



The State Bar *of California*

OPEN SESSION

AGENDA ITEM

MAY 2019

REGULATION AND DISCIPLINE COMMITTEE III.G

DATE: May 16, 2019

TO: Members, Regulation and Discipline Committee

FROM: Andrew Tuft, Supervising Attorney, Office of Professional Competence
Isabel Liou, Staff Attorney, Office of Professional Competence

SUBJECT: Request for Approval of Los Angeles County Bar Association Proposed
Revisions to Mandatory Fee Arbitration Rules: Compensation of Arbitrators

EXECUTIVE SUMMARY

This item requests the Regulation and Discipline Committee (RAD) approve proposed rule revisions to the Los Angeles County Bar Association (LACBA) Rules of Procedure for Fee Arbitrations, as set forth in Attachment A.

At its February 1, 2019 meeting, the State Bar's Committee on Mandatory Fee Arbitration (CMFA) reviewed LACBA's proposed rule revisions. Although LACBA's requested hourly compensation rate of \$175 is greater than the State Bar Model Rule hourly rate of \$150, the CMFA determined that these changes comport with the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs (Minimum Standards) and are within the range of compensation rates currently in use by other Southern California MFA programs.

BACKGROUND

Pursuant to Business and Professions Code section 6200(d), local bar associations are authorized to sponsor mandatory fee arbitration programs. The programs' local rules of procedure must comply with Business and Professions Code sections 6200-6206 and the Minimum Standards adopted by the State Bar Board of Trustees in 1978, and last updated in 2010. Approval by the Board of Trustees gives the local bar programs jurisdiction to arbitrate fee disputes submitted under the auspices of the Mandatory Fee Arbitration Program (Minimum Standards, Para. 1).

RAD last approved revisions to the LACBA's rules of procedure for fee arbitrations during its March 12, 2012 meeting, but LACBA's rule pertaining to arbitrator compensation has existed in its current form since at least 1998. The proposed revisions to the rules of procedure, if approved, would modify the compensation terms for LACBA's voluntary fee arbitrators for the first time in over twenty years.

DISCUSSION

LACBA seeks to revise Rule 42(a) of its arbitration rules of procedure to modify when arbitrators may request compensation and at what rate.

The text of the proposed modification to Rule 42(a) is as follows:

42. COMPENSATION OF ARBITRATORS; ADMINISTRATIVE CHARGES

- a) No arbitrator shall be entitled to compensation for services unless the hearings extends beyond two days four hours. ~~A hearing of three hours or less in one day will be considered as a half day hearing. A hearing of more than three hours in one day will be considered as a one day hearing.~~ Unless waived in writing, each arbitrator will be compensated at the rate of ~~\$200~~ \$175 for each ~~half day~~ and ~~\$400 for each day after the first two days of~~ additional hour after a four hour hearing. The compensation shall be paid equally by each party directly to each arbitrator, in advance, 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, ~~nor until such formal hearing sessions extend beyond two days.~~ Any disputes concerning compensation of the arbitrators will be determined by the Arbitration Executive Committee, and its determination shall be binding on the parties, including the arbitrators.

LACBA's proposed revisions seek to simplify their calculation for arbitration compensation by adopting an hourly rate of \$175 and allowing their arbitrators to be compensated for hearing time that extends beyond four hours, as opposed to after "two days" as provided in their current rule. LACBA has determined that the proposed change would assist the program in attracting and retaining qualified volunteer arbitrators, especially in cases where the hearing lasts more than one day.

At its February 1, 2019 meeting, the CMFA reviewed the proposed revision to LACBA's Rule 42(a) and found it to be in compliance with Business and Professions Code section 6200, et seq. and the Minimum Standards. Aside from a difference in the hourly rate, LACBA's proposed rule is substantially similar to the State Bar Model Rule regarding arbitrator compensation. Although slightly higher than the hourly rate of \$150 contained in the Model Rules, the CMFA also determined that LACBA's proposed hourly compensation rate of \$175 is within the range of compensation rates currently in use by other Southern California MFA programs. For example,

the San Diego County Bar Association program permits arbitrator compensation of \$150 per hour for hearings lasting over three hours. Following review of the request to amend the rule, the CMFA recommends that RAD approve the proposed modifications to the LACBA's Mandatory Fee Arbitration Rules of Procedure.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - core business operations

RECOMMENDATIONS

It is recommended that the Regulation and Discipline Committee approve the following resolution:

RESOLVED, that the Regulation and Discipline Committee hereby approves the Mandatory Fee Arbitration Rules of Procedure as proposed by the Los Angeles County Bar Association, in the form attached as Attachment A, as being in compliance with Business and Professions Code sections 6200-6206 and the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitrations.

ATTACHMENT(S) LIST

- A.** Proposed Los Angeles County Bar Association Rules of Procedure for Fee Arbitrations
- B.** Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs
- C.** Model Rules of Procedure for Fee Arbitrations

ATTACHMENT A
Proposed Los Angeles County Bar Association Rules of Procedure for Fee Arbitrations

LOS ANGELES COUNTY BAR ASSOCIATION
ATTORNEY CLIENT MEDIATION & ARBITRATION SERVICES
RULES FOR CONDUCT OF
MANDATORY ARBITRATION OF FEE DISPUTES
PURSUANT TO BUSINESS & PROFESSIONS CODE § 6200 *et. seq.*

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LOS ANGELES COUNTY BAR ASSOCIATION
ATTORNEY CLIENT MEDIATION & ARBITRATION SERVICES
RULES FOR CONDUCT OF
MANDATORY ARBITRATION OF FEE DISPUTES
PURSUANT TO BUSINESS & PROFESSIONS CODE § 6200 *et. seq.*

1. INTENT AND GOAL

The intent and goal of these Rules is to provide for a fair, speedy, economical, and impartial hearing and award.

2. GOVERNING LAW

Except as these Rules may otherwise provide, Article 13 of Chapter 4 of Division 3 of the Business & Professions Code shall govern these proceedings.

3. ORGANIZATION AND ADMINISTRATION

- a) The Arbitration Committee shall consist of all persons appointed thereto by the Arbitration Committee staff.
- b) A Committee member may be removed by the Committee Chairperson for good cause.
- c) The arbitration program shall be administered by the Arbitration Executive Committee, consisting of the Chairperson and one or more Vice Chairpersons, all appointed by the President of the Los Angeles County Bar Association. The Chairperson may designate one or more Vice Chairpersons who will act as Deputy Chairs and serve as chairpersons in the absence of the Chairperson. The Arbitration Executive Committee shall set policy and procedure, supervise the Arbitration Committee staff, recommend rule changes to the Trustees, set fees, and otherwise administer and supervise the program established by these Rules.

4. MANDATORY ARBITRATION

- a) Arbitration is mandatory when a client commences arbitration of a dispute between the client and an attorney concerning fees charged by the attorney for professional services rendered or reimbursable costs, or both (Bus. & Prof. Code §§ 6200 (b), 6205). Disputes which are subject to mandatory arbitration are those

disputes between attorneys and clients regarding fees or reimbursable costs, including but not limited to:

- i. The amount or balance of fees or reimbursable costs claimed by the attorney to be owing by the client.
 - ii. The amount of retainers or deposits or payments by the client which are claimed by the client to have been overpaid to the attorney and which are claimed to be subject to refund to the client.
- b) Arbitration is mandatory when a client has signed a fee agreement, which provides for arbitration through the Business & Professions Code § 6200 program to arbitrate.
 - c) If initiated by the attorney, fee arbitrations conducted pursuant to Business and Professions code §6200 et seq are voluntary for the client.
 - d) Arbitration is mandatory if 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.

5. LIMITS ON ARBITRATION

- a) The following disputes are not subject to mandatory arbitration:
 - i. Disputes where the attorney is also admitted to practice in another state, and he or she maintains no office in the State of California, and no material portion of the services were rendered in the State of California (Bus. & Prof. Code § 6200 (b)(1));
 - ii. Disputes where client seeks affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct (Bus. & Prof. Code § 6200 (b)(2)); or,
 - iii. Disputes where the fee to be paid by the client or on his or her behalf has been determined pursuant to statute or Court order (Bus. & Prof. Code § 6200 (b) (3)).
- b) The Arbitration Executive Committee reserves the right to decline to accept any arbitration.

6. NOTICE REQUIREMENT BY ATTORNEY TO CLIENT

An attorney must serve, either personally or by first class mail to the client, the State Bar's "Notice of Client's Right to Arbitrate" form prior to or at the time of serving the

Summons or Claim in an action or other proceeding against the client for recovery of fees which are subject to mandatory arbitration. Forms of the “Notice of Client’s Right to Arbitrate” are available upon request from the Arbitration Committee staff. Failure to give the notice shall be a ground for dismissal of the action (Bus. & Prof. Code § 6201 (a)).

7. STAY OF COURT PROCEEDINGS

If an attorney (or the attorney’s assignee) commences a fee collection action in any court, and that dispute is subject to mandatory arbitration, then the client may seek to stay the court action by initiating mandatory arbitration under these Rules and by filing a copy of the Petition for Arbitration on the approved Los Angeles County Bar Association form with the court, together with the original form entitled “Notice that Action has Been Stayed,” and by complying with any such additional requirements as the Court may direct (Bus. & Prof. Code § 6201 (c)).

8. WAIVER OF RIGHT BY CLIENT TO REQUEST OR MAINTAIN ARBITRATION

A Client’s right to request or maintain arbitration is waived if:

- a) Before initiating arbitration, the client answers a complaint in a civil action if adequate notice of the right to arbitration has been given (Bus. & Prof. Code § 6201 (d));
- b) The client commences an action or files any pleading seeking judicial resolution of the fee dispute or seeking affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct (Bus. & Prof. Code § 6201 (d));
- c) The client fails to submit a request for arbitration in writing that is either postmarked or actually received by the Los Angeles County Bar Association 30 days or less after the client’s receipt of the “Notice of Client’s Right to Arbitration” (Bus. & Prof. Code § 6201 (a)); or,
- d) The time for filing a civil action requesting the same relief would be barred by the applicable statute of limitation, but that limitation shall not apply if the client requests arbitration after the attorney has filed a civil action covering a dispute that is subject to mandatory arbitration (Bus. & Prof. Code § 6206).

9. REQUESTING HEARING THROUGH THE STATE BAR

A client or an attorney who believes that he or she cannot obtain a fair or impartial hearing under the Committee’s Rules for Conduct of Arbitration of Fee Disputes and Other Related Matters shall be entitled to a hearing through the State Bar of California in

compliance with the State Bar rules. In a matter already pending before the Committee, a written request must be received by the Arbitration Committee Office. LACBA shall release jurisdiction of the matter upon written notification of the State Bar's acceptance of said matter for arbitration.

10. ASSIGNMENT OF ARBITRATORS

- a) Disputes will be assigned to a sole arbitrator if the amount in dispute does not involve more than \$25,000. All other disputes will be assigned to a panel of three arbitrators (panel) unless the parties to the arbitration agree in writing to a sole arbitrator, before or during the proceeding.
- b) All arbitrators will be appointed by the Arbitration Committee staff. Three member panels will include one layperson, but such person may not serve as chairperson; otherwise all arbitrators shall be active members of the State Bar of California, in good standing.
- c) If the dispute is assigned to a panel of three arbitrators, the panel shall include one attorney whose area of practice is either civil law or criminal law, as requested by the client; or if the dispute is assigned to a sole arbitrator, such sole arbitrator shall be an attorney whose area of practice is either civil law or criminal law, as requested by the client;
- d) the Arbitration Committee shall request its members who are members of the State Bar of California to designate such members' area or areas of practice and such designation shall be used for assignment of arbitrators pursuant to the Rule. A member may designate both civil and criminal areas of practice.
- e) 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.
- f) A Vice Chairperson shall be designated to supervise all arbitrations. The supervising Vice Chairperson shall be available to the arbitrator(s) for information, guidance and advice, but the power of decision shall rest with the arbitrator(s). The supervising Vice Chairperson shall also be available to the parties and their counsel for information but shall take care to preserve his or her neutrality at all times. Whenever these Rules provide for reference of a matter to a Vice Chairperson, it shall be referred to the supervising Vice Chairperson designated for that arbitration.

11. NOTICE OF APPOINTMENT OF ARBITRATOR(S)

A notice identifying the arbitrator(s) who have been appointed to hear the particular dispute shall be served on the parties at least 15 days prior to the date of the hearing.

12. DETERMINATION OF JURISDICTION

- a) Once a sole arbitrator or panel has been appointed, all issues not already referred to the Arbitration Executive Committee or a Vice Chairperson shall be decided by the sole arbitrator or panel.
- b) Each sole arbitrator or panel shall have the authority to determine jurisdiction and shall decline to act if it determines that it lacks jurisdiction.
- c) The arbitrator or panel (or if none has been appointed, the Vice Chairperson) may dismiss any arbitration if the attorney does not maintain an office in Los Angeles County or if no substantial legal services were performed in Los Angeles County.

13. INITIATION OF ARBITRATION PROCEEDINGS

- a) Arbitration may be initiated by a client, an attorney or a third party entitled to request mandatory fee arbitration.
- b) An arbitration is initiated by filing a written "Request For Arbitration" on the approved form with the Arbitration Committee, and by paying the appropriate filing fee, or applying for waiver of the filing fee under Rule 14. Service of the Petition for Arbitration on the attorney shall be made by the Arbitration Committee staff. If the initiating party is an attorney, the Arbitration Committee staff shall serve upon the Attorney a copy of the approved State Bar "Notice of Attorney Responsibility" form.
- c) Service shall be effected upon the Attorney at the address provided on the petition and at the latest address shown on the official membership records of the State Bar, if different.
- d) Any response to a Request for Arbitration, together with any response to the issue of the attorney's responsibility for any award that refunds fees and/or costs to the client, shall be filed within 15 days of the service of the Petition. In the event the attorney or client who has previously agreed in writing to arbitration fails to respond to a Petition for Arbitration or refuses to participate in the arbitration, the hearing will proceed as scheduled, and a decision made on the basis of the evidence.
- e) The party requesting arbitration may amend the request up to 15 days after mailing it to the Arbitration Committee, unless a request for clarification is made by the Arbitration Committee. Thereafter, it may be amended only with the

approval of the Vice Chairperson or by the Arbitrator(s), if a notice of assignment of the arbitrator(s) has been served on the parties.

- f) Initiation of 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 Arbitration Committee shall give notice of the request for arbitration to the client by first class mail at the client's last known address.

14. FEES AND REQUESTS FOR WAIVER OF FILING FEES IN CASES SUBJECT TO ARBITRATION

- a) The Board of Trustees of the Los Angeles County Bar Association establishes the filing fee schedules. The schedules may be obtained by contacting the fee arbitration program staff.
- b) The filing fee schedule for arbitration is based on the amount in dispute as follows:
 - i. Fifty dollars plus five percent (5%) of the amount in dispute when the total amount in dispute is less than \$10,000.
 - ii. Six percent (6%) of the amount in dispute when the total amount in dispute is \$10,000 or more but less than \$20,000.
 - iii. Seven percent (7%) of the amount in dispute when the total amount in dispute is \$20,000 or more, with a \$5,000 maximum filing fee.
- c) Any party requesting mandatory arbitration that is financially unable to pay the filing fee may apply for a waiver of the filing fee. An application for waiver of the filing fee shall be made in writing on the Arbitration Committee's form. Program staff will apply fee waiver criteria to grant or deny the application or reduce the filing fee, and may allow the petitioner additional time in which to pay the filing fee, but that period of time shall not exceed 90 days without consent of all other parties subject to the approval of the Executive Director or his/her designee. The program staff shall communicate the decision in writing to all parties. A fee waiver decision made by the Executive Director or his/her designee may be appealed to the Arbitration Executive Committee on an annual basis. The decision of the Vice Chair shall be final.

- d) An application for waiver of the filing fee shall accompany a completed and executed petition for mandatory arbitration. No party shall be required to respond until the application for waiver of the fees has been decided.
- e) If petitioner is required to pay all or part of the fee and fails to pay the sum in full within the time provided in the Vice Chairperson's decision (or if no time is provided, within 30 days after service of the Vice Chairperson's decision), then the petition shall be dismissed without prejudice.
- f) If the petitioner's request for a fee waiver is granted or the fee is reduced, the petitioner agrees to pay the amount waived or reduced to the extent of any refund awarded.

15. FILING FEE REFUND POLICY

- a) The program will retain a \$50 non-refundable fee on all cases filed. No refund is available for filing fees of \$50 or less.
- b) If a case closes prior to the assignment of a mediator or arbitrator, the program will retain 50% of the total filing fee with a \$50 minimum.
- c) In cases closed after the assignment of a mediator, sole arbitrator or arbitrator panel, the program will retain 75% of the total filing fee with a \$50 minimum.
- d) No refund will be made on a case where an arbitration hearing date has been scheduled by the sole arbitrator or arbitrator panel, or a mediation session date has been scheduled by the mediator, unless LACBA receives written notice of settlement or withdrawal of the arbitration or mediation no later than 10:00 a.m. on the business day preceding the date set for the arbitration hearing or mediation session.
- e) If an arbitration hearing has commenced, no refund will be made.
- f) In cases closed where the petitioner is a lawyer or law firm and the respondent attorney declines arbitration, or the Arbitration Committee determines it does not have jurisdiction, the Arbitration Committee will retain 10% of the filing fee with a minimum of \$50 dollars.

16. ENUMERATION OF ISSUES

If the issues to be arbitrated are not clearly set forth in the Petition and Response, or in the correspondence or other submitted documents, the sole arbitrator or panel (or Vice Chairperson if the sole arbitrator or panel has not yet been appointed) may request the parties to clarify the issues. The sole arbitrator or panel may decline to determine any

issues not set forth in the Petition and Response, or not clarified in compliance with this Rule.

17. TIME SCHEDULE FOR ARBITRATION

The arbitrator(s) shall endeavor to adhere to the following time schedule, except where emergencies or circumstances beyond the control of the arbitrator(s), or the parties require short extensions. The “At-Issue Date” is the date on which the Petition and Response, signed by all parties, or the demand for arbitration under a prior agreement to arbitrate and any applicable filing fee, have all been received by the Arbitration Committee; provided, that if a Petition has been filed but no Response is filed, then the “At-Issue Date” is the date on which the time for filing the Response expires.

a) TIME SCHEDULE FOR SOLE ARBITRATOR PROCEEDINGS

- i. The sole arbitrator should be appointed within six weeks of the At-Issue Date.
- ii. The Notice of Hearing should be served on the parties within two weeks after appointment of the sole arbitrator.
- iii. The hearing should be held within four weeks of service of the Notice of Hearing.
- iv. The preparation of the award and transmittal thereof to the Arbitration Committee Office should be completed within two weeks of completion of the hearing.
- v. The award should be served on the parties by the Arbitration Committee Office within two weeks from receipt of the award from the arbitrator.

b) TIME SCHEDULE FOR THREE MEMBER PANEL ARBITRATIONS

- i. Appointment of the panel of arbitrators should be completed within five weeks of the At-Issue Date.
- ii. The Notice of Hearing should be served on the parties by the panel chairperson within three weeks after appointment of the panel.
- iii. The hearing should be held within six weeks of service of the Notice of Hearing.
- iv. The preparation of the award by the panel and transmittal thereof to the Arbitration Committee Office should be completed within four weeks of completion of the hearing.

- v. The award should be served on the parties by the Arbitration Committee Office within two weeks from receipt of the award from the panel.

18. FAILURE TO ADHERE TO TIME SCHEDULE FOR ARBITRATION

The failure of any person or party to adhere to the time schedules for arbitration set forth in the foregoing Rule shall not invalidate any award rendered in arbitration. However, the Chairperson may discharge an arbitrator or panel from further proceedings whenever the Chairperson, in his or her sole discretion, determines that there has been unreasonable delay by the arbitrator or panel in performing their duties under these Rules.

19. NOTICE OF HEARING

The sole arbitrator, or the panel chairperson in consultation with the other members of the panel, shall select a time and place for the hearing and cause notice thereof to be served personally or by first-class mail on the parties to the arbitration and on the other members of the panel at least 15 days before the hearing. Appearance at the hearing waives the right to notice. The notice shall advise the parties of their right to present witnesses and documentary evidence in support of their position, to be represented by counsel, and, at their own expense, to have a stenographic record of the proceedings made if proper arrangements are made with the sole arbitrator or panel chairperson.

20. AWARD WITHOUT HEARING

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

21. REPRESENTATION BY COUNSEL

Any party may be represented by counsel. A party intending to be so represented shall notify the sole arbitrator or panel chairperson and the Arbitration Committee staff in writing of the name, address and telephone number of counsel, and thereafter all notices to which such party may be entitled hereunder shall be sent to counsel. In the absence of such written notification, all notices will be sent to the parties.

22. STENOGRAPHIC OR OTHER RECORD

Any party requesting a stenographic record of the arbitration proceedings shall make the necessary arrangements for the taking of that record. The requesting party or parties shall pay the cost of such record. Every party to the arbitration shall be entitled to a copy of the report's transcript upon written request and payment of the expense to the reporter.

23. INTERPRETER

Any party requesting an interpreter shall make the necessary arrangements for the services of the interpreter. The requesting party or parties shall pay the cost of such services.

24. ISSUANCE OF SUBPOENAS

The Arbitration Committee will, upon good cause being shown, issue in blank subpoenas and subpoenas *duces tecum*, signed but otherwise in blank. Subpoenas and subpoenas *duces tecum* shall be served and enforced in accordance with Code of Civil Procedure §§ 1985-1997 (Code Civ. Proc. § 1282.6).

25. NOTICE TO APPEAR AND PRODUCE

Use of a notice to appear and produce with respect to a party, as provided in Code of Civil Procedure § 1987, is authorized, and that section together with any other applicable sections of Chapter 2 of Title 3 of Part 4 of the Code of Civil Procedure (Code Civ. Proc. § 1985 *et seq.*) shall govern such notices, except that a notice requiring production of books, documents or other things (Code Civ. Proc. § 1987 (b)) need only be served at least ten days before the hearing.

26. ORDER FOR PRODUCTION

The sole arbitrator or panel may within a reasonable time in advance of the hearing date or any adjourned hearing date, order any party to produce any books, documents or other things in the party's possession or under his or her control, which the sole arbitrator or panel determines are not privileged and are relevant to the subject matter of the arbitration.

27. POSTPONEMENTS; ADJOURNMENTS

Upon request of a party to the arbitration and for good cause, or upon their own determination, the sole arbitrator or panel may postpone or adjourn the hearing from time-to-time.

28. HEARING PROCEDURE; RULES OF EVIDENCE

- a) The sole arbitrator or panel chairperson shall preside at the hearing. The sole arbitrator, or the panel by majority vote, shall rule on the admission and exclusion of evidence and on questions of procedure, and shall exercise all powers relating to the conduct of the hearing.
- b) The parties to the arbitration are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at the hearing, but the rules of evidence and rules of judicial procedure applicable in the courts of California need not be observed. Upon request of any party to the arbitration or upon request of any

arbitrator, the testimony of witnesses shall be given under oath. The sole arbitrator or panel chairperson may administer oaths to witnesses appearing or testifying at the hearing. The sole arbitrator or panel shall have the power to limit and regulate the number, timing, form and length of the parties' written presentation.

- c) Any relevant attorney-client communications or attorney work product may be disclosed in connection with an arbitration hearing, a trial after arbitration, or judicial confirmation, correction, or vacation of an arbitration award, but in no event shall the disclosure be deemed a waiver of the confidential character of such matters for any other purpose (Bus. & Prof. Code § 6202).
- d) The sole arbitrator or panel has the power to preserve and enforce order in the proceedings before them and to provide for the orderly conduct of proceedings before them. When confronted with a discourteous, unruly or uncooperative party or witness, the sole arbitrator or panel may, among other things, adjourn the proceedings, take only written evidence and testimony, serve the party or witness with a subpoena or subpoena *duces tecum*, requiring his or her attendance at an adjourned hearing under penalty of contempt, exclude the witness, or if the offending party is the petitioner, and in an extreme case only, dismiss the proceedings with prejudice.
- e) If the arbitrator or panel intends to base an award upon information not obtained at the hearing, such information shall be disclosed to all parties to the arbitration and the parties given an opportunity to meet it.
- f) The sole arbitrator or arbitrators shall receive evidence relating to claims of malpractice and professional misconduct, but only to the extent that those claims bear upon the fees to which the attorney is entitled. The sole arbitrator or arbitrators shall not award affirmative relief, in the form of damages or offset or otherwise, for injuries underlying such claim. Nothing herein shall be construed to prevent the sole arbitrator or arbitrators from awarding a refund of unearned fees previously paid by the client (Bus. & Prof. Code § 6203 (a)).

29. ARBITRATION IN THE ABSENCE OF A PARTY

The arbitration may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made against a party solely because of the party's absence. The arbitrator or panel shall require the party who is present to submit such evidence as may be required to support the making of an award. An award may be made in favor of a party who is absent if the evidence so warrants.

30. ARBITRATION BY PANEL IN THE ABSENCE OF ONE OF THE MEMBERS

- a) If one of the panel members fails to appear, upon written stipulation of the parties, the hearing may proceed with a sole attorney arbitrator. Under no circumstances will the hearing proceed with two arbitrators.
- b) In the event there is no written stipulation of the parties to have an attorney hear the arbitration as sole arbitrator, the hearing date:
 - i) shall be adjourned and continued, to permit attendance of the absent arbitrator or assignment of a new arbitrator to the panel; or
 - ii) vacated, and the matter returned to the Arbitration committee staff for reassignment.

31. WITNESSES; FEES AND MILEAGE

Except for the parties to the arbitration and their agents, officers and employees, all witnesses appearing pursuant to subpoena or subpoena *duces tecum* are entitled to receive fees and mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in the Superior Court. The fee and mileage of a witness subpoenaed upon the application of a party to the arbitration shall be paid to the witness in advance by such party, and, if demanded and not so paid, the witness shall not be required to attend.

32. INSPECTION

- a) A client petitioning for arbitration is entitled to inspect, during normal business hours, the following documents and records in the possession of the respondent:
 - i. The file relating to the matter in which the dispute arose.
 - ii. All statements or billings, and client ledger cards of similar records kept, relating to the matter in which the fee dispute arose.
- b) A request by the client to inspect any of the items referred to in (a) must be in writing and must be given to the respondent not later than 20 days prior to the arbitration hearing. The respondent shall either allow inspection and copying or shall provide copies of the requested documents without charge to the client no later than five days from receipt of the request. If the respondent does not comply with the client's request, the panel chair may, at his/her discretion disallow the production of those documents at the hearing.
- c) Nothing in these rules shall prohibit the arbitrators from requiring the parties to submit additional information or documents prior to or at the hearing.

- d) Any material protected by applicable law or rule protected from disclosure to the client is exempt from inspection.
- e) Neither depositions for use as evidence nor any discovery whatsoever is permitted under any circumstances when all parties have not agreed in writing to such discovery.

33. MAKING OF AWARD AND OTHER DECISIONS BY PANEL

In an arbitration before a panel, rulings on the admission of evidence and other such matters not otherwise specified by these rules shall be made by concurrence of at least two or more of its members (Code Civ. Proc. § 1282 (c)). Any arbitrator who disagrees with the majority of the panel is entitled to write a dissenting opinion.

34. FORM AND CONTENTS OF AWARD

- a) The award shall be in writing and signed by the sole arbitrator or, in the case of a panel, by the arbitrators concurring therein. It shall indicate whether the arbitration was binding or non-binding and shall include a determination of all questions submitted to the arbitrators, 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 file findings of fact with their awards. In the discretion of the arbitrators, the award may also include findings as to the willfulness of a party's non-attendance at the hearings.
- b) The award of the sole arbitrator or the panel need not be in any particular form, but it should consist of a preliminary statement reciting the jurisdictional facts (i.e., that a hearing was held pursuant to Rule 4 of the rules; that the parties were given due notice of the hearing and an opportunity to testify, cross-examine and otherwise participate in the proceedings); a brief statement of the dispute; a statement of decision explaining the factual and legal basis for the decision, brief in form, but with sufficient detail to provide a general understanding of the basis of the determination; and the award. Such document is referred to in these Rules as the "award." In the event a refund is determined to be owed to the client and where questions are raised as to who is the responsible attorney(s) in the arbitration, the arbitrator(s) shall make that determination and shall include in the award the name of the attorney(s) and, if appropriate, the law firm(s). The award shall also include substantially the following language, as appropriate:

The arbitrator 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: \$_____

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

Client: \$_____

Attorney: \$_____

for a net amount of: \$_____

Accordingly, the following award is made:

Client, (name)_____ shall pay to 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

Attorney, (name) _____ shall refund to 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

Nothing further shall be paid by either attorney or client.

- c) The arbitration award must specifically exclude any award to either party for attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding, notwithstanding any contract between the parties providing for such an award of attorneys fees.
- d) The award shall include an allocation of the filing fee as determined by the arbitrator or panel. The absence of such allocation in the award will be deemed to mean each party is responsible for the fee arbitration filing fee paid by that party.
- e) In any event, whether the award makes any allocation of cost does not constitute a determination of prevailing party for purposes of Civil Code § 1717.

35. SERVICE OF AWARD TO PARTIES

The sole arbitrator or panel shall forward a signed original and two signed copies of the award to the Arbitration Committee Office. Any award not in procedural compliance with these Rules shall be referred to the Arbitration Executive Committee. The Arbitration Executive Committee will then have the task of conforming the award to

these Rules provided the only error is one of procedure or form. The Arbitration Committee Office shall then serve a signed copy of the award and a notice of the parties' post-arbitration rights on each party to the arbitration, together with a proof of service of the award, personally or by first class mail.

36. CORRECTION OF AWARD

- a) The Hearing Panel may correct an award only on the grounds set forth in Code of Civil Procedure § 1286.6 (a) [evident miscalculation of figures or evident mistake in the description of a person, thing or property referred to in the award] and § 1286.6 (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 § 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.
- b) 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.
- c) 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 Arbitration Committee in the same manner as provided by Rule 35.

37. BINDING ARBITRATION

- a) If both parties agree in writing that arbitration shall be binding, no appeal from the award is allowed, except that provided for by Chapter 4 of Title 9 of Part 3 of the Code of Civil Procedure, § 1285 *et seq.* is allowed.
- b) At any time prior to the actual taking of evidence at the hearing, the parties may agree in writing to be bound by the award.
- c) The parties may agree to be bound only after the dispute has arisen.
- d) Once both parties have agreed to be bound neither party may withdraw from the arbitration process without written consent from the other side.

38. FINALITY OF NON-BINDING AWARDS

When any dispute is submitted to mandatory arbitration under these Rules and all parties have not agreed in writing to be bound, the award shall nevertheless become final and binding on the parties, with the same effect as if the parties had originally agreed in writing to be bound, unless, within 30 days after service of the award, a party (i) commences an action in court to resolve the dispute adjudicated in the non-binding arbitration, or (ii) if there is an action pending, files a rejection of arbitration award and requests for trial after arbitration and otherwise complies with Business and Professions Code § 6204 (a). Provided, however, that if any party willfully fails to appear at the hearing for non-binding arbitration 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 will be 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.

39. ENFORCEMENT OF THE AWARD

Any award made pursuant to these Rules may be enforced in accordance with the provisions of Code of Civil Procedure §§ 1285-1288.8. If an action has previously been filed in any court, any petition to confirm, correct or vacate the award shall be made to the court in which the action is pending and may be served by mail on any party who has appeared, as provided in Chapter 4 (commencing with § 1285) Title 14 of Part 2 of the Code of Civil Procedure; otherwise it shall be served in the same manner as provided in Chapter 4 (commencing with § 1285) Title 9 of Part 3 of the Code of Civil Procedure (Bus. & Prof. Code § 6203 (b)).

40. QUALIFICATION OF ARBITRATORS

- a) No person appointed as an arbitrator shall arbitrate a dispute if he or she has any financial or personal interest in the result of the arbitration or if he or she determines that he or she is not qualified to act as to that dispute for any other reason. A person appointed as an arbitrator shall immediately disclose to the parties and the Arbitration Committee staff any circumstances which might be the basis for a claim of bias or any past or present relationship with the parties or their counsel which might disqualify the arbitrator. If disqualification is not claimed in writing by one or more of the parties within seven days after such disclosure, any claim of disqualification shall be considered waived, but such waiver shall have no effect upon any arbitrator's decision to disqualify himself or herself on his or her own motion.
- b) Any party may claim that one arbitrator is disqualified without cause by written notification to the Arbitration Committee staff and the sole arbitrator or panel served not later than 15 days after service of notice of appointment of the arbitrator or panel. An unlimited number of claims of disqualification served or raised thereafter shall be considered only on an adequate showing of good cause,

to be determined by the sole arbitrator or panel. The sole arbitrator or panel shall consider and rule upon the claim of disqualification.

- c) The party seeking disqualification may appeal the denial by the arbitrator or panel of a claim of disqualification. Any such appeal shall be served in writing on the Arbitration Committee staff within five days after service of the decision appealed from. The appeal shall be decided in writing by the Vice Chairperson with the concurrence of the Chairperson. If the Chairperson and the Vice Chairperson disagree, the Chairperson, in his or her discretion, shall either refer the matter to the Arbitration Executive Committee for decision or designate an additional Vice Chairperson to break the tie. All proceedings before the sole arbitrator or panel shall be stayed until the appeal is decided and until the resulting vacancy is filled.

41. VACANCIES

If any arbitrator should resign, die, withdraw, be disqualified or unable to perform the duties of his or her office as a sole arbitrator or member of a panel, the vacancy shall be filled in accordance with Rule 9 of these Rules.

42. COMPENSATION OF ARBITRATORS; ADMINISTRATIVE CHARGES

- a) **No arbitrator shall be entitled to compensation for services unless the hearings extends beyond two days four hours. A hearing of three hours or less in one day will be considered as a half day hearing. A hearing of more than three hours in one day will be considered as a one-day hearing. Unless waived in writing, each arbitrator will be compensated at the rate of \$200 \$175 for each half day and \$400 for each day after the first two days of additional hour after a four hour hearing. The compensation shall be paid equally by each party directly to each arbitrator, in advance, 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, nor until such formal hearing sessions extend beyond two days. Any disputes concerning compensation of the arbitrators will be determined by the Arbitration Executive Committee, and its determination shall be binding on the parties, including the arbitrators.**
- b) Except for the prescribed filing fees, no charges will be made by the Los Angeles County Bar Association, by the Arbitration Committee, or by any arbitrator, for administrative or clerical services. A hearing room will be provided by an arbitrator or by the Arbitration Committee without charge to the parties.

43. ARBITRATOR AS WITNESS

No arbitrator appointed under these Rules shall be competent to testify in any subsequent civil proceeding, as to any statement or conduct occurring during the course of the arbitration proceeding, except as to a statement that could (a) give rise to civil or criminal contempt, (b) constitute a crime, (c) be the subject of investigation by the State Bar or Commission on Judicial Performance, or (d) give rise to disqualification proceedings under Code of Civil Procedure § 170 (5) (Evid. Code § 703.5).

44. CONFIDENTIALITY

- a) In order to preserve confidentiality, all hearings shall be closed to the public. However, in the discretion of the arbitrator or panel, witnesses and other such persons as may be necessary to the conduct of the hearing may be present during the hearing.
- b) The panel, upon request of the client, shall permit the client to be accompanied by another person and may also permit additional persons to attend.
- c) All communications, negotiations, or settlement discussions by and between the participants and/or arbitrators in the arbitration shall remain confidential. Evidence of anything said or any admissions made in the course of the arbitration shall not be admissible in evidence or subject to discovery, and disclosure of that evidence cannot be compelled in any civil action or proceeding in which testimony can be compelled to be given.
- d) No document prepared for the purpose of, or in the course of, or pursuant to the arbitration (nor any copy of it), including but not limited to the case file, the request, reply, the award, all financial data pertaining to “consumers” as defined in Code of Civil Procedure § 1985.3, exhibits, transcripts, and all correspondence, shall be admissible in evidence or available through discovery, and its disclosure shall not be compelled in any civil action or proceeding in which testimony can be compelled to be given; provided, however, that a communication or a document (or any part thereof) that would otherwise be privileged or confidential pursuant to this Rule may be disclosed if all parties to the arbitration give their consent.

45. SERVICE

- a) Unless expressly stated in these Rules to the contrary, service of any notice or other paper shall be by personal delivery or by deposit in the United States mail, first class postage pre-paid, addressed to the person on whom it is to be served, at his or her office address as last given, on any document which has been filed in the arbitration and served on the party making service by mail; otherwise at his or her place of residence. The service is complete at the time of deposit in the mail (Code Civ. Proc. § 1013 (a)). The timing for performing any act shall commence

on the date of service is complete and shall not be extended by reason of service by mail.

- b) 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 § 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.
- c) 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 Rule 48 (b) above.
- d) In the event the attorney does not file a Response, service on an individual attorney shall be at the latest address shown on the official membership records of the State Bar and the address listed on the Request For Arbitration if these addresses differ. If the fee dispute is with a law firm, service shall be on the address as shown in the Request For Arbitration form unless the law firm designates an attorney to be responsible for the arbitration, then service shall be on the designee's address shown on the official membership records of the State Bar.

46. CERTIFICATION OF DOCUMENTS FOR JUDICIAL PROCEEDINGS

The Arbitration Committee staff shall, upon written request of a party, furnish to such party, at his or her expense, certified copies of any papers in the possession of the Association that may be required in judicial proceedings relating to the arbitration.

47. RETENTION OF FILES

The Arbitration Committee staff may, without prior notice, destroy any file five years after service of the award or, if no award is rendered, five years after the last paper is received from any party.

48. LIMITATION OF ACTIONS; JUDICIAL RESOLUTION OF ARBITRATION DISPUTE

The time for filing a civil action seeking judicial resolution of a dispute subject to arbitration under this article shall be tolled from the time an arbitration is initiated in accordance with the rules adopted by the board of governors until: (a) 30 days after receipt of notice of the award of the arbitrators; or (b) receipt of notice that the arbitration is otherwise terminated, whichever comes first (Bus. & Prof. Code § 6206).

49. INTERPRETATION OF RULES

The Arbitration Executive Committee has the authority to interpret these Rules, and to determine their application to specific situations and their interaction with related statutory and case law. When the Chairperson determines it is in the best interest of the arbitration program to do so, the Arbitration Executive Committee may issue written opinions expressing such interpretations. Such opinions shall be issued upon the approval of a majority of the Arbitration Executive Committee, and, upon issuance, shall have the same force and effect as the Rules. Issued opinions shall be maintained in a permanent file at the Arbitration Committee's Office and shall be available to the public.

50. CONTACTS WITH ARBITRATORS

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

- a) At the scheduled hearing;
- b) In writing with a copy to all parties, or their respective counsel, if any, and the Arbitration Committee;
- c) For purposes of scheduling a hearing date or other administrative procedure or matter;
- d) In an emergency.

Nothing in this Rule shall be interpreted or construed to prohibit the arbitrator from contacting a party or attorney for the party to discuss an administrative or procedural matter.

51. IMMUNITY

- a) In any arbitration, whether voluntary or mandatory, the arbitrator(s), the Arbitration Committee, Arbitration Executive Committee, the Los Angeles County Bar Association, and their officers, directors, and employees or agents shall have the same immunity, which attaches in judicial proceedings (Bus. & Prof. Code Section 6200(f)).
- b) In any arbitration, whether voluntary or mandatory, neither the arbitrator(s), the Arbitration Committee, the Los Angeles County Bar Association, nor their officers, directors, and employees or agents is a necessary party in judicial proceedings relating to the arbitration, nor shall any of them be liable to any party for any act or omission arising out of any proceeding initiated or conducted under these Rules.

ATTACHMENT B
Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs

**GUIDELINES AND MINIMUM STANDARDS
FOR THE OPERATION OF
MANDATORY FEE ARBITRATION PROGRAMS**

(Adopted by the Board of Governors December 16, 1978, January 1, 1979, revised March 21, 1992, amended April 17, 1993, amended July 17, 1993, amended November 5, 1993, amended June 18, 1994, amended April 8, 1995, amended March 2, 1996, amended November 22, 1996, amended January 25, 1997, amended March 21, 1997; amended April 3, 1998; amended January 26, 2001; amended March 9, 2007, amended July 20, 2007; amended May 15, 2010.)

1. If the current rules of procedure of a local bar association or a lawyer referral service are approved by the Board of Governors and those rules are in compliance with Business and Professions Code sections 6200-6206 and the Minimum Standards set forth herein, the local program will have jurisdiction over fee disputes submitted, and such arbitration will be the arbitration provided for in Business and Professions Code sections 6200-6206.

2. If an approved local program is not available, and the parties do not consent to have the fee dispute submitted to another local program willing to assume jurisdiction over the matter, the State Bar will assume jurisdiction over the fee dispute and proceed under the State Bar's rules of procedure for fee arbitration.

Local bar association rules of procedure for fee arbitration shall provide for the following:

3. Each party shall receive a fair, speedy and impartial hearing and award;

4. The attorney, prior to or at the time of filing an action against the client for the recovery of fees for professional services, shall serve, personally or by first class mail, upon the client the State Bar "Notice of Client's Right to Arbitrate" form;

5. In the event the attorney fails to respond or refuses to participate in the arbitration, the hearing will proceed as scheduled, and a decision will be made on the basis of the evidence;

6. A procedure for preserving the confidentiality afforded by Business and Professions Code section 6202, except that such procedure shall not prohibit the arbitrator(s) or the program from referring a matter to the State Bar's Office of Intake and Legal Advice when possible misconduct by an attorney is disclosed in an arbitration proceeding;

7. An appropriate procedure for the parties to disqualify no less than one arbitrator without cause and to have an unlimited number of challenges for cause;

8. At the time of service of the arbitrator's award on the parties, there shall also be served a notice of the parties' post-arbitration rights in the form approved by the Board of Governors of the State Bar;

9. Except as set forth below, in each three-member panel, one member shall be a lay person and the other two members shall be attorneys and in each sole arbitrator panel, the sole arbitrator shall be an attorney;

10. In the event of a three-member panel, the matter may not proceed with two members in the absence of the third member, but the parties may stipulate to proceed with a sole attorney arbitrator;

11. At the option of the client, one member of a three-person panel or the sole arbitrator shall be an attorney whose area of practice is either civil or criminal law; clients shall be informed of this option at an early stage in the proceedings and provided a means of exercising the option;

12. Authorization for the arbitrators to include an allocation of the filing fee in the arbitration award; and

13. 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, notice of the request must be sent to the client by first class mail at the client's last known address. The programs shall adopt procedures to insure that such notice has been sent to the client.

14. The program shall serve on the attorney(s) designated by the client, no later than the time of service of the notice appointing the arbitration panel, the State Bar approved notice of attorney responsibility form;

15. The award shall be in writing, including a determination of all questions submitted to the panel, the decision of which is necessary in order to determine the controversy, and if a refund is owed, the name(s) of the responsible attorney(s).

16. Each award served on the parties shall contain substantially the following language:

The arbitrators find 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 shall be allocated:

Client: \$_____

Attorney: \$_____

For a net amount of: \$_____

Accordingly, the following award is made:

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

OR

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

OR

(c) Nothing further shall be paid by either attorney or client. An award requiring a payment must also include interest in the amount of ten percent per annum from the 30th day after the date of service of the

award.

17. For a filing fee schedule and refund policy that are reasonably related to the amount in dispute and the cost of providing the service and shall not be in such an amount as to discourage the use of the service.

18. 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.

19. A monetary threshold above which three-member panels will be used must be reasonable. The program may not condition the assignment of a three-member panel on a party’s waiver of the right to non-binding arbitration.

20. 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.

21. Retired judges who are not on active membership status with the State Bar may not serve as fee arbitrators.

22. A client or an attorney who believes that he or she cannot obtain a fair and impartial hearing under the local program's rules of procedure shall be entitled to a hearing through a State Bar panel. Removal to the State Bar shall be governed by Rule 3.506, “Rules of Procedure for the Resolution of Fee Disputes and the Enforcement of Awards by the State Bar of California.”

MINIMUM STANDARDS FOR MEDIATION

When a request for arbitration has been filed with an authorized local bar association or lawyer referral service fee arbitration program, the rules of procedure may include provisions for parties who agree to mediate the dispute prior to proceeding through arbitration. In addition to the Minimum Standards set forth for arbitration of disputes, rules of procedure for those programs which wish to provide for mediation of fee disputes shall provide:

1. For a fair, speedy and impartial mediation procedure suitable to the circumstances;

2. That mediators have completed a minimum of 25 hours of mediation training which includes classroom and practical training;

3. For an appropriate procedure for parties to disqualify no less than one mediator without cause and to have an unlimited number of challenges for cause;

4. For an appropriate procedure for a mediator to disclose any conflict of interest;

5. For a procedure to preserve the confidentiality afforded by Evidence Code section 1152.5;

6. For the use of either lawyer or non-lawyer mediators;

7. That each mediated agreement in which the parties agree that the client shall receive a refund of previously paid fees and/or costs shall include the name of the individual attorney(s) responsible for making the refund;

8. That each mediated agreement shall be in writing and signed by the client and responsible attorney(s) and shall include substantially the following language:

The following agreement is made:

- (a) Client, _____, shall pay attorney, _____: \$ _____
- (b) Attorney, _____, shall refund to client, _____: \$ _____
- (c) Nothing further shall be paid by either attorney or client.

The parties have considered the allocation of the filing fee in making this agreement;

9. That the parties be required to execute an agreement to mediate that substantially conforms with the agreement approved by the State Bar and

10. That, after an agreement has been reached, the program shall provide the parties with a notice of the right to enforce the agreement that substantially conforms with the notice approved by the State Bar.

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:

ATTACHMENT C
Model Rules of Procedure for Fee Arbitrations

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.