



The State Bar *of California*

OPEN SESSION

AGENDA ITEM

JULY 2022

REGULATION AND DISCIPLINE COMMITTEE II.B

DATE: July 21, 2022

TO: Members, Regulation and Discipline Committee

FROM: Isabel Liou, Attorney, Office of Professional Support & Client Protection

SUBJECT: Request for Approval of Proposed Revisions to Long Beach Bar Association's Mandatory Fee Arbitration Rules

EXECUTIVE SUMMARY

Statutorily mandated arbitration of attorney-client fee and cost disputes may be conducted by a local bar association. The rules of procedure promulgated by a local bar association are subject to review by the Board of Trustees. The Long Beach Bar Association (LBBA) submitted revised rules of procedure to the State Bar Mandatory Fee Arbitration (MFA) Program in August 2021 and proposed further revisions in June 2022. The program's staff and presiding arbitrator have reviewed LBBA's revised fee arbitration and new fee mediation rules of procedure and determined that they comport with the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs (minimum standards).¹

This item requests the Regulation and Discipline Committee's (RAD) approval of the LBBA's fee arbitration and mediation rules of procedure as provided in Attachments A and B, respectively.

¹ Both the minimum standards and the State Bar of California Model Rules of Procedure for Fee Arbitrations facilitate a local bar association's establishment of a fee arbitration program consistent with the statutory goal of ensuring that a client receives a "fair, impartial, and speedy hearing and award." (See Bus. & Prof. Code, § 6200(d).) Rules of procedure promulgated by a local bar association are subject to approval by the Board or a designated committee to help accomplish this goal.

BACKGROUND

Under Business and Professions Code section 6200(d), bar associations are authorized to sponsor MFA programs. Local bar programs' 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. RAD's approval of a bar association's rules of procedure gives that program jurisdiction to arbitrate fee disputes submitted under the auspices of the MFA program (minimum standards, para. 1). Under Business and Professions Code section 6200(a), bar associations may also offer voluntary² fee mediation in addition to MFA.

The LBBA MFA rules of procedure were last approved by the Board in June 2006. The LBBA's proposed rule revisions consist primarily of updating its rules to adopt language from the State Bar Model Rules of Procedure for Fee Arbitrations³ (MFA model rules) but also include substantive revisions. In addition, the LBBA proposes to adopt new fee mediation rules largely based on the State Bar's Model Rules for Voluntary Fee Mediation⁴ (fee mediation model rules).

DISCUSSION

The LBBA's proposed MFA rule revisions adopt language from the MFA model rules and implement the Board's preapproved rule language on videoconference hearings and electronic service from its May 2020 meeting.⁵ The LBBA also proposes substantive revisions to its rules, including modifying its filing jurisdiction and filing fee schedule. Last, the LBBA proposes to adopt the fee mediation model rules in order to begin offering fee mediation.

FEE ARBITRATION RULES

Adoption of Model Rule Language

The majority of the LBBA's proposed revisions consist of updating its rules to reflect current MFA model rule language. Bar associations are encouraged, but are not required, to adopt the MFA model rules, which were last approved by the Board in July 2020.

LLBA's substantive rule revisions are discussed below in numerical order.

Rule 11.0, Jurisdiction by the Program

The LBBA proposes to expand its filing jurisdiction to include fee disputes where at least one of the attorneys involved maintains or maintained an office in, or provided substantial services in,

² See Bus. & Prof. Code, § 6200(h).

³ The Model Rules of Procedure for Fee Arbitrations are provided as Attachment C.

⁴ The Model Rules for Voluntary Fee Mediation are provided as Attachment D.

⁵ See Board open session agenda item number [121](#) from the May 14, 2020, Board meeting.

Los Angeles County. The LBBA's current filing jurisdiction is limited to fee disputes involving attorneys who are LBBA members, disputes where at least one of the attorneys involved maintains an office in the city of Long Beach, disputes arising from an underlying case filed in the South District of the Los Angeles County Superior Court, or disputes arising from legal services performed in the city of Long Beach. This proposed revision would provide an additional fee arbitration option for individuals who have a fee dispute involving an attorney with ties to Los Angeles County. In addition, the LBBA offers the possibility of an arbitration filing fee waiver and will accept matters involving incarcerated clients. While there are six other local bar fee arbitration programs in Los Angeles County, not all of them offer the possibility of an arbitration filing fee waiver or accept fee disputes involving incarcerated clients.

Rule 15.3, Filing Fee Schedule

The LBBA proposes to simplify its filing fee schedule while maintaining a maximum filing fee capped at \$5,000. The proposed schedule would charge a \$50 flat fee for disputes less than \$1,500, or a filing fee of either 4 or 5 percent for disputes equal to or greater than \$1,500. Filing fees of this amount and percentage are consistent with those charged by other Southern California local bar programs and the State Bar MFA program, the latter of which charges a filing fee of 5 percent of the disputed amount with the maximum filing fee capped at \$5,000.

LBBA's current and proposed filing fee schedules are compared below.

Current Filing Fee Schedule: Rule 15.2	Proposed Filing Fee Schedule: Rule 15.3
\$40.00 plus 3 percent of the amount in dispute for disputes up to \$9,999.99;	\$50.00 for disputes equal to or less than \$1,499.99;
\$40.00 plus 4 percent of the amount in dispute for disputes between \$10,000.00 and \$19,999.99; or	4 percent of the amount in dispute for disputes between \$1,500.00 and \$14,999.99; or
\$40.00 plus 5 percent of the amount in dispute for disputes of \$20,000.00 or more.	5 percent of the amount in dispute for disputes of \$15,000.00 or more.
Maximum filing fee shall not exceed \$5,000.00.	Maximum filing fee shall not exceed \$5,000.00.

Rule 19.2, Withdrawal from Arbitration

The LBBA's proposed revision to this rule clarifies when a request for fee arbitration may be dismissed.

Rule 21.1, Appointment of Panel

The LBBA proposes to increase the disputed amount threshold when a panel of three arbitrators will be appointed to hear a case from \$10,000 or more to greater than \$15,000 in dispute. Cases involving disputed amounts of \$15,000 or less would be heard by one attorney arbitrator, while three arbitrator panels are composed of two attorney arbitrators and one nonattorney arbitrator. This \$15,000 threshold is used by several other Los Angeles County bar association programs and is also the three-panel threshold for the State Bar MFA program.

Rule 40.9, Time to Retrieve Exhibits and Documents

For this rule, the LBBA seeks to increase the time a party has to retrieve their exhibits or other documents submitted to the hearing panel from 15 to 60 days.

FEE MEDIATION RULES

In addition to updating its MFA rules, the LBBA also seeks to begin offering fee mediation to complement its existing fee arbitration program. To that end, the LBBA has adopted the fee mediation model rules with minor customizations. The fee mediation model rules were last approved by the Board in November 2014. If LBBA's proposed fee mediation rules are approved, the LBBA will join the Los Angeles County Bar Association and the Santa Monica Bar Association in offering both fee arbitration and fee mediation in Los Angeles County.

State Bar staff and Presiding Arbitrator, Clark S. Stone, have reviewed the LBBA's revised MFA rules and proposed new fee mediation rules and have determined that both sets of rules comply with Business and Professions Code sections 6200 et seq. and the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs. Therefore, it is recommended that RAD approve the LBBA's MFA and fee mediation rules as presented in Attachments A and B.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

Updates are being made to this section of the agenda item template to reflect the 2022–2027 Strategic Plan.

RECOMMENDATIONS

Should the Regulation and Discipline Committee concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Regulation and Discipline Committee approves the Long Beach Bar Association’s revised Rules of Procedure for Fee Arbitrations, in the form presented 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 Arbitration Programs; and it is

FURTHER RESOLVED, that the Regulation and Discipline Committee approves the Long Beach Bar Association’s Rules for Voluntary Fee Mediation, in the form presented as Attachment B, as being in compliance with Business and Professions Code sections 6200–6206 and the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs.

ATTACHMENTS LIST

- A.** Long Beach Bar Association Mandatory Fee Arbitration Committee Rules of Procedure for Fee Arbitrations
- B.** Long Beach Bar Association Voluntary Mediation of Fee Disputes Program Rules for Voluntary Fee Mediation
- C.** Model Rules of Procedure for Fee Arbitrations
- D.** Model Rules for Voluntary Fee Mediation
- E.** Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs

**LONG BEACH BAR ASSOCIATION
MANDATORY FEE ARBITRATION COMMITTEE
Rules of Procedure for Fee Arbitrations**

**ARTICLE I
DEFINITIONS**

- 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 Long Beach Bar Association's ["LBBA"] Mandatory Fee Arbitration Program.
- 1.3 ASSIGNEE: A person to whom a claim, right or property is transferred.
- 1.4 AWARD: The decision of the arbitrator(s) in an arbitration conducted by the LBBA Mandatory Fee Arbitration Program.
- 1.5 CLIENT: A person who directly, or through an authorized representative consults, retains or secures legal services or advice from an attorney in that attorney's professional capacity.
- 1.6 COMMITTEE CHAIR: The person on the LBBA Mandatory Fee Arbitration Committee responsible for supervising the Program's arbitrators and for ruling on matters as set forth in these rules.
- 1.7 DECLARATION: A document that is based on personal knowledge and signed under penalty of perjury and otherwise in compliance with the requirements of Code of Civil Procedure section 2015.5.
- 1.8 FILE: Records, documents and other papers in a specific mandatory fee arbitration case.
- 1.9 HEARING PANEL: ~~Three~~ One or three arbitrators assigned to hear the fee dispute and to issue the award.
- 1.10 NON-LAWYER ARBITRATOR: A non-lawyer 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 of 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 non-lawyer arbitrators.
- 1.11 ~~10~~ PANEL CHAIR: Refers to either the sole arbitrator or the Chairperson of a three member hearing panel assigned to hear and rule in a mandatory fee arbitration. The Panel Chair is responsible for ruling on matters pertaining to the individual case assigned to the hearing panel as set forth in these rules.

- 1.12+ PARTY: A person who initiates or is named in an arbitration proceeding under these rules, including an attorney, a client or other person who may be liable for payment of, or entitled to a refund of, attorney's fees, costs, or both.
- 1.123 PROGRAM: Unless indicated otherwise, reference to the Program means the LBBA Mandatory Fee Arbitration Program.
- 1.134 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.
- 1.145 TRIAL AFTER NON-BINDING ARBITRATION: Either an action in a civil court having jurisdiction over the amount in controversy or a private arbitration pursuant to the parties' pre-existing written private 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, but 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 Code sections 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

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

RULE 4.0 Disputes Covered

- 4.1 Disputes concerning fees, costs, or both charged for professional services by an attorney are subject to arbitration under these rules, except for:
- a) Disputes 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;
 - b) Claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct;
 - c) 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;
 - d) 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;
 - e) Disputes where the claim has been assigned by the client;
 - f) Claims between attorneys for division of fees.

RULE 5.0 Binding Arbitration

- 5.1 Mandatory Fee Arbitration under these rules is not binding unless all parties agree in writing after the fee dispute arises. Such agreement shall be made prior to the taking of evidence at the hearing. If any party has not agreed in writing to binding arbitration, the arbitration is non-binding and any party may reject the award and request a trial after non-binding arbitration pursuant to Business and Professions Code section 6204 within 30 days after the award has been served. If a trial after non-binding arbitration is not requested, the award automatically becomes binding 30 days after it is served. If any party willfully fails to appear at the hearing as provided for under these rules, that party shall not be entitled to a trial after non-binding arbitration. The decision as to whether the nonappearance was willful is made by the trial court or private arbitrator in the trial after non-binding arbitration. The party who failed to appear at the hearing shall have the burden of proving that the failure to appear was not willful.
- 5.2 If all parties agree in writing, after the fee dispute arises, that the arbitration is binding, the award is final and there can be no subsequent trial in a civil court or private arbitration on the issues of fees and/or 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 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 or her 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 10 days of that party's receipt of the Reply.
- 6.4 Except as provided above, if the parties have already agreed to binding arbitration after the dispute arose, the binding election may be changed to non-binding arbitration only by written agreement signed by all parties before the taking of evidence, and sent to the Program.

RULE 7.0 Right to Counsel

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

RULE 8.0 Waiver of Right to Request or Maintain Arbitration

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

- a) answers a complaint in a civil action or files another equivalent response to the civil action before filing a request for mandatory fee arbitration, after the required form entitled "Notice of Client's Right to Arbitration" was sent to the client pursuant to Business and Professions Code section 6201(a); or
- b) commences an action or files any pleading seeking judicial resolution of a fee or cost dispute or seeking affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct; or
- c) fails to deliver to the Program a Request for Arbitration of a Fee Dispute ["Request"] 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(a). Should the fee dispute be transferred to a different fee arbitration program after the Request is filed, the original data postmarked or receipt of the arbitration request will be preserved for purposes of determining whether jurisdiction exists 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 fee arbitration program approved by the State Bar. 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. 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 reject any Request when it is clear from the face of the Request that the provisions of Business and Professions Code section 6200 have not been met or the matter is time-barred under Business and 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. For good cause, the Committee Chair may assign the matter to ~~an arbitrator~~ or 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, 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 Committee Chair is final.
- 10.5 If the parties consent in writing to submit to such jurisdiction, the Program may assume jurisdiction over a matter even if the Program does not have original jurisdiction.

RULE 11.0 Jurisdiction of the Program

~~The Program shall have jurisdiction over a fee dispute:~~

~~11.1 — if the attorney is a member of the Long Beach Bar Association;~~

~~11.2 — if at least one of the attorneys involved maintains an office within the city of Long Beach;~~

~~11.3 if the dispute arises out of an underlying case filed in the South District of the Los Angeles County Superior Court, or~~

~~11.4 if the dispute arises from the rendition of legal services performed within the City of Long Beach~~

11.1 The Program shall have jurisdiction over a fee dispute:

- a) if at least one of the attorneys involved presently maintains an office in the County of Los Angeles,
- b) if at least one of the attorneys involved maintained an office in the County of Los Angeles at the time services were performed, or:
- c) if a substantial amount of services were performed in the County of Los Angeles.

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 shall be preserved for purposes of determining whether jurisdiction exists.

RULE 12.0 Removal to the State Bar of California

12.1 If a Request has been filed with the Program and a party to the arbitration seeks removal to the State Bar Program,

- a) the party seeking removal from the Program must submit to the State Bar a declaration signed under penalty of perjury asserting the factual basis for the request for 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 shall serve the request for removal and supporting declaration on the other parties and the Program. Any written responses 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 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 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 arbitration or the Program itself would be prejudiced by removal and such prejudice outweighs the allegations by the party seeking removal that a fair hearing through the Program cannot be obtained; or
 - b) the conduct of the party seeking removal during the course of the arbitration proceedings before the 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 Program.

RULE 13.0 Effect of Failure to Adhere to Time Requirements

The Program shall not lose jurisdiction, no arbitrator shall be dismissed, and no award shall be invalidated or modified in any way, solely because of the Program's ~~or arbitrator(s)'~~ 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 Arbitration is initiated by filing a completed and signed Request with the Program and paying the appropriate filing fee established by the Program. Service of the Request on any other party with whom there is a fee dispute shall be made by the Program.
- 14.23 At the time of service of a Request on an attorney, the Program shall serve with it a copy of the approved "Notice of Attorney Responsibility" form.
- 14.34 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 ~~arbitrator(s)~~ Panel Chair if a notice of assignment of the ~~arbitrator(s)~~ hearing panel has been served on the parties.
- 14.45 ~~The Request (unless submitted by the attorney party) must be signed by the client. The client may include as a party to the arbitration any person who is not the client of attorney~~

~~but may be liable for, or entitled to a refund of, the attorney's fees or costs or both so long as that person also signs the Request. If arbitration is requested by any other person who may be liable for, or entitled to a refund of, attorney's fees, costs, or both, that person must also sign the Request. The Request 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, when an arbitration with a non-client is initiated, the Program will give notice of the Request to the client by first class mail at the client's last known address.~~

RULE 15.0 Filing Fee

15.1 The party requesting fee arbitration shall pay a filing fee with the request form. The ~~arbitrator(s)~~ hearing panel may allocate the entire amount of the filing fee, or a portion thereof, to one or both of the parties. Such allocation shall be stated in the award.

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

~~15.23~~ The filing fee shall be:

- ~~a) For amounts in dispute up to \$9,999.99 – \$40.00 plus 3% of the amount in dispute;~~
- ~~b) For amounts in dispute between \$10,000.00 and \$19,999.99 – \$40.00 plus 4% of the entire amount in dispute;~~
- ~~c) For amounts in dispute of \$20,000.00 or more – \$40.00 plus 5% of the amount in dispute.~~
- a) \$50 filing fee for any amount in dispute equal to or less than \$1,499.99;
- b) For amounts in dispute between \$1,500.00 and \$14,999.99 – 4% of the entire amount in dispute;
- c) For amounts in dispute of \$15,000 or more – 5% of the entire amount in dispute.

The maximum filing fee shall not exceed \$5,000.00.

RULE 16.0 Request for Filing Fee Waiver

- 16.1 A party seeking fee arbitration may file with the Program an application for a filing fee waiver on the approved form. A person seeking waiver of the filing fee, who may be liable for or entitled to a refund of attorneys fees, may be required to submit supporting documents regarding his or her own financial status to the Program to support the application for a filing fee waiver.
- 16.2 For good cause shown, the Committee Chair may grant or deny the filing fee waiver or reduce the filing fee. The decision of the Committee Chair shall be final.
- 16.3 The financial statement filed in support of a request for a filing fee waiver shall not be disclosed by the Program to any other party.

RULE 17.0 Response to Request for Arbitration

- 17.1 The respondent party's reply to a Request, together with any response concerning the issue of an attorney's responsibility for any award that refunds fees or costs, or both, to a party, 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 initiates a mandatory fee arbitration, and there is no written agreement between the parties that fee disputes be submitted to mandatory 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 the Program under rule 12.0 of an arbitration in which the client has already requested arbitration or has consented to an attorney's request for arbitration. 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 shall file one original and ~~three~~ an appropriate 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 to the hearing panel arbitrator(s) assigned to hear the arbitration matter, ~~and to the Committee Chair~~. The original Request shall be maintained by the Program administrator.

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

- 19.1 Upon confirmation by the parties that a fee dispute has been settled in a writing signed by all parties, the matter shall be dismissed without prejudice by the Program if no hearing

panel arbitrator(s) has/~~have~~ been assigned, or by the arbitrator(s) Panel Chair if a notice of assignment of the hearing panel arbitrator(s) has been served on the parties.

- 19.2 If the parties agreed in writing to binding arbitration, and the matter has not been settled, no party may individually withdraw from the mandatory fee arbitration unless all parties agree in writing to the mandatory fee arbitration being ~~dismissed~~ withdrawn. If the parties have not agreed to binding arbitration after the dispute has arisen and there is no prior written agreement between the parties requiring them to participate in mandatory fee arbitration, then the party who requested the mandatory fee arbitration may withdraw the Request and the matter shall be dismissed.
- 19.3 If the matter is settled or dismissed before the Request is served by the Program, 90% of the filing fee shall be refunded to the party who paid it. If the matter is settled or dismissed after the Request has been served by the Program but before the assignment of the hearing panel is served~~arbitrator(s)~~, 75% of the filing fee shall be refunded to the party who paid it. If written notice of the settlement or dismissal is received by the Program at least 10 days prior to the date of the first scheduled hearing, 50% of the filing fee shall be refunded to the party who paid it. If written notice of the settlement or dismissal is received by the Program less than 10 days before the first scheduled hearing, 25% of the filing fee shall be refunded to the party who paid it. Thereafter If written notice of the settlement or dismissal is received by the Program after the date of the first scheduled hearing, there shall be no refund of any filing fee shall be paid.
- 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 mandatory fee arbitrations be consolidated for hearing. The Program will serve the other parties 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 request to consolidate. The decision 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 ~~an arbitrator or~~ a hearing panel from its roster ~~of fee arbitrators. If the amount in dispute is \$10,000 or more, a hearing panel shall be assigned, consisting of two attorney arbitrators and a third arbitrator who shall be a non-lawyer lay person. An attorney arbitrator shall be designated as Panel Chair. The parties may agree, in writing, to have the matter heard by a single attorney arbitrator rather than by a panel of three. A hearing panel shall consist of one attorney arbitrator if the amount in dispute is \$15,000.00 or less and three arbitrators if the amount in dispute is more than \$15,000.00, one of which shall be a non-lawyer arbitrator. An attorney arbitrator shall be designated as Panel Chair. If the amount in dispute is more than \$15,000.00, 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 hearing panel, one of the attorney arbitrators, whose area of practice is either 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(e) must be submitted by the client at the time the written Request is submitted to the Program.
- 21.3 If a fee dispute involves ~~\$1,000~~\$500.00 or less, the arbitration shall be decided by the Committee Chair or designee ~~without a hearing~~. 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 Request, which will be reflected in a proof of service. After the Program serves the reply to the arbitration request (which will be reflected in the proof of service), the parties will have 30 days to make these submissions. 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 \$500.00, 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. shall be entitled to a hearing. Any party may appear at the hearing either in person or telephonically. The parties shall be informed of this rule at the time of the Program's service of a completed Request.
- 21.4 Any vacancy of an arbitrator, by way of disqualification or inability to serve, may be filled by the Program. In no event shall the arbitration proceed with only two arbitrators.
- 21.5 A retired judge cannot serve as an attorney arbitrator unless they are an active licensee of the State Bar of California.

RULE 22.0 Notice of Assignment of Arbitrator(s)

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 Request is received, or as soon thereafter as reasonably possible. If no reply is received, the notice of appointment of assignment of the hearing panel arbitrator(s) shall 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 Challenges; Disqualification of Arbitrator(s)

Each party may disqualify one arbitrator without cause and shall have unlimited challenges for cause. Any disqualification without cause of an arbitrator shall be ineffective unless made in writing and served on the Program within 15 days of the service of a notice of assignment of arbitrator(s) or substitute arbitrator(s). Arbitrators who believe that they cannot render a fair and impartial decision or that there is an appearance that they cannot render a fair and impartial decision, shall disqualify themselves. If a party challenges an arbitrator for cause, and the arbitrator does not agree, the challenge shall be decided by the Committee Chair.

RULE 24.0 Discharge of Arbitrator or Panel

24.1 The Committee Chair shall have the authority to discharge an arbitrator or hearing 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 the matter pending before any arbitrator, except:

- a) at scheduled hearings; or
- b) in writing with a copy to all other parties, or their respective counsel, if any, and the Program; or
- c) for the sole purpose of scheduling a hearing date or other administrative procedures with notice of same to the other parties; or
- 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 ~~arbitrator or~~ hearing panel and in the absence of any objections by the parties, witnesses may be present during the hearing.
- 26.2 The ~~arbitrator or~~ hearing panel, upon request of the client, shall permit the client to be accompanied by another person and may also permit additional persons to attend. Any such person shall be subject to the confidentiality of the arbitration proceedings.
- 26.3 ~~The arbitration award is public, but the arbitration case file, including the request, reply, and exhibits remain confidential unless disclosure is required by court order. 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 ~~arbitrator(s)~~ Panel Chair, any party may waive personal appearance and submit to the ~~arbitrator(s)~~hearing panel testimony and exhibits by written declaration under penalty of perjury.
- 27.2 Any party unable to attend a hearing may designate a lawyer or non-lawyer representative.
- 27.3 Any party may request to appear by telephone or videoconference~~virtually~~, subject to the advance approval of the Panel Chair~~arbitrator(s)~~.
- 27.4 A request for waiver of appearance or designation of a representative and the submission of testimony by written declaration or request for a telephone~~ie~~ or videoconference ~~appearance~~virtual appearance pursuant to this rule shall be filed with the ~~arbitrator(s)~~hearing panel at least 15 days prior to the first scheduled hearing.

RULE 28.0 Death or Incompetence of a Party

In the event of the 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

- 29.1 No discovery is allowable except as specifically set forth in these rules.
- 29.2 Nothing in these rules deprives a client of the right to inspect and obtain the client's file kept by the attorney. This provision does not apply to a non-client [a person other than a client who may be liable for, or entitled to a refund of, attorney's fees, costs, or both].

RULE 30.0 Subpoenas

- 30.1 The Committee Chair may issue subpoenas and/or subpoena duces tecum at the request of a party. The party requesting the subpoena shall provide a written statement in support of the request for the issuance of the subpoena or subpoenas to the assigned arbitrator or Panel Chair. The arbitrator or Panel Chair shall then decide whether the subpoena(s) should be issued. The requesting party shall be responsible for service of the subpoenas. The party requesting subpoenas shall also be responsible for any witness fees and costs of service of the 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 hearing panel, after the date of service of the "Notice of Assignment of Arbitrators." 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 arbitrator(s)hearing panel, the matter may be continued for good cause shown except that a continuance for 30 days or more must be approved by the Committee Chair.
- 31.2 The arbitrator(s)Panel Chair shall serve written notice of hearing on each party at the address in the "Notice of Assignment of Arbitrator(s)" and the Program within 15 days of their assignment and at least 15 days prior to the hearing date. Appearance by a party at a scheduled hearing shall constitute a waiver by said party of any deficiency with respect to the giving the "Notice of Hearing." Notwithstanding the failure of either party to attend, the hearing shall proceed as scheduled and a decision be 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 arbitrator(s)hearing panel shall require the party who was 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 was absent if the evidence so warrants. ~~If neither party appears and the arbitrator(s) has/have not approved waiver of personal appearance, the arbitrator(s) may terminate the arbitration by making an award that neither party is entitled to any relief.~~ If neither party appears and the Panel Chair has not approved waiver of personal appearance, the hearing panel will issue an award based on the evidence submitted.
- 31.5 If one of the hearing panel members fails to appear, upon written stipulation of the parties, the hearing may proceed with one of the two attorney arbitrators acting as the sole arbitrator. Under no circumstances will the hearing proceed with two arbitrators or with one laynon-attorney arbitrator.
- 31.6 If all parties so stipulate, the arbitrator(s)hearing panel shall decide all matters without a hearing based upon the Request, ~~r~~Reply and any other written materials provided by the parties. All such written materials shall be filed with the arbitrator(s)hearing panel and served on all other parties.

RULE 32.0 Stipulations Encouraged

Agreements between the parties concerning any issues are encouraged. The Program anticipates and expects the voluntary exchange of documents prior to the hearing.

RULE 33.0 Oaths

All testimony may be given under oath or affirmation administered by the arbitrator(s)Panel Chair. All testimony shall be given under oath at the request of any party.

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 35.0 Clarification of Issues and Exchange of Documents

The arbitrator(s)hearing panel may require that the parties clarify the issues, submit additional documentation, and exchange documents in advance of the hearing. The arbitrator(s)hearing panel ~~in their~~in its discretion, may decline to admit into evidence documents that were required to be exchanged in advance of the hearing but were not.

RULE 36.0 Order of Proof

The parties shall present their proof in a manner determined by the ~~arbitrator(s)~~hearing panel.

RULE 37.0 Interpreter

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

RULE 38.0 Transcripts or Recordings

No audio recording, video recording, or transcription of any kind is permissible.

RULE 39.0 Compensation of Arbitrators; Administrative Charges

- 39.1 No arbitrator shall be entitled to compensation for services.
- 39.2 Except for the prescribed filing fee, no charges will be made by the Program, nor by any arbitrator, for administrative or clerical services. A hearing room will be provided by the ~~arbitrator(s)~~hearing panel or by the Program, without charge to the parties.
- 39.3 All parties will bear their own costs, including the cost of interpreters and expert witnesses.

ARTICLE VII AWARD

RULE 40.0 Award

- 40.1 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 hearing panel. The award shall be reviewed by the Committee Chair and then served on the parties forthwith by the Program.
- 40.2 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 ~~arbitrator(s)~~hearing panel and the decision necessary to determine the controversy, including the name of the responsible attorney(s). Arbitrators are encouraged, where appropriate, to include findings of fact in their award. Where appropriate, the award should also include the circumstances bearing on the willfulness of any party's nonappearance at the scheduled hearing.
- 40.3 The award shall include substantially the following language, on a separate but consecutively numbered page,~~as appropriate~~:

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

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

Subtotal: \$ _____

Additionally, the arbitration filing fee of \$ _____ paid by _____ shall be allocated:

Client \$ _____

Attorney \$ _____

For a net amount of: \$ _____

Accordingly, the following award is made:

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

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

OR

b) Attorney, Name , shall pay client, Name : \$ _____

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

OR

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

40.4 The award may include a refund of unearned fees, or cost, or both, previously paid to the attorney. The award may include either pre-award or post-award interest, or both.

40.5 Whenever there is a hearing panel assigned, a majority vote shall be sufficient for all decisions of the arbitrators, including the award. Any dissent from the award shall be in writing and shall be served with the award.

40.6 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 arbitrator(s) shall not award affirmative relief in the form of damages or offset.

- 40.7 The award shall be signed by all arbitrators concurring with it.
- 40.8 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 fee's resulting from the arbitration proceeding.
- 40.9 The arbitrator(s) shall forward the original of the signed award to the Program. The Program shall, ~~after the Committee Chair reviews and approves it,~~ serve a copy of the award by mail on each party together with a Notice of Rights after Arbitration form approved by the State Bar Board of Trustees. No award is final or is to be issued until approved for procedural compliance and as to the form of the award by the Program or such person as the Committee Chair may designate for this purpose. After approval of the award as to its procedural compliance and form, the Program shall serve a copy of the award by mail on each party together with the Notice of Rights after Arbitration form. Any party who has submitted exhibits or documents to the arbitrator(s) hearing panel shall, upon service of the award, make arrangements within ~~1560~~ days to retrieve them. In the event that a party fails to make arrangements within ~~1560~~ days, the exhibits or documents may be destroyed.

RULE 41.0 Correction of Award by the Arbitrator(s)

- 41.1 The arbitrator(s) hearing panel may correct a binding or non-binding award only on the grounds set forth in Code of Civil Procedure section 1286.6(a) [evident miscalculation of figures or evident mistake in the description of a person, thing or property referred to in the award] or ~~Code of Civil Procedure section 1286.6(c) [that the award is imperfect in a matter of form, not affecting the merits of the controversy]~~ under the procedures set forth in Code of Civil Procedure Section 1284. An application for such a correction does not extend the deadline for seeking a trial after a non-binding award arbitration is rendered, and a non-binding award will automatically become binding 30 days after it is served on the parties.
- 41.2 A party requesting correction ~~or amendment~~ 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 10 days after service of the award. Any party to the arbitration may make a written objection to such request. ~~Such request does not toll the time period for filing a civil action to challenge the award. Any correction of the award by the hearing panel must be made within 30 days after service of the award.~~
- 41.3 ~~Any corrected or amended award will be served by the Program. The time for filing a civil action to challenge the award begins from the time of service of the amended or corrected award. 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 40.9.

~~41.4 The arbitrator(s) shall either deny the application or correct the award in writing signed by the arbitrator(s) concurring therein. Any jurisdiction on the part of the arbitrator(s) to amend or supplement an award expires upon entry of judgment.~~

ARTICLE VIII SERVICE; ADDRESS

RULE 42.0 Service

- 42.1 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)(3), 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 mandatory fee arbitration. The client shall keep the Program advised of his or her current address.
- 42.2 Unless otherwise specifically stated in these rules, service on an individual attorney shall be at the latest address shown on the official licensee records of the State Bar.
- 42.3 If either party is represented by counsel, service shall be on the party and on the counsel at the latest address shown on the official licensee records of the State Bar.
- 42.4 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.
- 42.5 Where a facsimile transmission or, e-mail ~~or text~~ 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. ~~together with written proof that it was sent to the other parties.~~
- 42.6 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.
- 42.7 In addition to the methods of service provided for in Rules 42.1-42.3, the parties may consent to electronic service of documents upon each other pursuant to Code of Civil Procedure section 1010.6(a)(1)(A)-(C).
- 42.8 The parties may consent to receive electronic service of documents from the Program in lieu of service by mail by providing to the Program written consent to receive electronic service of documents from the Program at the party's designated electronic address.

ARTICLE IX
REFERRAL OF ATTORNEY TO STATE BAR

RULE 43.0 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.

LONG BEACH BAR ASSOCIATION~~STATE BAR OF CALIFORNIA~~
VOLUNTARY MEDIATION OF FEE DISPUTES PROGRAM
~~MODEL~~ RULES FOR
VOLUNTARY FEE MEDIATION

1. Establishment and Purpose of a Mediation Program

It is the policy of the Board of Governors~~Trustees~~ ("Board") of the State Bar of California~~Long Beach Bar Association~~ ("LBB~~State Bar~~") and the State Bar~~LBB~~A Mandatory Fee Arbitration Committee (~~the~~ "Committee") to promote the consensual resolution of attorney/client fee disputes and to avoid the unnecessary arbitration of these disputes. The Board~~State Bar~~ believes that mediation is a desirable alternative to the fee arbitration program provided by the LBB~~State Bar~~ pursuant to Business and Profession Code Sections 6200 et seq. The State Bar~~Board~~ authorizes the institution of a Voluntary Mediation of Fee Disputes program ("Program") regulated by these Rules for Voluntary Fee Mediation ("Mediation Rules"). The Board hereby delegates to the Chairperson of the LBB~~State Bar~~ Program ("Chairperson") the authority and responsibility to appoint and maintain a panel of qualified mediators in accordance with the Attorney Fee Dispute Arbitration Rules of Procedure ("MFA Rules") and these Rules. Further, the Chairperson shall determine all questions of interpretation of these Rules at any stage of the proceedings.~~recommends to the local bar Mandatory Fee Arbitration programs ("Program") the establishment of a Mediation of Fee Disputes Program governed by these Model Rules for Voluntary Fee Mediation ("Rules").~~

2. Jurisdiction

The mediation program is for consensual mediation of fee disputes. Participation is voluntary. No party to any fee dispute will be required to engage in mediation through this program, and any party may terminate the mediation at any stage.

The Programs shall have jurisdiction to perform mediation ~~administer the mediation program~~ of attorney/client fee disputes under Business and Professions Code §§ 6200 et seq.

3. Appointments and Qualification of Mediators

The Program will appoint a pool of volunteer mediators, both lawyers and non-lawyers. The Program shall establish and publish guidelines for the qualifications of mediators, which shall include the requirement that all mediators have a minimum of 40 hours of mediator training, ~~who meet the qualifications established by the State Bar in Guidelines and Minimum Standards for Operation of Mediation Programs, including a requirement of at least 40 hours of mediator training, and any additional experience that Programs may require.~~

4. The Process

A. Commencement of Mediation

Mediation will commence only if all parties indicate on the Request for Fee Arbitration and Reply forms or otherwise agree in writing that they wish to mediate the fee dispute. If all parties do not wish to mediate, the fee dispute will proceed to arbitration under the ~~MFA Rules~~[Rules of Procedure for Fee Arbitrations](#).

B. Assignment of Mediator

The Program will notify the parties of the assignment of a mediator within fifteen (15) calendar days after receipt of a Request and a Reply indicating the willingness to mediate the fee dispute.

C. Disqualification of Mediator

1. As part of the assignment process, the Program will inform the prospective mediator of the names of the parties and the nature of the fee dispute. A mediator who has any personal bias regarding the parties or the subject matter, or who feels that the perception of bias could exist, will not serve as the mediator in the fee dispute.
2. Any party may challenge the mediator with cause at any time in writing within three (3) calendar days upon discovering a basis for such challenge. The Program will determine the validity of a for-cause challenge where it is disputed. Any party may challenge up to one mediator without cause, in writing to the Program, within five (5) calendar days after receipt of the Notice of Mediator Assignment. The challenging party must provide a copy of the challenge to the other party.
3. Upon the withdrawal or disqualification of the mediator, the Program will reassign the matter and notify the parties of the new mediator within five (5) calendar days.

D. Compensation of Mediator

The filing fee initially paid to the Program for the Request for Arbitration includes all administrative costs for mediation and arbitration. The first four (4) hours of the mediator's services are provided without any fee to the parties. If more than four (4) hours of mediation are required after the initial period is completed, the parties and Mediator may agree to schedule additional or longer sessions. The mediator may charge compensation from the parties for such additional or longer sessions subject to the restrictions in this paragraph. The mediator may charge compensation in an amount of no more than \$150.00 per hour. The parties and the mediator must agree upon the rate in writing before any additional or longer sessions commence. The mediator's fee will be shared by the parties equally or as otherwise agreed by the parties and the mediator in writing. Parties granted a waiver of the Program's filing fee are not entitled to waived or reduced mediator fees after the four hour initial mediation, absent written agreement by the mediator and the other party. If the

parties do not agree to compensate the mediator, and the mediator does not agree to proceed without compensation, the mediation will terminate.

E. Mediation Session Date

Within five (5) calendar days after the time to challenge a mediator other than for cause has expired, the mediator must attempt to arrange a mediation date to take place within forty-five (45) calendar days after the date of the Notice of Mediator Assignment. If the mediation cannot proceed within forty-five (45) calendar days of the assignment, absent approval by the Program, the ability to mediate will be lost and the matter will proceed to arbitration. The mediator must promptly send to the Program and to the parties a Notice of Mediation, which must include the location, date, and time of the mediation session. The Notice must also include a statement that the attorney attending the mediation session is the person responsible to pay or receive any sum, or has the written authority of the firm to do so (the "Responsible Attorney"). Before the commencement of the mediation, the mediator will secure an Agreement to Mediate from the Parties in the form provided by the Program and that substantially complies with the State Bar of California's approved form.

F. Mediation Session Date Continuance

A party may ask the mediator for a continuance of the mediation session date. Any continuance is at the discretion of the mediator. If the other party objects to the continuance request, the requesting party may either attend the mediation session on the date set or inform the mediator and other party that he or she will proceed directly to mandatory fee arbitration without utilizing the Program's mediation service. The mediator must promptly notify the Program in writing of any continuance of the mediation session date or the parties' election to proceed with mandatory fee arbitration.

G. Preparation for the Mediation Session

Not less than five (5) calendar days before the mediation session, and not more than ten (10) calendar days after the date of the Notice of Mediation, the attorney must provide copies of all detailed billing records relating to the fee dispute to the mediator and the other party. The parties may, by agreement, exchange other documents containing information relevant to the fee dispute. Either party may provide both the mediator and the other party with a brief written statement outlining any information not contained in the Request for Arbitration.

H. The Mediation Session

1. Mediation sessions will normally be scheduled for four hours. Additional or longer sessions are permitted as necessary, subject to Section 4 (D) above. Section 4 (D) and these Rules will govern any additional or longer sessions.
2. The parties and their attorney(s) or other advisor(s), if any, and the mediator will attend the mediation sessions. The mediator has the discretion to determine if other persons may attend the mediation sessions.

Nothing in these Rules prevents the mediator from meeting or communicating with the parties or their advisors separately during the mediation sessions. The mediator may conduct part or all of the mediation sessions by telephone.

3. If a party fails to attend the mediation sessions, the mediator may reschedule or terminate the mediation. If the mediation is terminated, the fee dispute will proceed to mandatory fee arbitration. The mediator must report any such action taken to the Program.

5. The Outcome

A. Resolution

If the parties resolve their fee dispute and wish to have the ability to enforce the terms of their agreement under the State Bar Rules, all points of the agreement must be immediately reduced to writing at the mediation session. All parties must sign the agreement and receive a copy. Signing the agreement constitutes consent to the terms of the agreement. The mediator may not draft any release or provide legal advice concerning the agreement. The mediator must promptly notify the Program in writing that the fee dispute is resolved. The Program will close the file and provide the parties with a copy of the State Bar of California's Notice of Your Rights After Mediation. The mediator will file the original of this agreement with the Program.

B. Written Agreement Requirements:

1. Responsible Attorney

The Notice of Mediation must state that the attorney attending the mediation session is the person responsible to pay any sum to, or receive any sum from, the Client and has the authority of the law firm (if any) to do so. If the parties wish to have the ability to enforce the agreement under the State Bar Rules, the agreement must include the name of the individual attorney(s) responsible for making the refund, even if a law firm will make the refund.

2. Required Language

For any settlement agreement reached during a mediation session to be enforced under Business & Professions Code §§ 6200, et seq., the agreement must be in writing, signed by the Clients and Responsible Attorney(s), and substantially must include the following:

The following agreement is made:

(1) The parties agree that the arbitration/mediation filing fee of \$ _____ is apportioned as follows:

[Client] [Non-Client] pays \$ _____

and

Attorney pays \$_____.

(2) Select one:

The parties agree that [Client] [Non-Client] [Attorney] _____
will pay/refund \$_____ to [Client] [Non-Client] [Attorney] _____

who will accept such payment in full settlement of the issues as noted above.

(If payment is to be made by a law firm, the agreement must name an individual attorney who will have primary responsibility for making the payment.)

or

_____ Nothing further will be paid by either attorney or client:

(3) If a lawsuit is pending,

(A) ____ Judgment may be entered immediately based on this agreement

or

(B) ____ Judgment may be entered if there is a breach of any terms.

(4) Complete, final and binding agreement:

THIS AGREEMENT IS BINDING AND ENFORCEABLE AND, IF NECESSARY FOR ITS ENFORCEMENT, IS ADMISSIBLE IN EVIDENCE OR OTHERWISE SUBJECT TO DISCLOSURE.

The parties agree that they have reached a full and final settlement of all disputes between these parties regarding fees or costs. This Agreement is binding and contains the material terms of the agreement between the parties and, if necessary for enforcement, will be exempt from confidentiality. For purposes of enforcement a copy of this agreement can be used with the same force and effect as the original. If a lawsuit is pending, this agreement may be enforced under Code of Civil Procedure § 664.6. To the extent required to enforce this agreement, pursuant to Evidence Code § 1123(a), the parties agree that this Settlement Agreement is exempt from the confidentiality provisions of Evidence Code § 1119 and is admissible in evidence to enforce the settlement.

C. No Resolution

If the parties cannot resolve the dispute through mediation, the mediator must notify the Program in writing within five (5) calendar days, and the fee dispute will proceed to mandatory fee arbitration under the Rules of Arbitration. The mediator may not serve as the arbitrator.

6. Confidentiality

- A. All communications, negotiations, and discussions during the mediation process are confidential except for the purposes of enforcing any written agreement reached

through the mediation, in which case, the waiver provisions of paragraph 5 (B)(4) apply.

- B. The mediation session(s) and any documents prepared for or during mediation are confidential, under California Evidence Code §§ 1115-1128, except the agreement itself may be admitted to enforce it as provided in paragraph 5(B)(4).
- C. The mediator, Program staff and Committee members are deemed ineligible to testify in any civil judicial or quasi-judicial proceeding, including arbitration, as to any statements made at or in connection with the mediation.

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; Sept. 19, 2019; July 16, 2020.)

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 NONLAWYER 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 nonbinding 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 nonbinding 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 they maintain 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 Nonbinding 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 nonbinding. Following service of a nonbinding arbitration award, either party may request a trial pursuant to Business and Professions Code section 6204 within 30 days after the nonbinding 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 nonappearance 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 nonbinding 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 nonbinding.
- 6.2 A party who has requested binding arbitration may withdraw that request and request a change to nonbinding 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 10 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 nonbinding 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 and Professions Code section 6200 have not been met or the matter is time barred under Business and 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 they determine 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 they 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 (“nonclient”), or (ii) the attorney claiming entitlement to fees against a nonclient. A fee arbitration between an attorney and a nonclient 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 nonclient 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 nonclient 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 their 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 their own financial status to the program to support the client's application for a filing fee waiver. If the nonclient party replies to the program that they no longer have 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 nonclient 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 nonclient, 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 nonlawyer. 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 they are 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 they cannot render a fair and impartial decision or who believes that there is an appearance that they cannot render a fair and impartial decision, shall disqualify themselves or shall accede to a party's challenge for cause. If an arbitrator does not agree to be disqualified, the challenge shall be decided by the Committee Chair.

RULE 24.0 Discharge of Arbitrator or Panel.

The Committee Chair shall have the authority to discharge an arbitrator or panel of arbitrators from further proceedings on a matter whenever the Committee Chair, in their 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 nonlawyer representative.
- 27.3** Any party unable to attend a hearing may request to appear by telephone or videoconference, 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 or

videoconference 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** An arbitrator has the discretion to require compensation for a hearing that extends beyond four hours. The parties must agree in writing prior to the taking of evidence that they will compensate the arbitrator unless the arbitrator waives compensation. If this agreement is not timely entered into by the parties, then the arbitrator is not permitted to seek compensation for time beyond four hours. If agreed to 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. Regardless of whether there is or is not an agreement for compensation, the arbitrator retains the authority to control the total length of the proceedings in order to conduct a fair and thorough hearing.
- 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 nonbinding. 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 nonbinding arbitration, the award should also include the circumstances bearing on the willfulness of any party's nonappearance at the hearing.

39.3 The award shall include substantially the following language:

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

\$ _____

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

Subtotal \$ _____

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

Client: \$ _____

Attorney: \$ _____

For a net amount of: \$ _____

Accordingly, the following award is made:

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

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

OR

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

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

OR

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

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

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

39.6 Evidence relating to claims of malpractice or professional misconduct, whether or not the client was actually harmed, shall be admissible, but only to the extent that those claims bear upon the fees and/or costs to which the attorney is entitled. The panel shall

not award affirmative relief in the form of damages or offset or otherwise, for injuries underlying any such claim.

- 39.7** The award shall be signed by all arbitrators concurring with it.
- 39.8** The award may include an allocation of the filing fee; however, it shall not include an award for any other costs of the arbitration, including attorneys' fees resulting from the arbitration proceeding notwithstanding any contract between the parties providing for such an award of costs or attorney's fees.
- 39.9** The Hearing Panel shall deliver the original of the signed award to the Program., which shall serve a copy of the award by mail on each party together with a Notice of Your Rights After Arbitration form approved by the State Bar Board of Trustees. 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 nonbinding award is rendered, and a nonbinding 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 10 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 their 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 licensee 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 licensee 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 their 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.

**STATE BAR OF CALIFORNIA
VOLUNTARY MEDIATION OF FEE DISPUTES PROGRAM
MODEL RULES FOR
VOLUNTARY FEE MEDIATION**

1. Establishment and Purpose of a Mediation Program

It is the policy of the Board of Trustees of the State Bar of California ("State Bar") and the State Bar Mandatory Fee Arbitration Committee (the "Committee") to promote the consensual resolution of attorney/client fee disputes and to avoid the unnecessary arbitration of these disputes. The State Bar believes that mediation is a desirable alternative to the fee arbitration program provided by the State Bar pursuant to Business and Profession Code sections 6200 et seq. The State Bar recommends to the local bar Mandatory Fee Arbitration programs ("Program") the establishment of a Mediation of Fee Disputes Program governed by these Model Rules for Voluntary Fee Mediation ("Rules").

2. Jurisdiction

The mediation program is for consensual mediation of fee disputes. Participation is voluntary. No party to any fee dispute will be required to engage in mediation through this program, and any party may terminate the mediation at any stage.

The Programs administer the mediation program of attorney/client fee disputes under Business and Professions Code §§ 6200 et seq.

3. Appointments and Qualification of Mediators

The Program will appoint a pool of volunteer Mediators, both lawyers and non-lawyers, who meet the qualifications established by the State Bar in Guidelines and Minimum Standards for Operation of Mediation Programs, including a requirement of at least 40 hours of mediator training, and any additional experience that Programs may require.

4. The Process

A. Commencement of Mediation

Mediation will commence only if all parties indicate on the Request for Fee Arbitration and Reply forms or otherwise agree in writing that they wish to mediate the fee dispute. If all parties do not wish to mediate, the fee dispute will proceed to arbitration under the Rules of Procedure for Fee Arbitrations.

B. Assignment of Mediator

The Program will notify the parties of the assignment of a Mediator within fifteen (15) calendar days after receipt of a Request and a Reply indicating the willingness to mediate the fee dispute.

C. Disqualification of Mediator

1. As part of the assignment process, the Program will inform the prospective Mediator of the names of the parties and the nature of the fee dispute. A Mediator who has any personal bias regarding the parties or the subject matter, or who feels that the perception of bias could exist, will not serve as the Mediator in the fee dispute.
2. Any party may challenge the Mediator with cause at any time in writing within three (3) calendar days upon discovering a basis for such challenge. The Program will determine the validity of a for-cause challenge where it is disputed. Any party may challenge up to one Mediator without cause, in writing to the Program, within five (5) calendar days after receipt of the notice of Mediator Assignment. The challenging party must provide a copy of the challenge to the other party.
3. Upon the withdrawal or disqualification of the Mediator, the Program will reassign the matter and notify the parties of the new Mediator within five (5) calendar days.

D. Compensation of Mediator

The filing fee initially paid to the Program for the Request for Arbitration includes all administrative costs for mediation and arbitration. The first four (4) hours of the Mediator's services are provided without any fee to the parties. If more than four (4) hours of mediation are required after the initial period is completed, the parties and Mediator may agree to schedule additional or longer sessions. The Mediator may charge compensation from the parties for such additional or longer sessions subject to the restrictions in this paragraph. The Mediator may charge compensation in an amount of no more than \$150.00 per hour. The parties and the Mediator must agree upon the rate in writing before any additional or longer sessions commence. The Mediator's fee will be shared by the parties equally or as otherwise agreed by the parties and the Mediator in writing. Parties granted a waiver of the Program's filing fee are not entitled to waived or reduced Mediator fees after the four hour initial mediation, absent written agreement by the Mediator and the other party. If the parties do not agree to compensate the Mediator, and the Mediator does not agree to proceed without compensation, the Mediation will terminate.

E. Mediation Session Date

Within five (5) calendar days after the time to challenge a Mediator other than for cause has expired, the Mediator must attempt to arrange a mediation date to take place within forty-five (45) calendar days after the date of the notice of Mediator Assignment. If the Mediation cannot proceed within forty-five (45) calendar days of the assignment, absent approval by the Program, the ability to mediate will be lost and the matter will proceed to arbitration. The Mediator must promptly send to the Program and to the parties a Notice of Mediation, which must include the location, date, and time of the mediation session. The Notice must also include a statement that the attorney attending the mediation session is the person responsible to pay or

receive any sum, or has the written authority of the firm to do so (the “Responsible Attorney”). Before the commencement of the Mediation, the Mediator will secure an Agreement to Mediate from the Parties in the form provided by the Program and that substantially complies with the State Bar of California’s approved form.

F. Mediation Session Date Continuance

A party may ask the Mediator for a continuance of the mediation session date. Any continuance is at the discretion of the Mediator. If the other party objects to the continuance request, the requesting party may either attend the mediation session on the date set or inform the Mediator and other party that he or she will proceed directly to mandatory fee arbitration without utilizing the Program’s mediation service. The Mediator must promptly notify the Program in writing of any continuance of the mediation session date or the parties’ election to proceed with mandatory fee arbitration.

G. Preparation for the Mediation Session

Not less than five (5) calendar days before the mediation session, and not more than ten (10) calendar days after the date of the Notice of Mediation, the attorney must provide copies of all detailed billing records relating to the fee dispute to the Mediator and the other party. The parties may, by agreement, exchange other documents containing information relevant to the fee dispute. Either party may provide both the Mediator and the other party with a brief written statement outlining any information not contained in the Request for Arbitration.

H. The Mediation Session

1. Mediation sessions will normally be scheduled for four hours. Additional or longer sessions are permitted as necessary, subject to Section 4 (D) above. Section 4 (D) and these Rules will govern any additional or longer sessions.
2. The parties and their attorney(s) or other advisor(s), if any, and the Mediator will attend the mediation sessions. The Mediator has the discretion to determine if other persons may attend the mediation sessions.

Nothing in these Rules prevents the Mediator from meeting or communicating with the parties or their advisors separately during the mediation sessions. The Mediator may conduct part or all of the mediation sessions by telephone.

3. If a party fails to attend the mediation sessions, the Mediator may reschedule or terminate the mediation. If the mediation is terminated, the fee dispute will proceed to mandatory fee arbitration. The Mediator must report any such action taken to the Program.

5. The Outcome

A. Resolution

If the parties resolve their fee dispute and wish to have the ability to enforce the terms of their agreement under the State Bar Rules, all points of the agreement must be immediately reduced to writing at the mediation session. All parties must sign the agreement and receive a copy. Signing the agreement constitutes consent to the terms of the agreement. The Mediator may not draft any release or provide legal advice concerning the agreement. The Mediator must promptly notify the Program in writing that the fee dispute is resolved. The Program will close the file and provide the parties with a copy of the State Bar of California's Notice of Your Rights After Mediation. The Mediator will file the original of this agreement with the Program.

B. Written Agreement Requirements:

1. Responsible Attorney

The Notice of Mediation must state that the attorney attending the mediation session is the person responsible to pay any sum to, or receive any sum from, the Client and has the authority of the law firm (if any) to do so. If the parties wish to have the ability to enforce the agreement under the State Bar Rules, the agreement must include the name of the individual attorney(s) responsible for making the refund, even if a law firm will make the refund.

2. Required Language

For any settlement agreement reached during a mediation session to be enforced under Business & Professions Code §§ 6200, et seq., the agreement must be in writing, signed by the Clients and Responsible Attorney(s), and substantially must include the following:

The following agreement is made:

(1) The parties agree that the arbitration/mediation filing fee of \$ _____ is apportioned as follows:

[Client] [Non-Client] pays \$ _____

and

Attorney pays \$ _____.

(2) Select one:

The parties agree that [Client] [Non-Client] [Attorney] _____
will pay/refund \$ _____ to [Client] [Non-Client] [Attorney] _____

who will accept such payment in full settlement of the issues as noted above.

(If payment is to be made by a law firm, the agreement must name an individual attorney who will have primary responsibility for making the payment.)

or

_____ Nothing further will be paid by either attorney or client:

(3) If a lawsuit is pending,

(A) ____ Judgment may be entered immediately based on this agreement

Or

(B) ____ Judgment may be entered if there is a breach of any terms.

(4) Complete, final and binding agreement:

THIS AGREEMENT IS BINDING AND ENFORCEABLE AND, IF NECESSARY FOR ITS ENFORCEMENT, IS ADMISSIBLE IN EVIDENCE OR OTHERWISE SUBJECT TO DISCLOSURE. The parties agree that they have reached a full and final settlement of all disputes between these parties regarding fees or costs. This Agreement is binding and contains the material terms of the agreement between the parties and, if necessary for enforcement, will be exempt from confidentiality. For purposes of enforcement a copy of this agreement can be used with the same force and effect as the original. If a lawsuit is pending, this agreement may be enforced under Code of Civil Procedure § 664.6. To the extent required to enforce this agreement, pursuant to Evidence Code § 1123(a), the parties agree that this Settlement Agreement is exempt from the confidentiality provisions of Evidence Code § 1119 and is admissible in evidence to enforce the settlement.

C. No Resolution

If the parties cannot resolve the dispute through mediation, the Mediator must notify the Program in writing within five (5) calendar days, and the fee dispute will proceed to mandatory fee arbitration under the Rules of Arbitration. The Mediator may not serve as the arbitrator.

6. Confidentiality

- A. All communications, negotiations, and discussions during the mediation process are confidential except for the purposes of enforcing any written agreement reached through the mediation, in which case, the waiver provisions of paragraph 5 (B)(4) apply.
- B. The mediation session(s) and any documents prepared for or during mediation are confidential, under California Evidence Code §§ 1115-1128, except the agreement itself may be admitted to enforce it as provided in paragraph 5(B)(4).

- C. The Mediator, Program staff and Committee members are deemed ineligible to testify in any civil judicial or quasi-judicial proceeding, including arbitration, as to any statements made at or in connection with the mediation.

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; amended May 3, 2019.)

1. If the current rules of procedure of a local bar association or a lawyer referral service are approved by the Board of Trustees 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 Intake department of the State Bar's Office of Chief Trial Counsel 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 Trustees 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 nonclient. A fee arbitration between an attorney and a nonclient 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 nonclient 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 nonclient 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 ensure 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 nonbinding 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 active licensees with the State Bar may not serve as fee arbitrators.

22. A client or an attorney who believes that they 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 sections 703.5 and 1115 through 1129;

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. A mediated agreement 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 mediated agreement.

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.