE 32.0 Stipulations Encouraged.

Agreements between the parties as to issues not in dispute and the voluntary exchange of documents prior to the hearing is encouraged.

RULE 33.0 Oaths.

All testimony may be given under oath or affirmation administered by the sole arbitrator or Panel Chair.

RULE 34.0 Evidence.

Any relevant evidence shall be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule to the contrary.

RULE 34.5 Clarification Of Issues And Exchange Of Documents.

The Panel Chair may require that the parties clarify the issues, submit additional documentation, and exchange documents in advance of the hearing. The Hearing Panel may, in its discretion, decline to admit into evidence documents that were required to be exchanged in advance but were not.

RULE 35.0 Order Of Proof.

The parties shall present their proof in a manner determined by the sole arbitrator or Panel Chair.

RULE 36.0 Interpreter.

Any party may provide and pay for the attendance of a person to interpret at that party's expense.

RULE 37.0 Transcripts or Recordings.

No stenographic, audio or video recording is permissible.

RULE 38.0 Compensation of Arbitrators; Administrative Charges

38.1 No arbitrator shall be entitled to compensation for services unless the hearings extend beyond four hours. Unless waived in writing, each arbitrator will be compensated at the rate of \$250 for each additional hour

after a four hour hearing. The compensation shall be paid equally by each party to the program for each day of hearing on which compensation is payable. No compensation will be paid to arbitrators for services other than during formal hearing sessions extending beyond four hours. Any disputes concerning compensation of the arbitrators will be determined by the Committee Chair, and its determination shall be binding on the parties, including the arbitrators.

38.2 Except for the prescribed filing fees, no charges will be made by the program, nor by any arbitrator, for administrative or clerical services. A hearing room will be provided by an arbitrator or by the program without charge to the parties.

38.3 All parties will bear their own costs, including the costs of interpreters and expert witnesses.

**SECTION 7.
AWARD**

RULE 39.0 Award.

39.1 The award shall be submitted to the Program within 20 days of the close of the hearing in any matter heard by a sole arbitrator and within 30 days of the close of the hearing in any matter heard by a three- member panel. The award shall be reviewed pursuant to rule 39.9 and then served on the parties forthwith by the Program.

39.2 The award shall be in writing. The award shall indicate whether it is binding or non-binding. It shall include a determination of all questions submitted to the panel, the decision of which is necessary in order to determine the controversy, including the name of the responsible attorney(s). Arbitrators are encouraged, where appropriate, to include findings of fact. in their awards - If a party failed to appear for non-binding arbitration, the award should also include the circumstances bearing on the willfulness of any party's nonappearance at the hearing.

39.3 The award shall include substantially the following language, as appropriate:

The Hearing Panel finds that the total amount of fees or costs that should have been charged in this matter are:

	\$ _____
Client is found to have paid:	\$ _____
Subtotal	\$ _____

Pre-award interest [check box]:
 is not awarded.

is awarded in the amount of \$ _____

In addition, the fee arbitration filing fee of \$ _____ as paid by _____ shall be allocated:
 Client: \$ _____
 Attorney: \$ _____

For a net amount of: \$ _____

Accordingly, the following award is made:

a) Client, _____ (name), shall pay attorney, _____ (name) \$ _____

OR

b) Attorney, _____ (name), shall pay client, _____ (name): \$ _____

OR

c) Nothing further shall be paid by either attorney or client.

39.4 The award may include a refund of unearned fees, or costs, or both previously paid to the attorney.

39.5 Whenever there are three arbitrators, a majority vote shall be sufficient for all decisions of the arbitrators, including the award. Any dissent from the award shall be served with the award.

39.6 Evidence relating to claims of malpractice or professional misconduct, whether or not the client was actually harmed, shall be admissible, but only to the extent that those claims bear upon the fees and/or costs to which the attorney is entitled. The panel shall not award affirmative relief in the form of damages or offset or otherwise, for injuries underlying any such claim.

39.7 The award shall be signed by all arbitrators concurring with it.

39.8 The award may include an allocation of the filing fee; however, it shall not include an award for any other costs of the arbitration, including attorneys' fees resulting from the arbitration proceeding notwithstanding any contract between the parties providing for such an award of costs or attorney's fees.

39.9 The panel shall forward the original of the signed award to the Program. which shall serve a copy of the

award by mail on each party together with a Notice of Rights After Arbitration form approved by the State Bar Board of Governors. No award is final or is to be issued until approved for procedural compliance and as to the form of the award by the Committee Chair or such person as the Chair may designate for this purpose. After approval of the award as to the procedural compliance and approval as to the form of the award, the Program shall serve a copy of the award by mail on each party together with a Notice of Rights After Arbitration form approved by the State Bar Board of Governors. Any party who has submitted exhibits or documents to the panel shall, upon service of the award, make arrangements to retrieve them.

RULE 40.0. Correction of Award by Hearing Panel.

40.1 The Hearing Panel may correct a binding or non-binding award only on the grounds set forth in Code of Civil Procedure section 1286.6, subdivision (a) [evident miscalculation of figures or evident mistake in the description of a person, thing or property referred to in the award] and subdivision (c) [the award is imperfect in a matter of form, not affecting the merits of the controversy] under the procedures set forth in Code of Civil Procedure section 1284. An application for such a correction does not extend the deadline for seeking a civil trial after a non-binding award is rendered, and a non-binding award will automatically become binding 30 days after it is served on the parties.

40.2 A party requesting correction or amendment under this rule must file a request in writing to the Program and serve a copy on the other party within ten days after service of the award. Any party to the arbitration may make a written objection to such request. Such request does not toll the time period for filing a civil action to challenge the award.

40.3 Any corrected or amended award will be served by the Program. The time for filing a petition to confirm, vacate or correct the award begins from the date of service of the amended or corrected award, the date of denial of the request for correction or amendment of the award, or the date that a request that a request for correction of amendment of the award is deemed denied under Code of Civil Procedure 1284, whichever date is earlier.

40.4 The Hearing Panel shall either deny the application or correct the award in writing signed by the arbitrator(s) concurring therein. Any jurisdiction on the part of the Hearing Panel to amend or supplement an award expires upon entry of judgment.

**SECTION 8.
SERVICE; ADDRESS**

RULE 41.0 Service.

41.1 Unless otherwise specifically stated in these rules, service on the client shall be by personal delivery, by deposit in the United States mail, or by deposit in a business facility used for collection and processing of correspondence for mailing with the United States Postal Service pursuant to Code of Civil Procedure section 1013(a), postage paid, addressed to the person on whom it is to be served, at his or her address as last given, on any document which has been filed in the arbitration. The client shall keep the program advised of his or her current address.

41.2 Unless otherwise specifically stated in these rules, service on an individual attorney shall be at the latest address shown on the official membership records of the State Bar. Service shall be in accordance with subsection 46.1 above.

41.3 If either party is represented by counsel, service shall be on the party as indicated in subsections 40.1 and 40.2 of this rule, and on the counsel at the latest address shown on the official membership records of the State Bar.

41.4 The service is complete at the time of deposit. The time for performing any act shall commence on the date service is complete and shall not be extended by reason of service by mail.

41.5 Where a facsimile or email transmission is used to communicate with the program or to file any document, it will not be considered received unless the program also receives within five days of the date of the transmission, the original of the faxed document.

41.6 In the event that the client fails to keep the program advised of his or her current address, the program may close the arbitration request, if it is made by the client, after 30 days from the date that the program learns of the invalid address.

State Bar of California Model Rules of Procedure for Fee Arbitrations

(Approved November 17, 2006; rev. July 11, 2008; rev. Nov. 24, 2009; rev. Mar. 10, 2010; rev. May 11, 2012.)

ARTICLE I. DEFINITIONS

RULE 1.0. Definitions.

As used in this chapter:

- 1.1 ACTION:** A civil judicial proceeding brought to enforce, redress or protect a right.
- 1.2 ADMINISTRATOR:** The staff person responsible for administering the local bar association's Mandatory Fee Arbitration Program.
- 1.3 AWARD:** The decision of the arbitrator or arbitrators in the fee arbitration proceeding.
- 1.4 CLIENT:** A person who directly or through an authorized representative consults, retains or secures legal services or advice from an attorney in the attorney's professional capacity.
- 1.5 COMMITTEE CHAIR:** The person on the Mandatory Fee Arbitration program responsible for supervising the program's fee arbitrators and for ruling on matters as set forth in these rules.
- 1.6 DECLARATION:** A declaration is a document in compliance with the requirements of Code of Civil Procedure section 2015.5, or an affidavit.
- 1.7 FILE:** Fee arbitration records and papers in a specific fee arbitration case.
- 1.8 HEARING PANEL:** One or three arbitrators assigned to hear the fee dispute and to issue the award.
- 1.9 NON-LAWYER ARBITRATOR:** A lay arbitrator is a person who has not been admitted to practice law in any jurisdiction and has not worked regularly for a public or private law office or practice, court of law or attended law school for any period of time. Paralegal assistants, law firm staff, and law clerks shall not serve as lay arbitrators.
- 1.10 PANEL CHAIR:** Refers to either the sole arbitrator or Panel Chair of a three-member panel assigned to hear a matter. The Panel Chair is responsible for ruling on matters pertaining to the individual case assigned as set forth in these rules.

- 1.11 PARTY:** A person who initiates or is named in an arbitration proceeding under these rules, including an attorney, a client or other person who is not the client but may be liable for payment of, or entitled to a refund of attorney's fees.
- 1.12 PROGRAM:** Unless indicated otherwise, reference to the program means the Mandatory Fee Arbitration Program of the _____ Bar Association.
- 1.13 STATE BAR:** The State Bar of California. Unless indicated otherwise, reference to the State Bar means the State Bar's Office of Mandatory Fee Arbitration.
- 1.14 TRIAL:** Trial after non-binding fee arbitration means: (1) an action in the court having jurisdiction over the amount in controversy or (2) arbitration pursuant to the parties' pre-existing arbitration agreement.

ARTICLE II. ARBITRATION GENERALLY

RULE 2.0 Arbitration Mandatory For Attorneys.

Arbitration under Business and Professions Code sections 6200-6206 is voluntary for a client, unless the parties agreed in writing to submit their fee disputes to arbitration, and mandatory for an attorney if commenced by a client.

RULE 2.1 Notice of Client's Right to Arbitration Before Lawsuit or Other Proceeding to Collect Fees.

The attorney shall, prior to or at the time of service of summons in a lawsuit against the client for the recovery of fees, costs, or both for professional services rendered or prior to or at the commencement of any other proceeding under a contract that provides for alternative to arbitration under Business and Professions Codes section 6200-6206, forward to the client a written "Notice of Client's Right to Arbitration" using the State Bar approved form. Failure to give this notice shall be a ground for the dismissal of the lawsuit or other proceeding.

RULE 3.0 Party's Failure to Respond or Participate.

In a mandatory fee arbitration, if a party fails to respond to a request for arbitration or refuses to participate, the arbitration will proceed as scheduled and an award will be made on the basis of the evidence presented to the hearing panel. The award may include findings on the subject of a party's failure to appear at the arbitration. A party who is found to have willfully failed to appear at the arbitration is not entitled to a trial after non-binding arbitration.

RULE 4.0 Disputes Covered.

Disputes concerning fees, costs, or both charged for professional services by an attorney are subject to arbitration under these rules, except for:

- 4.1** disputes where the attorney is also admitted to practice in another jurisdiction or where the attorney is only admitted to practice in another jurisdiction, and he or she maintains

no office in the State of California, and no material portion of the services was rendered in the State of California;

- 4.2 claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct;
- 4.3 disputes where the fees or costs to be paid by the client or on the client's behalf have been determined or are determinable pursuant to statute or court order;
- 4.4 disputes where the request for arbitration is made by a person who is not liable for or entitled to a refund of attorney's fees or costs.; or
- 4.5 disputes where the claim has been assigned by the client.

RULE 5.0 Non-Binding and Binding Arbitration.

- 5.1 Arbitration is not binding unless all parties agree in writing after the fee dispute arises. Such agreement shall be made prior to the taking of evidence at the hearing. If any party has not agreed in writing to binding arbitration, the arbitration is non-binding. Following service of a non-binding arbitration award, either party may request a trial pursuant to Business and Professions Code section 6204 within 30 days after the non-binding arbitration award has been served except that if any party is found to have willfully failed to appear at the hearing as provided for under these rules, that party shall not be entitled to a trial after arbitration. The decision as to whether the non-appearance was willful is made by the court. The party who failed to appear at the hearing shall have the burden of proving that the failure to appear was not willful. If a trial after arbitration is not requested, the non-binding award automatically becomes binding 30 days after the award is served. An award may also be corrected, vacated, or confirmed pursuant to Code of Civil Procedure section 1285 et seq.
- 5.2 If all parties agree in writing, after the fee dispute arises, that the arbitration is binding, the award is binding and there can be no trial after arbitration in a civil court on the issue of fees and costs. A binding award may be corrected, vacated or confirmed pursuant to Code of Civil Procedure section 1285 et seq.

RULE 6.0 Withdrawal of Binding Arbitration Election.

- 6.1 If the parties agree in writing, after the fee dispute arises, to binding arbitration, the arbitration shall proceed as binding. The parties may request binding arbitration as provided on the program forms. In the absence of a written agreement made after the fee dispute arises to submit to binding arbitration, the arbitration shall be non-binding.
- 6.2 A party who has requested binding arbitration may withdraw that request and request a change to non-binding arbitration in writing to the program and the other parties, so long as the other parties have not already agreed to binding arbitration.

- 6.3** If the party who initially requests arbitration requests that the arbitration will be binding, and the respondent party's Reply agrees to binding arbitration but also seeks to materially increase the amount in dispute, then the party who requested arbitration may withdraw his request that the arbitration be binding. Such withdrawal of consent to binding arbitration, by the initiating party, must be communicated in writing to the Program within ten days of that party's receipt of the Reply.
- 6.4** Except as provided above, if the parties have already agreed to binding arbitration, the binding election may be changed to non-binding arbitration only by written agreement signed by all parties before the taking of evidence.

RULE 7.0 Right to Counsel.

All parties, at their expense, may be represented by an attorney.

RULE 8.0 Waiver of Right to Request or Maintain Arbitration.

A client's right to request or maintain arbitration is waived if the client:

- 8.1** files an answer or other response to a complaint in an action or other equivalent response in any other proceeding before filing a request for arbitration, after the required form entitled "Notice of Client's Right to Arbitration" was given pursuant to Business and Professions Code section 6201(a);
- 8.2** commences an action or files any pleading seeking judicial resolution of a fee or cost dispute or affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct;
- 8.3** fails to deliver to the program a request for arbitration on the approved program form that is postmarked or received on or before the 30th day from the date of the client's receipt of the form entitled "Notice of Client's Right to Arbitration" given pursuant to Business and Professions Code section 6201, subdivision (a). Should the fee dispute transfer to a different fee arbitration program after the request for arbitration is filed, the original date of postmark or receipt of the arbitration request will be preserved for purposes of determining whether the request for arbitration was made within the 30-day time period.

RULE 9.0 Stay of Proceedings.

If an attorney, or the attorney's assignee, commences an action to collect fees or costs in any court or other proceeding, with limited exceptions including provisional remedies, the court action or other proceeding is automatically stayed upon filing a request for fee arbitration with a State Bar approved fee arbitration program. The party who requested fee arbitration has a duty to notify the court of the stay and attach a copy of the arbitration request form. If the person who requested or caused the stay has not appeared in the action or other proceeding, or is not subject to the jurisdiction of the court, the plaintiff must immediately file a notice of stay and attach a copy of the arbitration request form showing that the proceeding is stayed. Upon request, the program may provide a copy of a notice of automatic stay to the party.

**ARTICLE III.
PROGRAM**

RULE 10.0 Determination of Jurisdiction.

- 10.1** The program shall notify the parties of its intent to reject any request for arbitration when it is clear from the face of the request that the provisions of Business & Professions Code section 6200 have not been met or the matter is time barred under Business & Professions Code section 6206. Where the existence of an attorney-client relationship is in dispute, the parties may stipulate to submit the issue for a determination by the program, which otherwise lacks jurisdiction to determine that issue.
- 10.2** The Committee Chair may request that the parties submit written statements supporting their respective positions on the issue of whether the program has jurisdiction over their fee dispute or whether the dispute is time barred. For good cause, Committee Chair may assign the matter to a hearing panel to take evidence and make a determination of whether jurisdiction should be accepted.
- 10.3** Within 15 days from service of notice of a ruling on a challenge to jurisdiction or claim that the matter is time barred, a party may file a written request for reconsideration based on new evidence. The Committee Chair shall rule on the request for reconsideration.
- 10.4** There is no appeal of the Committee Chair's decision following reconsideration. Any ruling on reconsideration by the local bar program is final.
- 10.5** If there is an approved local bar association program that is willing to accept jurisdiction where the parties consent in writing to submit to such jurisdiction, a program may assume jurisdiction over a matter even if the program does not have original jurisdiction.

RULE 11.0 Jurisdiction by the Program.

- 11.1** The Program shall have jurisdiction over a fee dispute if a substantial portion of the legal services was performed in the county where the Program is located, or at least one of the attorneys involved in the dispute has an office in _____ or maintained an office in _____ at the times the services were rendered.
- 11.2** In the event of a dispute between the parties as to which program should hear the matter, the program where the arbitration request was first filed shall determine that the arbitration will be conducted in the county where "the majority of legal services were provided," and such ruling is final and not appealable to the State Bar. Should the fee dispute transfer to a different fee arbitration program after the request for arbitration is

filed, the original date of postmark or receipt of the arbitration request will be preserved for purposes of determining whether jurisdiction exists.

RULE 12.0 Removal to the State Bar of California.

12.1 If a request for arbitration has been filed with the program and a party to the arbitration requests removal to the State Bar program,

a) The party seeking removal from the program must submit a declaration signed under penalty of perjury asserting the factual basis for the removal. That party need not submit an additional filing fee to the State Bar until there has been a final ruling by the State Bar's Presiding Arbitrator granting removal to the State Bar.

b) The State Bar will serve the request for removal and supporting declaration on the other parties and the program. Any written response must be received by the State Bar within 15 days of service of the request for removal and declaration for consideration by the State Bar's Presiding Arbitrator.

c) The party seeking removal must provide all additional information requested by the State Bar within the time limits set by the State Bar.

d) A request for removal to the State Bar will be decided by the State Bar's Presiding Arbitrator under the applicable rules of procedure of the State Bar. Upon service of an order granting a request for removal, the party who paid the filing fee to the program shall receive a refund of the filing fee from the Program.

12.2 The State Bar's Presiding Arbitrator shall deny a request for removal if he or she determines that:

a) The other parties to the local bar program's arbitration or the program itself would be prejudiced by removal and such prejudice outweighs the allegations by the party seeking removal that the party believes that a fair hearing through the local bar's program cannot be obtained; or

b) The conduct of the party seeking removal during the course of the arbitration proceedings before the local bar program is clearly inconsistent with a bona fide belief by that party that he or she cannot obtain a fair hearing in that forum; or

c) The party seeking removal has waived any claim that the party cannot obtain a fair hearing before the local bar's arbitration program.

RULE 13.0 Effect of Failure to Adhere to Time Requirements.

The program shall neither lose jurisdiction, nor shall any arbitration be dismissed nor any award invalidated or modified in any way, solely because of the program's or the hearing panel's failure to comply with time requirements as set forth in these rules.

**ARTICLE IV.
INITIATION OF ARBITRATION PROCEEDING**

RULE 14.0 Request for Arbitration.

- 14.1** Arbitration may be initiated by a client, an attorney or a third party entitled to request mandatory fee arbitration.
- 14.2** An Arbitration is initiated by filing a written “Request For Arbitration” with the program on the approved program form and paying the appropriate filing fee as established by the program. Service of the request on the other party with whom there is a fee dispute named on the request form shall be made by the program.
- 14.3** At the time of service of a request on an attorney, the program may serve with it a copy of the approved “Notice of Attorney Responsibility” form. If the form was not previously served, the program must serve this form no later than the time of service of the notice appointing the arbitration panel.
- 14.4** The party requesting arbitration may amend the request up to 15 days after mailing it to the program, unless a request for clarification is made by the program. Thereafter, it may be amended only with the approval of the Committee Chair or by the Panel Chair, if a notice of assignment of the hearing panel has been served on the parties.
- 14.5** The request for arbitration may be made by (i) a person who is not the client but who may be liable for or entitled to a refund of attorney’s fees or costs (“non-client”), or (ii) the attorney claiming entitlement to fees against a non-client. A fee arbitration between an attorney and a non-client is not intended to abrogate the requirement that the attorney exercise independence of professional judgment on behalf of the client or the protection of client confidences and secrets. Absent the client’s written consent to disclosure of confidential information, a fee arbitration with a non-client is not intended to abrogate the attorney’s duty to maintain client confidences and secrets, unless such disclosure is otherwise permitted by law. Absent the client’s signature on the request for arbitration, when an arbitration with a non-client is initiated, the program will give notice of the request to the client by first class mail at the client’s last known address.

15.0 Filing Fee.

- 15.1** The party requesting fee arbitration shall pay a filing fee with the request form. The arbitrator shall, at his or her discretion, allocate the entire amount of the filing fee, or a portion thereof, to one or more of the parties. Such allocation shall be clearly stated in the Award.
- 15.2** The joining of additional parties as petitioner or respondent shall not increase the filing fee.

15.3 Filing Fee Schedule.

The filing fee is \$_____ for disputes up to \$_____
\$_____ for disputes up to \$_____
\$_____ for disputes up to \$_____ or
\$_____ for disputes over \$_____

RULE 16.0 Request for Filing Fee Waiver.

16.1 A party seeking arbitration may file with the program an application for a filing fee waiver on the approved program form. The person seeking waiver of the filing fee who is not a client and who may be liable for or entitled to a refund of attorney's fees identified by the client as set forth in Rule 14.4, may be required to submit supporting documents regarding his or her own financial status to the program to support the client's application for a filing fee waiver. If the non-client party replies to the program that he or she no longer has an interest in the outcome of the arbitration, the application will proceed based on the client's supporting documents alone.

16.2 For good cause shown, the Committee Chair may grant or deny the filing fee waiver or order a reduced fee. The order of the Committee Chair shall be final.

16.3 The financial statement filed in support of a request for a fee waiver shall not be disclosed by the program to the other party.

RULE 17.0 Response to Request for Arbitration.

17.1 The respondent party's reply to a Request for Arbitration, together with any response, if the respondent party is an attorney, to the issue of the attorney's responsibility for any award that refunds fees or costs or both to the client, shall be submitted to the program on its approved form within 30 days of the service of the request, unless an extension of time to reply is obtained from the program.

17.2 If the attorney seeks arbitration, and there is no written agreement between the parties that fee disputes be submitted to fee arbitration, arbitration shall proceed only if the client consents in writing on the approved form within 30 days of service of the request, unless the attorney is seeking removal from a local bar program under rule 10.2 of a matter in which the client has already requested arbitration or has consented to an attorney's request for arbitration.

RULE 18.0 Requests and Responses to Requests for Arbitration.

Parties filing or responding to a Request for Arbitration shall file one original and the required number of copies of all forms and supporting documentation with the program. Copies of materials filed with the program will be forwarded to the other party and the hearing panel assigned to hear the matter.

RULE 19.0 Settlement of Disputes; Withdrawal from Arbitration; Refund Schedule.

19.1 Upon confirmation by the parties or the hearing panel if one has been assigned that the dispute has been settled, the matter shall be dismissed without prejudice by the program in the absence of an assigned hearing panel, or by the panel chair if a notice of assignment of the hearing panel has been served on the parties.

19.2 a) If a party wishes to withdraw from a binding arbitration and the matter has not been settled, all other parties must agree to the matter being withdrawn.

b) If there is a written agreement between the parties requiring arbitration of the fee dispute through the Mandatory Fee Arbitration Program, all other parties must consent to a request for withdrawal before the proceeding is dismissed.

c) If arbitration has been requested by the attorney, the matter may only be dismissed with the agreement of the other parties.

d) In all other cases, the party who requested arbitration may withdraw from the arbitration proceeding without the consent of other parties at any time before evidence is taken.

19.3 Refund of the filing fee: If the matter is settled or dismissed based on withdrawal before the request for arbitration is served on the attorney by the program, ___ percent of the filing fee shall be refunded to the party who paid it. If the matter is settled after the request for arbitration has been served on the respondent party by the program but before assignment of a panel, the program shall retain ___ percent of the filing fee paid up to a maximum of \$____. After assignment of a hearing panel, if written notice of the settlement is received by the program at least 10 days prior to the date of the scheduled hearing, the program shall retain ___ percent of the filing fee up to a maximum of \$____. The remaining fee shall be refunded to the party who paid it. After hearing panel assignment and less than 10 days before the hearing, there shall be no refund of filing fees.

19.4 If the parties settle the fee dispute and wish to obtain a stipulated award incorporating the terms of a written settlement agreement, the Committee Chair, if no hearing panel has been assigned, or the Panel Chair, if the hearing panel has been assigned, may issue a stipulated award incorporating by reference the parties' written settlement agreement. The Program will serve the stipulated award in the same manner as it would serve an arbitration award as prescribed elsewhere in these rules. A stipulated award can be enforced by the State Bar on behalf of the client in the same manner as an award after arbitration as provided by Business and Professions Code section 6203(d).

RULE 20.0 Consolidations.

A party may request, in writing, that two or more arbitration matters be consolidated for hearing. The Program will serve the other party with a copy of the request. A written reply may be filed with the program within 15 days of service of the request for consolidation. The

Committee Chair shall rule on all written requests to consolidate. The order of the Committee Chair shall be final. Consolidation will not result in a refund of filing fees paid or reduction of filing fees owed to the Program.

If a client requests fee arbitration against an attorney who is already a party in a non-client fee arbitration relating to the client's matter or joins a fee arbitration as a party in a fee dispute between the client's attorney and a non-client, consolidation of the arbitration matters is automatic absent a showing of good cause to the contrary.

ARTICLE V. PANELS

RULE 21.0 Appointment Of Panel.

- 21.1** For each dispute, the Program shall assign a hearing panel from the program's roster of fee arbitrators. A hearing panel shall consist of one attorney arbitrator if the amount in dispute is \$15,000 or less and three arbitrators if the amount in dispute is more than \$15,000, one of which shall be a non-lawyer. An attorney arbitrator shall be designated as Panel Chair. If the amount in dispute is more than \$15,000, the parties may agree, in writing, to have the matter heard by a single attorney arbitrator.
- 21.2** Upon the client's request, the program shall assign a sole arbitrator, or in the case of a three person panel, one of the attorney arbitrators, whose area of practice is civil or criminal law. Any such designation made by the client shall be of an arbitrator who practices in the same area of law as was involved in the matter for which the attorney was retained by the client. Any such request made pursuant to Business and Professions Code section 6200, subdivision (e) must be submitted by the client at the time the written "Request for Arbitration" on the approved program form is submitted to the program.
- 21.3** If a fee dispute involves \$1,000 or less, the arbitration shall be decided by the Committee Chair or designee. Each party shall submit all supporting documents and a complete written statement of the reasons for the dispute, a response, or both, under penalty of perjury. The parties have 30 days from the service by the program of the reply to the arbitration request, which will be reflected in a proof of service. The record shall thereafter be forwarded to the Committee Chair or designee for action, who may require either or both parties to submit additional information within 30 days. However, if the amount in controversy is less than \$1,000 but greater than \$500, the parties upon the request of any party, may appear at a hearing, either in person or telephonically, before the Committee Chair or designee assigned to the matter, in addition to providing the written information required by this section. The parties shall be informed of this rule at the time of the program's service of a completed arbitration request form.

21.4 Any vacancy of an arbitrator, by way of disqualification or inability to serve, may be filled by the program, but in no event shall the arbitration proceed with only two arbitrators.

21.5 A retired judge cannot serve as an attorney arbitrator unless he or she is an active member of the State Bar of California.

RULE 22.0 Notice of Appointment of Panel.

A notice identifying the arbitrator(s) who will hear the dispute shall be served on the parties within 60 days of the date on which the reply to the arbitration request is received, or as soon thereafter as is reasonably possible. If no reply is received, the notice of appointment of panel will be served within 60 days of the date on which the time to file the response expired, or as soon thereafter as is reasonably possible.

RULE 23.0 Challenge to Arbitrator(s).

Each party may disqualify one arbitrator without cause and shall have unlimited challenges for cause. Any disqualification without cause of an arbitrator shall be ineffective unless made in writing and served on the program within 15 days of the service of a notice of assignment of panel or substitute arbitrator(s) if there is a disqualification or successful challenge. An arbitrator who believes that he or she cannot render a fair and impartial decision or who believes that there is an appearance that he or she cannot render a fair and impartial decision, shall disqualify himself or herself or shall accede to a party's challenge for cause. If an arbitrator does not agree to be disqualified, the challenge shall be decided by the Committee Chair.

RULE 24.0 Discharge of Arbitrator or Panel.

The Committee Chair shall have the authority to discharge an arbitrator or panel of arbitrators from further proceedings on a matter whenever the Committee Chair, in his or her sole discretion, determines that there has been an unreasonable delay in performing duties under these rules or for other good cause shown.

RULE 25.0 Prohibited Contacts With Arbitrators.

A party or an attorney or representative acting for a party shall not directly or indirectly communicate with an arbitrator regarding a matter pending before such arbitrator, except:

- a) At scheduled hearings;
- b) In writing with a copy to all other parties, or their respective counsel, if any, and the program;
- c) For the sole purpose of scheduling a hearing date or other administrative procedures with notice of same to the other parties;
- d) For the purpose of obtaining the issuance of a subpoena as set forth in these rules; or

e) In an emergency.

ARTICLE VI. THE HEARING

RULE 26.0 Confidentiality.

- 26.1** All hearings shall be closed to the public. However, in the discretion of the hearing panel and in the absence of any objections by the parties, witnesses may be present during the hearing.
- 26.2** The hearing panel, upon request of the client, shall permit the client to be accompanied by another person and may also permit additional persons to attend. Any such person shall be subject to the confidentiality of the arbitration proceedings.
- 26.3** The arbitration case file, including the request, reply, exhibits and transcripts, as well as the award itself, are to remain confidential. Absent a court order compelling disclosure of the award, the program may not disclose the award to any individual or entity that was not a party to the arbitration proceeding. An award shall remain confidential except as may be necessary in connection with a judicial challenge to, confirmation or enforcement of, the award, or as otherwise required by law or judicial decision.

RULE 27.0 Waiver of Personal Appearance.

- 27.1** Upon advance approval of the Panel Chair, any party may waive personal appearance and submit to the hearing panel testimony and exhibits by written declaration under penalty of perjury.
- 27.2** Any party may designate a lawyer or non-lawyer representative.
- 27.3** Any party unable to attend a hearing may request to appear by telephone, subject to the advance approval of the Panel Chair.
- 27.4** A request for waiver of appearance or designation of a representative and the submission of testimony by written declaration or request for telephonic appearance pursuant to this rule shall be filed with the Panel Chair and served on all parties at least 10 days prior to the hearing.

RULE 28.0 Death or Incompetence of a Party.

In the event of death or incompetence of a party, the personal representative of the deceased party or the guardian or conservator of the incompetent may be substituted.

RULE 29.0 Discovery.

No discovery is allowable except as specifically set forth in these rules. Nothing in these rules deprives the client of the right to inspect and obtain the client's file kept by the attorney.

RULE 30.0 Subpoenas.

In this rule, “subpoena” includes a subpoena duces tecum. A party seeking to have a subpoena issued shall submit a completed but unsigned Judicial Council subpoena form to the Committee Chair, or Panel Chair if one has been appointed, with proof of service on all parties. Upon showing of good cause, the Committee Chair or Panel Chair may issue a subpoena requested by a party. In the event the Committee Chair or Panel Chair approves the issuance of a subpoena, the Committee Chair or Panel Chair shall sign the submitted subpoena and provide any executed subpoena to the requesting party, who shall be responsible for service of the subpoena. The party requesting a subpoena will be responsible for any witness fees and any costs of service of the subpoena. No subpoena may be served on any party or third party unless it has been approved and signed by the Committee Chair or Panel Chair pursuant to this rule.

RULE 31.0 Commencement of Hearing; Notice; Attendance.

- 31.1** The hearing shall commence within 45 days for a single arbitrator or 90 days for a three-member panel after the date of service of the “Notice of Assignment of Panel.” A disqualification or allowed challenge of an assigned arbitrator will result in a 15- day extension from the date of the assignment of replacement member(s). Upon stipulation or application to the Panel Chair, the matter may be continued for good cause shown except in the instance where the continuance is for 30 days or more, in which case the continuance must be approved by the Committee Chair.
- 31.2** The panel shall serve written notice of hearing on each party at the address in the “Notice of Assignment of Panel” and the program within 15 days of its assignment and at least 15 days prior to the hearing date. Appearance by a party at a scheduled hearing shall constitute waiver by said party of any deficiency with respect to the giving of “Notice of Hearing.” Notwithstanding the failure of either party to attend, the hearing shall proceed as scheduled and a decision made on the basis of evidence submitted.
- 31.3** An award shall not be made against a party solely because of the party's absence. The panel shall require the party who is present to submit such evidence as may be required to support the making of an award.
- 31.4** An award may be made in favor of a party who is absent if the evidence so warrants. If neither party appears and the panel chair has not approved waiver of personal appearance, the panel will issue an award based on the evidence submitted.
- 31.5** If one of the panel members fails to appear, upon written stipulation of the parties, the hearing may proceed with either of the attorney arbitrators acting as the sole arbitrator. Under no circumstances will the hearing proceed with two arbitrators or with one lay arbitrator.

31.6 If all parties so stipulate, the sole arbitrator or Hearing Panel shall decide all matters without a hearing based upon the Petition, Reply and any other written materials provided by the parties. All such written materials shall be filed with the hearing panel and served on all other parties.

RULE 32.0 Stipulations Encouraged.

Agreements between the parties as to issues not in dispute and the voluntary exchange of documents prior to the hearing is encouraged.

RULE 33.0 Oaths.

All testimony may be given under oath or affirmation administered by the sole arbitrator or Panel Chair.

RULE 34.0 Evidence.

Any relevant evidence shall be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule to the contrary.

RULE 34.1 Clarification of Issues and Exchange of Documents.

The Panel Chair may require that the parties clarify the issues, submit additional documentation, and exchange documents in advance of the hearing. The Hearing Panel may, in its discretion, decline to admit into evidence documents that were required to be exchanged in advance but were not.

RULE 35.0 Order of Proof.

The parties shall present their proof in a manner determined by the sole arbitrator or Panel Chair.

RULE 36.0 Interpreter.

Any party may provide and pay for the attendance of a person to interpret at that party's expense.

RULE 37.0 Transcripts or Recordings.

No stenographic, audio, or video recording is permissible.

RULE 38.0 Compensation of Arbitrators; Administrative Charges.

38.1 No arbitrator shall be entitled to compensation for services unless the hearings extend beyond four hours. Unless waived in writing, each arbitrator will be compensated at the rate of \$150 for each additional hour after a four hour hearing. The compensation shall be paid equally by each party to the program for each day of hearing on which compensation is payable. No compensation will be paid to arbitrators for services other than during formal hearing sessions extending beyond four hours. Any disputes concerning compensation of the arbitrators will be determined by the Committee Chair, and its determination shall be binding on the parties, including the arbitrators.

- 38.2 Except for the prescribed filing fees, no charges will be made by the program, nor by any arbitrator, for administrative or clerical services. A hearing room will be provided by an arbitrator or by the program without charge to the parties.
- 38.3 All parties will bear their own costs, including the costs of interpreters and expert witnesses.

**ARTICLE VII.
AWARD**

RULE 39.0 Award.

- 39.1 The award shall be submitted to the Program within 15 days of the close of the hearing in any matter heard by a sole arbitrator and within 25 days of the close of the hearing in any matter heard by a three-member panel. The award shall be reviewed pursuant to rule 39.9 and then served on the parties forthwith by the Program.
- 39.2 The award shall be in writing. The award shall indicate whether it is binding or non-binding. It shall include a determination of all questions submitted to the panel, the decision of which is necessary in order to determine the controversy, including the name of the responsible attorney(s). Arbitrators are encouraged, where appropriate, to include findings of fact. If a party failed to appear for non-binding arbitration, the award should also include the circumstances bearing on the willfulness of any party's nonappearance at the hearing.
- 39.3 The award shall include substantially the following language:

The Hearing Panel finds that the total amount of fees and/or costs which should have been charged in this matter are:

\$ _____

Of which client is found to have paid: \$ _____

Subtotal \$ _____

In addition, the fee arbitration filing fee of \$ _____ as paid by _____ shall be allocated:

Client: \$ _____

Attorney: \$ _____

For a net amount of: \$ _____

Accordingly, the following award is made:

a) Client, _____ (name) _____, shall pay attorney, _____ (name) _____: \$ _____ plus interest in the amount of ten percent per annum from the 30th day after the date of service of this award

OR

b) Attorney, _____ (name) _____, shall pay client, _____ (name) _____: \$ _____ plus interest in the amount of ten percent per annum from the 30th day after the date of service of this award

OR

c) Nothing further shall be paid by either attorney or client.

- 39.4** The award may include a refund of unearned fees, costs, or both previously paid to the attorney.
- 39.5** Whenever there are three arbitrators, a majority vote shall be sufficient for all decisions of the arbitrators, including the award. Any dissent from the award shall be served with the award.
- 39.6** Evidence relating to claims of malpractice or professional misconduct, whether or not the client was actually harmed, shall be admissible, but only to the extent that those claims bear upon the fees and/or costs to which the attorney is entitled. The panel shall not award affirmative relief in the form of damages or offset or otherwise, for injuries underlying any such claim.
- 39.7** The award shall be signed by all arbitrators concurring with it.
- 39.8** The award may include an allocation of the filing fee; however, it shall not include an award for any other costs of the arbitration, including attorneys' fees resulting from the arbitration proceeding notwithstanding any contract between the parties providing for such an award of costs or attorney's fees.
- 39.9** The Hearing Panel shall deliver the original of the signed award to the Program., which shall serve a copy of the award by mail on each party together with a Notice of Your Rights After Arbitration form approved by the State Bar Board of Governors. No award is final or is to be served until approved for procedural compliance and as to the form of the award by the Committee Chair or such person as the Chair may designate for this purpose. Any party who has submitted exhibits or documents to the panel shall, upon service of the award, make arrangements to retrieve them.

RULE 40.0 Correction or Amendment of Award by Hearing Panel.

- 40.1** The Hearing Panel may correct an award only on the grounds set forth in Code of Civil Procedure section 1286.6, subdivision (a) [evident miscalculation of figures or evident mistake in the description of a person, thing or property referred to in the award] and subdivision (c) [the award is imperfect in a matter of form, not affecting the merits of the controversy] under the procedures set forth in Code of Civil Procedure section 1284. An application for correction of the award does not extend the deadline for seeking a trial after a non-binding award is rendered, and a non-binding award will automatically become binding 30 days after it is served on the parties.
- 40.2** A party requesting correction under this rule must file a request in writing to the Program, with a proof of service, and serve a copy on the other party within ten days after service of the award. Any party to the arbitration may make a written objection to such request. . Any correction of the award by the Hearing Panel must be made within 30 days after service of the award.
- 40.3** A party may request amendment of the award. A party must file a request to amend the award in writing to the Program, with a proof of service, and serve a copy on the other party at any time prior to judicial confirmation of the award. Any party to the arbitration may make a written objection to such request.. Any corrected or amended award, or denial of application to correct or amend the award, shall be served by the Program in the same manner as provided by rule 39.9.

**ARTICLE VIII.
SERVICE; ADDRESS**

RULE 41.0 Service.

- 41.1** Unless otherwise specifically stated in these rules, service on the client shall be by personal delivery, by deposit in the United States mail, or by deposit in a business facility used for collection and processing of correspondence for mailing with the United States Postal Service pursuant to Code of Civil Procedure section 1013(a), postage paid, addressed to the person on whom it is to be served, at his or her address as last given, on any document which has been filed in the arbitration. The client shall keep the program advised of his or her current address.
- 41.2** Unless otherwise specifically stated in these rules, service on an individual attorney shall be at the latest address shown on the official membership records of the State Bar. Service shall be in accordance with subsection 41.1 above.
- 41.3** If either party is represented by counsel, service shall be on the party as indicated in subsections 41.1 and 41.2 of this rule, and on the counsel at the latest address shown on the official membership records of the State Bar.

41.4 The service is complete at the time of deposit. The time for performing any act shall commence on the date service is complete and shall not be extended by reason of service by mail.

41.5 Where a facsimile or email transmission is used to communicate with the program or to file any document, it will not be considered received unless the program also receives within five days of the date of the transmission, the original of the faxed document.

41.6 In the event that the client fails to keep the program advised of his or her current address, the program may close the arbitration request, if it is made by the client, after 30 days from the date that the program learns of the invalid address.

**ARTICLE IX
REFERRAL OF ATTORNEY TO STATE BAR**

42.0 Referral of Attorney to State Bar.

The Hearing Panel or the program may in its discretion refer an attorney's conduct disclosed in the arbitration proceeding to the State Bar for possible disciplinary investigation without violating the confidentiality surrounding these proceedings.

April 20, 2018 CMFA Meeting
Business Item F: comments on proposed WSBCBA MFA rules

Overall Comments:

Joel Mark (JM): The following variances between the WSB Rules and the Model Rules seem to be significant, and I believe should be addressed with the WSB Program to see if they have some explanation of why they made each change before CMFA final approval.

RULE 1.9:

JM: WSB Rules omit the definition of a Non-Lawyer Arbitrator in Rule 1.9 of the Model Rules. This should be addressed as that definition is in the Minimum Standards and Guidelines.

RULE 1.14:

JM: WSB Rules omit the definition of Trial in Rule 1.14 of the Model Rules. This should be addressed since following the *Schatz* case, trial includes “arbitration de novo.”

RULE 2.1:

JM: WSB Rules omit Model Rule 2.1 regarding the requirement of service of the Notice of Client’s Right to Arbitrate. This should be addressed because the Notice is required by statute.

RULE 4.1:

Roy Zukerman (RZ): I believe that the proposed wording, which drops “also” is confusing, and that the rule should keep the Model Rule language for clarity.

RULE 8.1:

RZ: The proposal appears to reach the same result as the model, but also it is confusing as worded and they should be required to use the model language.

RULE 11.1:

RZ: I don’t consider the client’s residence as an appropriate basis for jurisdiction. For example, a San Bernardino resident who hires a Shasta County attorney to handle a matter in that county shouldn’t be able to force the attorney to arbitrate in San Bernardino.

JM: WSB has added to Model Rule 11.1 that, for it to have jurisdiction a substantial portion services have to be performed in San Bernardino County AND at least one of the attorneys involved maintains maintained an office in San Bernardino County at the time the services were performed. The Model Rules specify that jurisdiction is established by one OR the other of these conditions. This should be addressed because it permits a client in the County to bring an arbitration in the County if an out-of-county attorney performs substantial services within the County, as opposed to making the client bring the proceeding in some distant county where the attorney maintains an office.

RULES 12.1 & 12.2:

JM: The changes in numbering of Rules 12.1 and 12.2 needs to be reformatted. It’s very confusing.

April 20, 2018 CMFA Meeting
Business Item F: comments on proposed WSBCBA MFA rules

RULE 15.3:

JM: The WSB fee schedule seems appropriate. It is \$100 for disputes up to \$2,000, 5% of amount in controversy up to \$50,000 (i.e., up to \$2,500), and \$3,000 for any controversy over \$50,000.

RULE 16.1:

JM: WSB has removed the criteria for and confidentiality protections regarding requests for filing fee waivers from Model Rule 16.1. This should be addressed because, otherwise, it appears that granting or denying of such requests is entirely within the discretion of the Committee Chair regardless of any showing of actual need.

RULE 19.3:

RZ: The proposal is more liberal than the model in some respects, and more draconian in others. I'm not comfortable with the overall proposal.

RULE 21.2:

RZ: The model gives a party the right to demand either a civil or criminal practitioner whereas the proposal speaks of "area of practice". If that is intended to specify someone who handles the same type of cases as the attorney party it could be very problematical. How many specialists in med mal, let alone security fraud, would be on the arbitration panel?

JM: The requirement that the client be given a choice between "criminal" and "civil" admittedly does not tailor the choice more finely is a valid criticism. However, that language is in the B&P Code so we are stuck with it.

RULE 21.3:

RZ: The proposal drops the model rule and renumbers subsequent rules. I think the model is an excellent way of handling "small claims", and should be included, perhaps with some modifications.

JM: WSB has eliminated Model Rule 21.3 involving disputes under \$1,000. This should be addressed as requiring appearances at formal hearings of such disputes can put a significant financial burden on both parties.

RULE 21.5:

JM: WSB has eliminated Model Rule 21.5 that provides that a retired judge cannot serve as an attorney arbitrator unless he or she is an active member of the State Bar. This should be addressed because the State Bar says otherwise (over the vehement objection of retired judges when that requirement was made several years ago).

April 20, 2018 CMFA Meeting
Business Item F: comments on proposed WSBCBA MFA rules

RULE 29.0:

RZ: I don't agree with the proposal's dropping on reference to the client's absolute right to examine his/her own file

JM: I completely agree with you that the rules should reflect the client's absolute right to their file, as that is the law.

RULE 30.0:

RZ: I am somewhat conflicted on the issue of requiring good cause for issuance of a subpoena (the model rule) vs. giving the parties an untrammelled right to subpoena the kitchen sink, and think it needs to be discussed.

JM: WSB has made changes to Model Rule 30.0 eliminating the "good cause" requirement for the issuance of subpoenas. This should be addressed as it protects the Program from subpoena abuse. It additionally alters who may sign and who may serve any subpoena request approved by the Committee Chair. These changes seem acceptable.

RULE 39.3:

JM: WSB has made changes to Rule 39.3 regarding pre- and post-award interest which significantly varies from the approved Award form by adding a check box for pre-award interest and removing any mention of post-award interest. This should be addressed because the award of pre-award interest is very rare and, more importantly, removing post-award interest takes away a significant element of the enforcement process set forth in B&P Code 6203(d).

RULE 40.2:

JM: WSB has removed the provision in Model Rule 40.2 requiring that any request for correction of the Award must be made within 30 days. This should be address because, I believe, that is statutory. They also have added language regarding in their proposed Rules 40.3 and 40.4 regarding when a petition to confirm, vacate or correct the Award must be filed with the Court, which I believe is incorrect.

RULE 40.4:

RZ: This rule is unique to the proposal, and I'm not sure it is correct. Does a panel have jurisdiction to amend or supplement an advisory award after the commencement of judicial proceedings? Does a panel have jurisdiction to amend or supplement a binding award until and unless a judgment is obtained on the award? I think the answer to both questions is negative.

JM: Actually, I think this provision largely is consistent with the law on modifications. We have an advisory on that exact question. We should see if 40.4 is consistent with that advisory.

RULE 42.0:

JM: WSB has removed Model Rule 42.0 regarding referrals to discipline. This should be addressed as I wonder why they seek to discourage such referrals by Panel Members of by the Program.

STATE BAR COMMITTEE ON MANDATORY FEE ARBITRATION

DESCRIPTION OF COMMITTEE SERVICE AND APPOINTMENTS POLICY

(Approved August 11, 2000)

I. Description of Committee Function.

A. Legal and Legislative Oversight.

The Committee's primary function is the oversight of the mandatory fee arbitration program established by Business & Professions Code Sections 6200-6206. The Committee is charged with the review and comment upon any proposed legislation which affects the mandatory fee arbitration program and fee agreements in general. It also makes recommendations for legislative amendments, amendments to the State Bar's Rules of Procedure as well as any proposed amendments to the guidelines and minimum standards adopted by the Board of Governors pursuant to Business & Professions Code Section 6200(a). The Committee monitors legal developments in both substantive and procedural law relating to mandatory fee arbitration.

B. State Arbitration Program and Oversight of Local Bar Programs.

The Committee oversees the State Bar's Mandatory Fee Arbitration Department. The State Bar's program has jurisdiction over fee disputes in the twenty counties which have no local fee arbitration program or where a party has asserted that he or she cannot receive a fair hearing before a local program. In addition, the Committee is responsible for the review and recommendation of the local rules established for governing the fee arbitration procedures of approximately 43 local county bar programs statewide. The Committee makes preliminary review of any proposed amendments to such program rules before they are submitted to the Board of Governors for approval.

C. Education and Outreach.

The Committee is responsible for drafting the State Bar approved Sample Fee Agreements. The Committee drafts and publishes arbitration advisories, which are the Committee's opinions on significant legal issues. These advisories provide guidance to arbitrators in various aspects of the law. The arbitration advisories are circulated to fee arbitrators throughout the state and are published on the State Bar's web site. The Committee provides training programs for local bar and State Bar fee arbitrators throughout the state. It also presents speaker panels on topics related to fee agreements and fee arbitration issues at the State Bar Annual Meeting and Section Education Institutes.

II. Committee Member Time Commitment.

The Committee Year runs from the date of the State Bar Annual Meeting to the next annual meeting (typically held in September or October of each year).

The Committee holds approximately eight (8) meetings per year, at locations throughout the state. The basic time commitment for Committee members is approximately 8 to 12 hours per month, which includes travel and attendance at regular meetings, and meeting preparation. Most of the regular meetings are held in San Francisco or Oakland. Members of the Committee are expected to be in attendance at regular meetings.

Some members of the Committee will be appointed to an education subcommittee, or an arbitrator training subcommittee. Members of the education subcommittee speak at seminars at the State Bar's Section Education Institute and the State Bar Annual Meeting. Typically, two programs are given on subjects relating to the fee arbitration process and fee agreements. These members typically incur a time commitment for preparation of materials, travel and speaking engagements which can add perhaps 30 to 40 hours to the annual commitment.

Committee members who volunteer to speak at arbitrator training seminars will typically attend between 3 and 6 arbitrator trainings per year. The additional time commitment for travel, preparation time, drafting of materials and arbitrator trainings is an estimated 30 to 40 hours per year for the speakers. Attendees at arbitration training sessions are offered MCLE credits, thereby requiring a substantive legal component in the presentations.

The Committee also drafts educational materials, arbitration advisories, and sample fee agreements. These projects are assigned to members of the Committee, on a team subcommittee basis. The drafting of an arbitration advisory may require dozens of hours of research, writing and editing by the members of these subcommittees. Active participants in the Committee will usually be involved in one to two arbitration advisories or other writing projects during the year. These are in addition to the basic time commitments described above.

Most of the Committee members do volunteer for subcommittee work, writing projects, education or arbitrator training. An active member of the Committee can reasonably expect to average 10 to 20 hours or more per month in activities associated with the Committee's meetings and projects. Very active Committee members, speakers and Committee officers should expect to incur an even greater time commitment.

III. Non-Discrimination Policy.

The Committee shall not discriminate on the basis of disability, race, religion, gender or sexual orientation in ranking its applicants or selecting its officers.

IV. Member Appointment Policy.

A. Committee Structure.

The Committee has fifteen members plus a Committee Chair. Membership includes both lawyer and non-lawyer members. Three to five members of the Committee should be non-lawyers. Most of the non-lawyer members are either local bar program administrators, or lay arbitrators. The typical term of appointment is three (3) years.

It is a goal of the Committee to have a diverse group of members who represent all geographic areas of the state. Committee members should be familiar with the operation of the Mandatory Fee Arbitration program established by Business and Professions Code Section 6200 *et seq.* Experience in the program, either as a lay arbitrator, attorney arbitrator, local program administrator or chair is considered of primary importance to a member's successful service on the Committee.

There are two Vice-Chair positions. In general, Committee members who serve as a Vice-Chair will hold such position in their third year of service. The Vice-Chair who is selected to become Chair of the Committee will typically serve as Chair in a fourth year of service, as an extended term. All appointments and terms of service are subject to approval of the Board of Governors.

B. Appointments Subcommittee.

Applications for appointment to the Committee shall be reviewed by an Appointments Subcommittee of five persons consisting of the current Committee Chair, the two Vice-Chairs, one at large member (at least one of the above should be a non-lawyer member) and the Program Director.

C. Ranking of Committee Candidates.

Candidates shall be ranked according to their qualifications, which shall include consideration of the following factors:

(1) The candidate's prior experience in State Bar or local fee arbitration programs and the ability of the candidate to provide a resource to the Committee of legal or administrative expertise.

(2) The candidate's geographic locale and the size of the local committee the

candidate represents, if any, to be viewed in relationship to the existing make-up of the Committee members.

(3) The candidate's education, background, gender and ethnicity for the purpose of maintaining diversity of the Committee members.

(4) The candidate's other qualifications as expressed by the candidate's biographical statement, reasons for applying, letters of recommendation and other factors.

(5) The candidate's speaking ability, experience in teaching, writing and other background relevant to potential service in the Committee's arbitrator training programs and educational seminars.

Where appropriate, and subject to the decision of the chair, candidates may be interviewed in person or by telephone to evaluate their qualifications, demeanor and other attributes of committee service.

D. Submission of Recommendations.

Ranking of applicants shall be performed by the Appointments Subcommittee and submitted to the State Bar's Board Committee which has jurisdiction over appointments to the Committee. The Chair of the Committee shall submit the rankings to the appropriate Board Committee along with the Appointments Subcommittee's recommendations to fill Committee vacancies in both membership positions and officer positions. All recommended appointments are subject to approval of the Board of Governors.

V. Officer Appointments Policy.

A. Committee Officers.

The Committee shall have three regular officers consisting of a Chair, and two Vice-Chairs. Officers should be selected based upon superior legal and/or program knowledge, leadership and organizational skills.

B. Duties of the Chair.

- (1) Proposes meeting schedule for the year.
- (2) Chairs the Committee meetings.
- (3) Drafts and develops meeting agendas and action plan for the year.

- (4) Adheres to open and closed meeting requirements.
- (5) Coordinates efforts of members and staff on assignments.
- (6) Interacts with Board Committee on Regulation & Discipline regarding Committee work.
- (7) Participates in Education and Training Programs.
- (8) Serves as the Committee's representative in public functions and communications.

C. Duties of the Vice-Chairs.

One of the Vice-Chairs shall have responsibility to chair an education subcommittee with primary responsibility to organize the Committee's educational outreach efforts to educate members of the bar regarding fee agreements, ethical obligations related to fees, avoidance of fee disputes and participation in the mandatory fee arbitration process. The education Vice-Chair works with the Chair to oversee and organize arbitrator training panels and speaker panel; and is in charge of drafting and update of educational and seminar materials.

The other Vice-Chair shall assist with Committee administrative tasks, chair the Committee in the absence of the Chair, assist with training programs and speaker panels; assist with meeting agenda and Committee administration. The administrative Vice-Chair shall have primary responsibility to monitor preparation and revision of Arbitration Advisories.

D. Application for Officer Appointments.

Committee members who desire to serve as a Vice-Chair of the Committee may submit application to the Program Director. Applications for Vice-Chair shall be submitted in writing on or before March 1 of each year. The Chair of the Committee and any current Vice-Chair may also nominate a candidate for appointment as a Vice-Chair.

E. Selection of the Vice-Chairs.

The Vice-Chairs for the next Committee Year shall be selected from the applicants or nominees by the recommendation of the Appointments Subcommittee. The review and selection process shall occur between March 1 and May 31 of each year. The recommendation of the Appointments Subcommittee shall be reported to the Board of Governors. All appointments are subject to the approval of the Board of Governors and take effect at the next State Bar Annual Meeting.

F. Selection of Committee Chair.

The Committee Chair for the next Committee Year shall generally be chosen from one of the two Vice-Chairs on the recommendation of the departing Chair, in consultation with the Program Director. Selection of the Chair is subject to appointment by the Board of Governors.

THE STATE BAR OF CALIFORNIA
COMMITTEE ON MANDATORY FEE ARBITRATION

DESCRIPTION OF COMMITTEE SERVICE AND APPOINTMENTS POLICY
(Approved by the State Bar Committee on Mandatory Fee Arbitration August 11, 2000;
revised _____)

I. Description of Committee Function.

A. Legal and Legislative Oversight.

The Committee's primary function is the oversight of the Mandatory Fee Arbitration program which is codified in Business & Professions Code Sections 6200-6206. The charge of the Committee is as follows: (a) make recommendations on policies affecting the program; (b) review policies, procedures, guidelines and the law relating to the program, attorney's fees and fee agreements, and recommend appropriate amendment, change or modification; (c) provide advice and assistance to the various local programs including formulating and presenting educational programs, review and recommend changes to local program rules and approve their rules so they will be entitled to claim statutory immunity; (d) review, evaluate and propose legislation affecting the statewide program and (e) issue arbitration advisories on various topics of law to assist arbitrators with their cases and to develop a uniform approach to resolving fee disputes among the various programs.

B. State Bar Program and Oversight of Local Bar Programs.

The Committee oversees the State Bar's Mandatory Fee Arbitration program. The State Bar's program has jurisdiction over fee disputes in the approximately thirty counties which have no local fee arbitration program or where a party has asserted that he or she cannot receive a fair hearing before a local program. In addition, the Committee is responsible for the review and recommendation of the local rules established for governing the fee arbitration procedures of approximately 34 local county bar programs statewide. The Committee makes preliminary review of any proposed amendments to these program rules before they are submitted to the Board of Trustees for approval.

C. Education and Outreach.

The Committee is responsible for drafting the State Bar approved Sample Fee Agreements. The Committee drafts and publishes arbitration advisories, which are the Committee's opinions on significant legal issues. These advisories provide guidance to arbitrators in various aspects of the law. The arbitration advisories are circulated to fee arbitrators throughout the state and are published on the State Bar's web site. The Committee provides training programs for local bar and State Bar fee arbitrators throughout the state. It also presents speaker panels on topics related to fee agreements and fee arbitration issues at the California Lawyers Association Annual Meeting (formerly known as the State Bar Annual Meeting and Sections Convention).

II. Committee Member Time Commitment.

The Committee year begins at the close of the Board of Trustees Annual Meeting and ends at the close of the Annual Meeting in the following year. The Annual Meeting date varies but is typically held in September or October of each year.

The Committee holds approximately six (6) meetings per year, generally at the State Bar's San Francisco or Los Angeles office. The basic time commitment for Committee members is approximately 8 to 12 hours per month, which includes travel and attendance at regular meetings, and meeting preparation. Members of the Committee are expected to be in attendance at regular meetings and are subject to removal from the Committee pursuant to the Board of Trustees' Appointment Policies and Procedures.

Some members of the Committee will be appointed to an education subcommittee, or an arbitrator training subcommittee. Members of the education subcommittee speak at various seminars held throughout the State. Typically, programs are given on subjects relating to the fee arbitration process and fee agreements. These members incur a time commitment for preparation of materials, travel and attendance at the engagements which can add an additional 30 to 40 hours to the annual commitment.

Committee members who volunteer to speak at arbitrator training seminars will typically attend between 3 and 6 arbitrator trainings per year. The additional time commitment for travel, preparation time, drafting of materials and arbitrator trainings is an estimated 30 to 40 hours per year for the speakers. Attendees at arbitration training sessions are offered MCLE credits, and therefore the speakers must provide a substantive legal component in the presentations.

The Committee also drafts educational materials, arbitration advisories, and sample fee agreements. These projects are assigned to members of the Committee, on a team subcommittee basis. The drafting of an arbitration advisory may require dozens of hours of research, writing and editing. Active participants in the Committee will usually be involved in preparing one to two arbitration advisories or other writing projects during the year.

Most of the Committee members volunteer for subcommittee work, writing projects, education or arbitrator training. Projects are varied and range from updating current forms to reviewing a local bar program's rules of procedure. An active member of the Committee can expect to average 10 to 20 hours or more per month in activities associated with the Committee's meetings and projects.

III. Non-Discrimination Policy.

The Committee shall not discriminate on the basis of disability, race, religion, gender or sexual orientation in ranking its applicants or selecting its officers.

IV. Bagley-Keene Open Meeting Act.

Effective April 1, 2016, all State Bar committees are subject to the requirements of the Bagley-Keene Open Meeting Act contained in Government Code Sections 11120-11132.

V. Member Appointment Policy.

A. Committee Structure.

The Committee is composed of sixteen (16) members consisting of attorneys, one of whom serves as the Mandatory Fee Arbitration program's Presiding Arbitrator, and 3-5 non-attorneys. Most of the non-lawyer members are either local bar program administrators, or lay arbitrators. The typical term of appointment is three (3) years.

It is a goal of the Committee to have a diverse group of members who represent all geographic areas of the state. Committee members should be familiar with the operation of the Mandatory Fee Arbitration program. Experience in the program, either as a lay arbitrator, attorney arbitrator, local program administrator or chair is beneficial to a member's successful service on the Committee.

There are two Vice-Chair positions. In general, Committee members who serve as a Vice-Chair will hold this position in their fourth and/or fifth year(s) of service as an extended term. The Vice-Chair who is selected to become Chair of the Committee will typically serve as Chair in a sixth year of service, as an extended term. All appointments and terms of service are subject to approval of the Board of Trustees.

B. Appointments Subcommittee.

Applications for appointment to the Committee shall be reviewed by an Appointments Subcommittee of three (3) persons consisting of the current Committee Chair, a committee member of the current Chair's choosing, and a State Bar mandatory fee arbitration staff person, typically the committee staff liaison. The current Chair shall select the second committee member on the Appointments Subcommittee from the following: the two Vice-Chairs and the current non-lawyer members on the committee.

With the repeal of Business and Professions Code Section 6026.5 effective January 1, 2018, the committee appointments process is no longer confidential in that appointments cannot be discussed in closed session at either a committee or Board of Trustees meeting. Further, any appointments subcommittee meeting must comply with the provisions of the Bagley-Keene Open Meeting Act.

C. Ranking of Committee Candidates.

Candidates shall be ranked according to their qualifications, which shall include consideration of the following factors:

(1) The candidate's prior experience in State Bar or local fee arbitration programs and the ability of the candidate to provide a resource to the Committee of legal or administrative expertise.

(2) The candidate's geographic locale and the size of the local committee the candidate represents, if any, to be viewed in relationship to the existing make-up of the Committee members.

(3) The candidate's education, background, gender and ethnicity for the purpose of maintaining diversity of the Committee members.

(4) The candidate's other qualifications as expressed by the candidate's biographical statement, reasons for applying, letters of recommendation and other factors.

(5) The candidate's speaking ability, experience in teaching, writing and other background relevant to potential service in the Committee's arbitrator training programs and educational seminars.

Where appropriate, and subject to the decision of the chair, candidates may be interviewed in person or by telephone to evaluate their qualifications, demeanor and other attributes of committee service.

D. Submission of Recommendations.

Ranking of applicants shall be performed by the Appointments Subcommittee and submitted to the State Bar's Board Committee which has jurisdiction over appointments to the Committee. The Chair of the Committee shall submit the rankings to the appropriate Board Committee along with the Appointments Subcommittee's recommendations to fill Committee vacancies in both membership positions and officer positions. All recommended appointments are subject to approval of the Board of Trustees.

VI. Officer Appointments Policy.

A. Committee Officers.

The Committee shall have three regular officers consisting of a Chair and two Vice-Chairs. Officers should be selected based upon superior legal and/or program knowledge, leadership and organizational skills.

B. Duties of the Chair.

- (1) Proposes meeting schedule for the year.
- (2) Chairs the Committee meetings.
- (3) Drafts and develops meeting agendas and action plan for the year.
- (4) Adheres to Bagley-Keene Act open meeting requirements.
- (5) Coordinates efforts of members and staff on assignments.
- (6) Interacts with Board Committee on Regulation & Discipline regarding Committee work.
- (7) Participates in Education and Training Programs.
- (8) Serves as the Committee's representative in public functions and communications.

C. Duties of the Vice-Chairs.

One of the Vice-Chairs shall have responsibility to chair an education subcommittee with primary responsibility to organize the Committee's educational outreach efforts to educate members of the bar regarding fee agreements, ethical obligations related to fees, avoidance of fee disputes and participation in the mandatory fee arbitration process. The education Vice-Chair works with the Chair to oversee and organize arbitrator training panels and speaker panel and is in charge of drafting and update of educational and seminar materials.

The other Vice-Chair shall assist with Committee administrative tasks, chair the Committee in the absence of the Chair, assist with training programs and speaker panels; assist with the meeting agenda and Committee administration. The administrative Vice-Chair shall have primary responsibility to monitor preparation and revision of Arbitration Advisories.

D. Application for Officer Appointments.

Committee members who desire to serve as a Vice-Chair of the Committee may submit an application to the committee staff liaison. Applications for Vice-Chair shall be submitted in writing on or before March 1 of each year. The Chair of the Committee and any current Vice-Chair may also nominate a candidate for appointment as a Vice-Chair.

E. Selection of the Vice-Chairs.

The Vice-Chairs for the next Committee Year shall be selected from the applicants or nominees by the recommendation of the Appointments Subcommittee. The review and selection process shall occur between March 1 and May 31 of each year. The recommendation of the

Appointments Subcommittee shall be reported to the Board of Trustees. All appointments are subject to the approval of the Board of Trustees.

F. Selection of Committee Chair.

The Committee Chair for the next Committee Year shall generally be chosen from one of the two Vice-Chairs on the recommendation of the departing Chair, in consultation with the committee staff liaison. Selection of the Chair is subject to appointment by the Board of Trustees.

failure to comply with time requirements as set forth in these rules.

**ARTICLE IV.
INITIATION OF ARBITRATION PROCEEDING**

RULE 14.0 Request For Arbitration.

- 14.1** Arbitration is initiated by filing a written “Request For Arbitration” with the program on the approved program form and paying the appropriate filing fee as established by the program. Service of the request on the other party with whom there is a fee dispute named on the request form shall be made by the program.
- 14.2** At the time of service of a request on an attorney, the program shall serve with it a copy of the approved “Notice of Attorney Responsibility” form.
- 14.3** The party requesting arbitration may amend the request up to 15 days after mailing it to the program, unless a request for clarification is made by the program. Thereafter, it may be amended only with the approval of the Committee Chair or by the Panel Chair, if a notice of assignment of the hearing panel has been served on the parties.
- 14.4** The request for arbitration may be made by (i) a person who is not the client but who may be liable for or entitled to a refund of attorney's fees or costs ("non-client"), or (ii) the attorney claiming entitlement to fees against a non-client. This rule permitting fee arbitration between an attorney and a non-client does not abrogate the attorney's duty to exercise independence of professional judgment on behalf of the client or protect the client's confidences and secrets. Absent the client's written consent to disclosure of confidential information, the lawyer has a duty to maintain client confidences and secrets, unless disclosure is otherwise permitted by law. Absent the client's signature on the request for arbitration, when an arbitration with a non-client is requested, the program will give notice of the request to the client by first class mail at the client's last known address.

15.0 Filing Fee

The party requesting fee arbitration shall pay a filing fee with the request form. The arbitrator shall, at his or her discretion, allocate the entire amount of the filing fee, or a portion thereof, to one or both of the parties. Such allocation shall be clearly stated in the Award.

15.1 Filing Fee Schedule

The filing fees for arbitration by the San Mateo County Bar Association are as follows:

\$100.00	for disputes up to \$1,000 or less
\$150.00	for disputes up to \$1,000.01 to \$5,000.00
\$350.00	for disputes up to \$5,000.01 to \$10,000.00
\$350.00	plus 3% of any disputes up over \$10,000.01 with a maximum fee of \$3,000.00. (i.e., \$25,000 dispute pays \$350 + \$450 = \$800)

failure to comply with time requirements as set forth in these rules.

ARTICLE IV. INITIATION OF ARBITRATION PROCEEDING

RULE 14.0 Request For Arbitration.

- 14.1** Arbitration is initiated by filing a written “Request For Arbitration” with the program on the approved program form and paying the appropriate filing fee as established by the program. Service of the request on the other party with whom there is a fee dispute named on the request form shall be made by the program.
- 14.2** At the time of service of a request on an attorney, the program shall serve with it a copy of the approved “Notice of Attorney Responsibility” form.
- 14.3** The party requesting arbitration may amend the request up to 15 days after mailing it to the program, unless a request for clarification is made by the program. Thereafter, it may be amended only with the approval of the Committee Chair or by the Panel Chair, if a notice of assignment of the hearing panel has been served on the parties.
- 14.4** The request for arbitration may be made by (i) a person who is not the client but who may be liable for or entitled to a refund of attorney's fees or costs ("non-client"), or (ii) the attorney claiming entitlement to fees against a non-client. This rule permitting fee arbitration between an attorney and a non-client does not abrogate the attorney's duty to exercise independence of professional judgment on behalf of the client or protect the client's confidences and secrets. Absent the client's written consent to disclosure of confidential information, the lawyer has a duty to maintain client confidences and secrets, unless disclosure is otherwise permitted by law. Absent the client's signature on the request for arbitration, when an arbitration with a non-client is requested, the program will give notice of the request to the client by first class mail at the client's last known address.

15.0 Filing Fee

The party requesting fee arbitration shall pay a filing fee with the request form. The arbitrator shall, at his or her discretion, allocate the entire amount of the filing fee, or a portion thereof, to one or both of the parties. Such allocation shall be clearly stated in the Award.

15.1 Filing Fee Schedule

The filing fee for arbitration by the San Mateo County Bar Association is as follows: 6% of the disputed amount with a minimum fee charge of \$100 and a maximum charge of \$7000.

RULE 16.0 Request For Filing Fee Waiver.

- 16.1** A party seeking arbitration may file with the program an application for a filing fee waiver on the approved program form. The person seeking waiver of the filing fee who