



# The State Bar of California

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## **OPEN SESSION AGENDA ITEM 50-9 NOVEMBER 2023**

**DATE:** November 16, 2023

**TO:** Members, Board of Trustees  
Sitting as the Regulation and Discipline Committee

**FROM:** Melanie J. Lawrence, Program Director, Office of Professional Support & Client Protection  
Isabel Liou, Attorney, Office of Professional Support & Client Protection

**SUBJECT:** Proposed Amendments to Rules Governing Mandatory Fee Arbitration Program (Title 3, Division 4, Chapter 2): Return from Public Comment and Request for Approval

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### **EXECUTIVE SUMMARY**

The State Bar Mandatory Fee Arbitration (MFA) program seeks to update the rules of procedure that govern fee arbitration and the enforcement of fee arbitration awards. MFA program staff and three subject matter experts reviewed the current rules and have proposed amendments to streamline the program's day-to-day operations and new rules to govern the appointment of the program's fee arbitrators and subject matter experts.

This item requests adoption of amendments to the MFA rules following a 45-day public comment period. In addition, this item requests that the new rules on arbitrator appointments be adopted retroactively to the Board's November 18, 2022, meeting so that the MFA program's current presiding arbitrator, assistant presiding arbitrators, and entire roster of eligible fee arbitrators' terms of service can continue seamlessly after the current December 31, 2023, appointment expiration date.

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### **BACKGROUND**

On May 18, 2023, the [Board of Trustees authorized](#) the State Bar to issue proposed amendments to the MFA rules for a 45-day public comment period.

## **RULE REVISION HISTORY AND PROCEDURAL UPDATES (RULES 3.500–3.566)**

The rules of procedure governing mandatory fee arbitrations (MFA Rules) consist of rules 3.500 through 3.566 located in Title 3, Division 4, Chapter 2 in the Rules of the State Bar of California. The last comprehensive update of the MFA Rules was approved by the Board of Trustees during its March 7, 2013, meeting and became effective July 1, 2013.

The proposed amendments in this item reflect the first comprehensive update of the MFA Rules since the 2013 revision, although select rules have been updated in the interim. Staff consulted with the MFA program's subject matter experts, the presiding arbitrator and two assistant presiding arbitrators, to craft the proposed revised rules as provided in Attachment A. The proposed amendments are designed to increase the efficiency of the program's daily operations and address the qualifications and appointment of arbitrators to the program. Substantive amendments include deleting the venue rule, making remote hearings by videoconference or phone the default mode of conducting fee arbitrations, making electronic service the default form of service, and adding new Article 4 consisting of four new rules to govern the qualifications and appointment of arbitrators.

## **CURRENT APPOINTMENT PROCEDURE**

Presently, the MFA rules are silent on the topic of arbitrator appointments, but the Guidelines and Minimum Qualifications of Arbitrators for the State Bar of California Fee Arbitration Program<sup>1</sup> (Guidelines and Minimum Qualifications) outline the appointment procedure for new arbitrators, list the qualifications of attorney and lay arbitrators, and specify the ongoing requirements for all arbitrators while volunteering for the MFA program. These guidelines were adopted by the former Committee on Mandatory Fee Arbitration (CMFA) in 2001 and were last revised on May 3, 2019, before the CMFA sunset at the end of June 2019.<sup>2</sup>

At the November Board of Trustees meeting each year, staff recommends qualified new arbitrator applicants for appointment, all eligible current arbitrators for reappointment, based on the criteria in the Guidelines and Minimum Qualifications, and either the appointment or reappointment of the program's presiding arbitrator and two assistant presiding arbitrators. Presently, each of these appointments is for a one-year term for the following calendar year. During the November 18, 2022, Board meeting, the program's entire roster of eligible fee arbitrators, presiding arbitrator, and two assistant presiding arbitrators were reappointed to a one-year term, effective January 1, 2023, and ending December 31, 2023.<sup>3</sup>

## **PROPOSED APPOINTMENT PROCEDURE (NEW ARTICLE 4)**

In lieu of the annual appointments item for the MFA program's volunteers, the proposed amendments would change the appointment procedure and terms so that the presiding arbitrator and two assistant presiding arbitrators each serve a four-year term, subject to Board

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<sup>1</sup> A copy of the Guidelines & Minimum Qualifications of Arbitrators for the State Bar Fee Arbitration Program is provided as Attachment C.

<sup>2</sup> See discussion of the CMFA in Board open session agenda item [704 - Appendix I Implementation](#) from the November 16, 2018, Board meeting.

<sup>3</sup> See Board open session agenda item [50-11](#) from the November 18, 2022 Board meeting.

approval. For fee arbitrators, staff would continue to vet applicants and would also have the ability to appoint qualified individuals to the program on a rolling basis throughout the year. Once appointed, fee arbitrators would serve continuously so long as they meet the requirements and qualifications outlined in the proposed new rules.

Since the MFA program's appointments have historically been made during the November board meeting, this item requests that the new MFA rules pertaining to arbitrator appointments be adopted retroactively to the November 18, 2022, meeting. For the MFA program's presiding arbitrator and assistant presiding arbitrators, adoption of the new appointment rules would extend their appointment expiration date from December 31, 2023, to December 31, 2026. For all eligible fee arbitrators who were reappointed during the November 2022 meeting, their terms would now continue until they are no longer eligible for or ask to be removed from the program's roster of fee arbitrators.

## **DISCUSSION**

In addition to posting on the State Bar's website, the request for public comment on the proposed amendments to the MFA rules was publicized in the State Bar's summer all-licensee email. The MFA program also sent an all-arbitrator email blast in July 2023 summarizing current projects and news, and encouraged the program's approximately 360 fee arbitrators to submit public comment on the proposed amendments to the MFA rules.

The State Bar received two comments, both generally agreeing with the proposed amendments to the rules, but suggesting modifications to the rules governing hearing procedures. After review of the comments, and consultations with the MFA program's presiding arbitrator and two assistant presiding arbitrators, staff recommends a minor amendment to rule 3.541(E)(2) and 3.534(F) in response to public comment and otherwise recommends that the Board adopt the rules as proposed.

The full text of the two comments received is provided as Attachment D. Staff recommends an additional amendment to rule 3.541(E)(2) and a corresponding amendment to rule 3.534(F) after considering the Los Angeles County Bar Association's Attorney Fee Dispute Committee's feedback on rule 3.541. Specifically, the committee suggested modifying rule 3.541(E)(2) to clarify that American Sign Language (ASL) interpreters will be provided free of charge, as required by the Americans with Disabilities Act (ADA), commenting that the proposed provision requiring the party to pay for an interpreter should only apply to voice language interpreters and attorneys. In practice, an "interpreter" in the context of this rule is commonly understood by fee arbitration parties to include spoken language interpreters only, and the program provides ASL interpreters free of charge. Staff agrees that the rule warrants clarification to reflect current practice and proposes to add "unless payment by the State Bar is otherwise required by law" to the end of the subdivision. This language is purposely broad to encompass other potential scenarios where an interpreter must be provided free of charge without limiting it to the ADA. The Office of General Counsel has confirmed that this language would be considered a clarifying, technical amendment that would not need to be circulated for an additional public comment period. Staff proposes adding the same language to proposed rule

3.534(F) regarding fees for consistency. The proposed additional language in response to public comment is reflected in Attachment B in yellow highlights.

Accordingly, this item requests that the amended rules be approved as presented in Attachment A, with the new rules governing arbitrator appointments in Article 4 applied retroactively to the Board's November 18, 2022, meeting.

## **FISCAL/PERSONNEL IMPACT**

None

## **AMENDMENTS TO RULES OF THE STATE BAR OF CALIFORNIA**

Title 3, Division 4, Chapter 2

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

## **STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS**

Goal 1. Protect the Public by Strengthening the Attorney Discipline System

b.1. Assist members of the public needing assistance in submitting complaints and resolving problems by providing clear information about how the system works, outlining what constitutes a viable complaint.

## **RECOMMENDATIONS**

**Should the Board of Trustees, sitting as the Regulation and Discipline Committee, concur in the proposed action, passage of the following resolution is recommended:**

**RESOLVED**, that the Board of Trustees, sitting as the Regulation and Discipline Committee, adopt the proposed amendments to Articles 1 through 3 of Title 3, Division 4, Chapter 2, of the rules of the State Bar attached as provided in Attachment A to be effective on January 1, 2024; and it is

**FURTHER RESOLVED**, that the Board of Trustees, sitting as the Regulation and Discipline Committee, adopt Article 4, Appointment and Requirements of Arbitrators, in Title 3, Division 4, Chapter 2, of the rules of the State Bar as provided in Attachment A to be effective retroactively to November 18, 2022.

## **ATTACHMENTS LIST**

- A. Proposed Rules of the State Bar, Title 3, Division 4, Chapter 2 (clean)
- B. Proposed Rules of the State Bar, Title 3, Division 4, Chapter 2 (redline)

**C. Guidelines and Minimum Qualifications of Arbitrators for the State Bar of California Fee Arbitration Program**

**D. Full Text of Public Comments Received**

**TITLE 3. PROGRAMS AND SERVICES**

Adopted July 2007

**DIVISION 4. CONSUMERS**

**Chapter 2. Fee Arbitration**

**Article 1. General Provisions**

**Rule 3.500 Scope**

- (A) As required by statute, the Board of Trustees of the State Bar has adopted these rules for arbitration of disputes regarding attorney fees.<sup>1</sup>
- (B) In these rules, unless otherwise indicated:
  - (1) "Appointments Committee" means a committee consisting of the presiding arbitrator and at least one staff member from the State Bar's Fee Arbitration department;
  - (2) "assistant presiding arbitrator" means a person to whom the presiding arbitrator has delegated duties or who acts in place of the presiding arbitrator when they are not available;
  - (3) "attorney arbitrator" means an active licensee in good standing with the State Bar for at least five years or a retired judge who is an active licensee of the State Bar;
  - (4) "award" means the decision of the arbitrator or arbitrators in a fee arbitration hearing;
  - (5) "client" means the person who directly or through an authorized representative obtains an attorney's legal services;
  - (6) "non-client" means a person who is not the client of an attorney but who may be liable for, or entitled to a refund of, the attorney's fees; references to "client" also apply to "non-client";
  - (7) "declaration" means a document that is based on personal knowledge and signed under penalty of perjury and otherwise complies with the requirements of Code of Civil Procedure section 2015.5;

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<sup>1</sup> Business & Professions Code §§ 6010, 6200-6206.

- (8) “fees” means attorney fees, costs, or both;
  - (9) “hearing” means a fee arbitration hearing conducted by the State Bar;
  - (10) “lay arbitrator” means a non-attorney who has not been admitted to practice law in any jurisdiction; who has never worked regularly for a court or a law practice of any kind as a paralegal, law clerk, or in any other capacity; or who has never attended law school;
  - (11) “presiding arbitrator” is the arbitrator appointed by the Board of Trustees to supervise the arbitrators in the State Bar Fee Arbitration program and to decide the matters indicated by these rules;
  - (12) “designee” means an assistant presiding arbitrator or staff of the State Bar Fee Arbitration program;
  - (13) “State Bar” means the State Bar Fee Arbitration program;
  - (14) “trial” after non-binding arbitration means either an action in the court having jurisdiction over the amount in controversy or arbitration pursuant to the parties’ pre-existing arbitration agreement;
  - (15) “Request for Arbitration” means the initiating submission made by a party requesting fee arbitration using the approved State Bar form and paying the appropriate filing fee as established by the State Bar;
  - (16) “received” means when a mailed Request for Arbitration is postmarked, or when a Request for Arbitration or other submission is received by the State Bar by mail or electronically.
- (C) Unless otherwise provided by rule or law, the presiding arbitrator may delegate their duties.

*Rule 3.500 adopted effective July 1, 2013.*

### **Rule 3.501 Right to arbitration of fee disputes**

- (A) California law entitles a client to arbitration of a dispute regarding an attorney’s fees for legal services. If initiated by a client, fee arbitration is mandatory for an attorney.<sup>2</sup> Fee arbitration is voluntary for a client unless the parties have agreed in writing to submit their fee disputes to mandatory fee arbitration.<sup>3</sup>

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<sup>2</sup> Business & Professions Code § 6201.

<sup>3</sup> Business & Professions Code § 6200(c).

- (B) An attorney must provide the client with the mandatory State Bar Notice of Client's Right to Fee Arbitration form before or at the time of
  - (1) service of summons in a lawsuit against the client for fees; or
  - (2) commencing any other proceeding against the client for fees under a contract that provides for an alternative to mandatory fee arbitration.<sup>4</sup>
- (C) Failure to provide the notice is grounds for dismissal of the lawsuit or other proceeding.<sup>5</sup>
- (D) Where the existence of an attorney-client relationship is in dispute, the parties may stipulate to submit the issue for determination by the State Bar.

*Rule 3.501 adopted effective July 1, 2013.*

### **Rule 3.502 Waiver of right to arbitration**

- (A) A client's right to request or maintain fee arbitration is waived<sup>6</sup> if
  - (1) a complete State Bar Request for Arbitration has not been received by the State Bar within thirty days of the client's receipt of the State Bar Notice of Client's Right to Fee Arbitration;<sup>7</sup>
  - (2) the client commences a legal action or files a pleading seeking either of the following:
    - (a) judicial resolution of a fee dispute subject to arbitration; or
    - (b) affirmative relief against an attorney for alleged malpractice or professional misconduct; or
  - (3) the client receives a State Bar Notice of Client's Right to Fee Arbitration but does either of the following before submitting a State Bar Request for Arbitration:
    - (a) answers or otherwise responds to a complaint filed in court by the attorney; or
    - (b) files a response in another proceeding regarding fees initiated by the attorney.
- (B) If the fee dispute is transferred to a different fee arbitration program after the Request

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<sup>4</sup> Business & Professions Code § 6201(a).

<sup>5</sup> Business & Professions Code § 6201(a).

<sup>6</sup> Business & Professions Code § 6201.

<sup>7</sup> Business & Professions Code § 6201(a).



for Arbitration is filed with the State Bar, the date that determines whether the request was made by the thirty-day deadline is one of the following:

- (1) the date the request was received by the State Bar; or
- (2) the date ordered by the presiding arbitrator.

*Rule 3.502 adopted effective July 1, 2013.*

### **Rule 3.503 Exclusions**

These rules do not apply to<sup>8</sup>

- (A) claims for fees that are determinable by statute or court order;
- (B) claims made by a party requesting arbitration who is not liable for the fees or entitled to a refund;
- (C) claims for damages or other affirmative relief based on alleged malpractice or professional misconduct;
- (D) claims for fees where services were not rendered in California in any material part by an attorney who maintains no office in California, whether the attorney is admitted in California or only in another jurisdiction;<sup>9</sup>
- (E) claims for fees where the client has assigned the claim; or
- (F) claims between attorneys for division of fees.

*Rule 3.503 adopted effective July 1, 2013.*

### **Rule 3.504 Representation**

A party to arbitration may be represented by an attorney at their expense.

*Rule 3.504 adopted effective July 1, 2013.*

### **Rule 3.505 Original jurisdiction**

- (A) Fee arbitration is conducted by a bar association in the county where the legal services giving rise to the fees in dispute were substantially performed or in the county where at

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<sup>8</sup> Business & Professions Code § 6200(b).

<sup>9</sup> Business & Professions Code § 6200(b)(1).

least one attorney involved in the dispute had an office at the time the services were rendered.

- (B) Fee arbitration may be initiated and conducted by the State Bar if
  - (1) no local bar association program has jurisdiction;
  - (2) a party submits a State Bar Request for Arbitration that explains in a declaration why the party cannot obtain a fair hearing before the local bar association; or
  - (3) the local bar association that would normally arbitrate the matter demonstrates to the satisfaction of the State Bar that it has no jurisdiction or is otherwise unable to arbitrate the matter.
- (C) The State Bar will waive original jurisdiction if a local bar association is willing to accept it and the parties consent in writing to jurisdiction of the local bar association.

*Rule 3.505 adopted effective July 1, 2013.*

#### **Rule 3.506 Removal jurisdiction**

- (A) Arbitration within the jurisdiction of a local program may be removed to the State Bar when a party seeking removal establishes in a declaration under penalty of perjury a factual basis for removal and the presiding arbitrator determines there is good cause for the State Bar to arbitrate the dispute.
- (B) The State Bar serves notice of a request for State Bar jurisdiction on any other party identified in the request and on the local bar association that has jurisdiction. A written reply to the notice may be submitted to the State Bar. The reply must be received at the State Bar within fifteen days of service of the request.
- (C) The presiding arbitrator must deny a request for removal of a fee dispute within the jurisdiction of a local program if
  - (1) another party or the local program would be prejudiced by removal and such prejudice outweighs an allegation of inability to obtain a fair hearing;
  - (2) during the local arbitration proceedings the party requesting removal has acted in a manner inconsistent with the allegation of inability to obtain a fair hearing; or
  - (3) the party requesting removal has waived any claim of inability to obtain a fair hearing.
- (D) A party requesting removal of jurisdiction must provide any additional information the State Bar requires by the deadline it specifies.

- (E) The presiding arbitrator's decision regarding a request for removal is final.

*Rule 3.506 adopted effective July 1, 2013.*

### **Rule 3.507 Non-binding and binding arbitration**

- (A) Fee arbitration is non-binding unless every party agrees in writing to binding arbitration. The written agreement must be made after the dispute arises and before the taking of evidence at the arbitration hearing.<sup>10</sup>
- (B) A non-binding fee arbitration award becomes final and binding unless within thirty days of service of the award a party requests a trial.<sup>11</sup>
- (C) A party who initiates a request for binding arbitration may submit a written election for non-binding arbitration instead if the respondent
- (1) has not replied;
  - (2) has not agreed to binding arbitration in the reply; or
  - (3) has replied and agreed to binding arbitration, but sought to materially increase the amount in dispute, provided the election is sent to the State Bar within ten days of receipt of the reply.
- (D) Parties who have agreed in writing to binding arbitration may change their election to non-binding arbitration, provided they all agree in writing before the taking of evidence.

*Rule 3.508 adopted effective July 1, 2013.*

### **Rule 3.508 Consolidation**

- (A) A party may request consolidation of two or more arbitration matters for hearing. The request must be in writing. The State Bar will serve a copy of the request on the other parties. A written reply to the request must be submitted to the State Bar within fifteen days of service. The decision of the presiding arbitrator regarding a request for consolidation is final.
- (B) If an attorney is in arbitration with a non-client and the client then files a Request for Arbitration of the same dispute, the client is automatically joined to the arbitration and the matters are consolidated absent a showing of good cause.
- (C) Consolidation does not entitle a party to a refund or reduction of filing fees.

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<sup>10</sup> Business & Professions Code § 6204(a).

<sup>11</sup> Business & Professions Code § 6203(b).

*Rule 3.509 adopted effective July 1, 2013.*

### **Rule 3.509 Withdrawal; dismissal**

- (A) A client who has requested arbitration may withdraw from arbitration
  - (1) with the written consent of all parties if they have contractually agreed in writing to State Bar arbitration;
  - (2) with the written consent of all parties if the arbitration is binding and the matter has not been settled; or
  - (3) in all other cases, without the consent of other parties if withdrawal occurs before the taking of evidence.
- (B) Arbitration requested by an attorney may be dismissed only upon written agreement of each party.
- (C) The State Bar or sole arbitrator or panel chair appointed by the State Bar must dismiss arbitration without prejudice when the parties confirm that the dispute has been settled.

*Rule 3.510 adopted effective July 1, 2013.*

### **Rule 3.510 Stay of proceeding<sup>12</sup>**

- (A) If an attorney or an attorney's assignee initiates a legal proceeding in a court or other forum to collect fees that are otherwise subject to arbitration, the proceeding is automatically stayed by filing a State Bar Request for Arbitration. The court or other forum must immediately be notified of the request, on an appropriate form if applicable, and be provided with a copy of the request by
  - (1) the party requesting arbitration; or
  - (2) the plaintiff in a legal proceeding in which the party requesting arbitration has not appeared or is not subject to jurisdiction of the court or other forum.<sup>13</sup>
- (B) Upon request, the State Bar may provide a copy of the form to a party so that the party may complete and file the form.

*Rule 3.511 adopted effective July 1, 2013.*

### **Rule 3.511 Confidentiality**

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<sup>12</sup> Business and Professions Code § 6201(b)-(d).

<sup>13</sup> Rule of Court 3.650.

- (A) A Request for Arbitration, a reply, a State Bar file, an exhibit, an award, and any other record of an arbitration proceeding are confidential and may not be disclosed by the State Bar unless disclosure is required by court order.
- (B) The award is confidential except in a judicial challenge to, confirmation of, or enforcement of an award.
- (C) Use of any of the items set forth in rule 3.512(A) for disciplinary investigations or other State Bar proceedings does not violate the confidentiality required by these rules.<sup>14</sup>
- (D) Arbitration between an attorney and non-client does not abrogate an attorney's responsibility to exercise independent professional judgment on behalf of a client or to protect the client's confidential information,<sup>15</sup> unless the law requires it or the client consents to allow the disclosure of confidential information for the purposes of the proceeding.
- (E) A party's statement of financial status is confidential and is not provided to an opposing party.

*Rule 3.512 adopted effective July 1, 2013.*

#### **Rule 3.512 Service; receipt; dates**

- (A) Unless these rules provide otherwise, service is by personal delivery or by mail pursuant to Code of Civil Procedure section 1013(a). If a party is represented by counsel, service is required only upon that party's counsel, except for service of an award, which is served on the party as well as on counsel.
- (B) Service by mail is complete at the time of deposit in the United States mail or in a business facility used to collect and process correspondence for mailing with the United States Postal Service. The time for performing any act commences on the date service is complete and shall not be extended by reason of service by mail.
- (C) A client who is a party to an arbitration is served at the latest address provided to the State Bar. If a client fails to advise the State Bar of their current address, the State Bar may close a client Request for Arbitration or enforcement thirty days after learning that the address is not current.
- (D) An attorney who is a party to an arbitration or who represents a party in an arbitration is served at the attorney's address of record with the State Bar.<sup>16</sup>

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<sup>14</sup> Rule 3.546.

<sup>15</sup> Business & Professions Code § 6068(e); Rule of Professional Conduct 1.6.

<sup>16</sup> Rule 2.3.

- (E) A filing or other communication submitted to the State Bar electronically is deemed to be received on the date of receipt of the transmission.
- (F) Electronic Service
  - 1) In addition to the methods of service provided for in subdivision (A) of this rule, the parties to an arbitration presumptively consent to electronic service of documents upon each other pursuant to Code of Civil Procedure section 1010.6(a)(1)(A)-(C), unless they specify in writing that they do not consent.
  - 2) The parties to an arbitration presumptively consent to receive electronic service of documents at their designated electronic address from the State Bar in lieu of service by mail, unless they specify in writing that they do not consent.

*Rule 3.513 adopted effective July 1, 2013; amended effective July 16, 2020; amended effective September 22, 2022.*

### **Rule 3.513 Effect of time requirements**

The failure of the State Bar or a sole arbitrator or panel appointed by the State Bar to comply with a time requirement of these rules does not by itself deprive the State Bar of jurisdiction, warrant dismissal of an arbitration, or provide grounds for invalidation or modification of an award.

*Rule 3.514 adopted effective July 1, 2013.*

## **Article 2. State Bar Fee Arbitration Proceedings and Award**

### **Rule 3.530 Request for Arbitration**

- (A) When the State Bar has jurisdiction or accepts it in accordance with these rules, a Request for Arbitration may be filed by
  - (1) a client; or
  - (2) an attorney claiming entitlement to fees from a client or a non-client.
- (B) If an attorney requests arbitration, the arbitration may proceed only if the client consents in writing on the approved form within thirty days of service of the request. Client consent is not required if the client has previously consented in writing to mandatory fee arbitration, or the request is for removal of arbitration initiated by the client.<sup>17</sup>
- (C) A client is entitled to appointment of an attorney arbitrator whose area of practice is civil law if the fee dispute relates to civil law, or criminal law if the dispute relates to

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<sup>17</sup> Rule 3.506.

criminal law.<sup>18</sup> A client must make the election in the Request for Arbitration or a reply to a request.

- (D) The State Bar must serve a notice of a Request for Arbitration and any supporting documentation on
  - (1) any attorney identified in the Request for Arbitration as a respondent, together with the Notice of Attorney Responsibility;
  - (2) a client if a request submitted by a non-client has not been signed by the client; and
  - (3) a client if an attorney has requested fee arbitration and the client has consented.
- (E) A client's Request for Arbitration must be received no later than thirty days from the date the client received the Notice of Client's Right to Fee Arbitration.
- (F) A Request for Arbitration may be amended up to fifteen days after its receipt by the State Bar. The State Bar may subsequently request clarification that requires amendment of the request. Later amendment by a party may be made only with the permission of the presiding arbitrator, or the sole arbitrator or panel chair if assigned. If an amendment increases the amount in dispute, the State Bar may request a corresponding increase in the filing fee from the requesting party.

*Rule 3.530 adopted effective July 1, 2013.*

### **Rule 3.531 Reply to Request for Arbitration**

A respondent party may submit a reply to a Request for Arbitration to the State Bar within thirty days of service of the request. The State Bar will forward a copy of the reply to the requesting party.

*Rule 3.531 adopted effective July 1, 2013.*

### **Rule 3.532 Disputes below threshold minimum**

If the amount in dispute is less than the minimum amount set forth in the Schedule of Charges and Deadlines, the parties are not entitled to a hearing. Rather, the party requesting arbitration and any party replying to the request must each submit a complete written statement of the reasons for the dispute, with all supporting documents, written witness testimony, and citations to appropriate authority, if any. The presiding arbitrator may then require any party to submit additional information, evidence, and/or authority within thirty days of receipt of the reply or the deadline for its receipt.

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<sup>18</sup> Business & Professions Code § 6200(e).

*Rule 3.532 adopted effective July 1, 2013.*

### **Rule 3.533 Denial of Request for Arbitration; reconsideration**

If the State Bar believes that a Request for Arbitration is time barred or does not otherwise meet statutory requirements,<sup>19</sup> it must notify the parties and provide them an opportunity to submit additional written evidence or authority in support of State Bar jurisdiction, or provide the initiating party an opportunity to submit new evidence in a written request for reconsideration. A request for reconsideration must be submitted within fifteen days of service of the notice. The request is decided by the presiding arbitrator, whose decision is final.

*Rule 3.533 adopted effective July 1, 2013.*

### **Rule 3.534 Fees; refund**

- (A) The party requesting arbitration must submit the filing fee set forth in the Schedule of Charges and Deadlines with the Request for Arbitration or when the State Bar accepts removal of jurisdiction in accordance with these rules.<sup>20</sup>
- (B) Joining a party does not increase the filing fee.
- (C) If the fee dispute is settled or dismissed before the Request for Arbitration is served, the entire filing fee is refunded. If the fee dispute is settled or dismissed after the request has been served, the State Bar retains some or all of the fee as set forth in the Schedule of Charges and Deadlines.
- (D) An award may include an allocation of all or part of a filing fee among the parties.
- (E) The filing fee is the only administrative fee that may be charged for arbitration. The hearing room, for either an in-person or remote hearing by phone or video conference, must be provided without charge.
- (F) Each party is responsible for its own costs, such as those for interpreters and expert witnesses unless payment by the State Bar is otherwise required by law.

*Rule 3.534 adopted effective July 1, 2013.*

### **Rule 3.535 Waiver of filing fee**

- (A) A Request for Waiver of Arbitration Filing Fee may be submitted by the party requesting arbitration. The State Bar may require that the request submitted by a party be supported by a statement of financial status.

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<sup>19</sup> Business & Professions Code §§ 6200-6206.

<sup>20</sup> Rule 3.506.



- (B) A Request for Waiver of Arbitration Filing Fee may be granted, in whole or in part, for good cause, or denied. The decision is final.

*Rule 3.535 adopted effective July 1, 2013.*

### **Rule 3.536 Arbitrators**

- (A) Except for disputes below a threshold minimum,<sup>21</sup> arbitration must be conducted by a sole attorney arbitrator or by a panel of three arbitrators appointed by the State Bar. A panel of three arbitrators must be chaired by an attorney arbitrator and include a lay arbitrator. A retired judge serving as an arbitrator must be an active licensee of the State Bar.
- (B) Whether the State Bar assigns a sole arbitrator or a panel of three arbitrators is determined by the amount in dispute that is set forth in the Schedule of Charges and Deadlines. If a three-member panel is assigned, the parties may stipulate to proceed with a sole attorney arbitrator conducting the arbitration. If the amount in dispute is less than the threshold minimum amount set forth in the schedule, the presiding arbitrator decides the arbitration in accordance with these rules.<sup>22</sup>
- (C) An attorney arbitrator must be a civil or criminal practitioner if a client has elected such an appointment in the request and the dispute involves the same area of law.<sup>23</sup>
- (D) A Notice of Appointment of Arbitrator must be served
  - (1) within sixty days of receipt of a reply to the Request for Arbitration;
  - (2) within sixty days of the passage of the reply deadline if no reply was received; or
  - (3) in either case as soon as reasonably possible after the receipt of the reply or the reply deadline.
- (E) Arbitrators may request compensation for a hearing that extends beyond four hours. In order for an arbitrator to receive compensation, the parties must agree in writing prior to the taking of evidence that they will compensate the arbitrator. 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. No compensation will be paid to arbitrators for services other than for formal hearings extending beyond four hours. Compensation is hourly at the rate set forth in the Schedule of Charges and Deadlines and is paid equally by the parties. Any dispute regarding compensation is decided by the presiding

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<sup>21</sup> Rule 3.532.

<sup>22</sup> Rule 3.532.

<sup>23</sup> Rule 3.530(C).

arbitrator, whose decision is final. 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.

*Rule 3.536 adopted effective July 1, 2013; amended effective January 25, 2019, amended effective September 19, 2019.*

### **Rule 3.537 Disqualification or discharge of arbitrators**

- (A) A party may disqualify one arbitrator without cause. A party is entitled to unlimited challenges of an arbitrator for cause. The State Bar must be notified of the disqualification within fifteen days of serving the Notice of Arbitrator Assignment.
- (B) An arbitrator who believes he or she cannot render a fair and impartial decision or who believes there is an appearance that he or she cannot render a fair and impartial decision must disqualify himself or herself or accede to a party's challenge for cause. If the arbitrator believes there are insufficient grounds to accede to a challenge for cause, the presiding arbitrator decides the challenge. The decision is final.
- (C) Neither a presiding arbitrator nor an assistant presiding arbitrator may represent a party in a State Bar fee arbitration while serving in these roles.
- (D) An arbitrator vacancy due to disqualification or inability to serve must be filled by the State Bar. If a panel member fails to appear at a hearing, the parties may stipulate in writing that the hearing may proceed with a single attorney arbitrator. In no event may arbitration proceed with only two arbitrators or a single non-attorney arbitrator.
- (E) The presiding arbitrator may discharge an arbitrator or panel of arbitrators for unreasonable delay or for other good cause at any time up to the service of an award.

*Rule 3.537 adopted effective July 1, 2013; amended effective May 17, 2019.*

### **Rule 3.538 Contact with arbitrator**

A party or a person acting on a party's behalf may communicate with an arbitrator only

- (A) in writing with a copy submitted to the State Bar and all other parties or their counsel;
- (B) to schedule a hearing;
- (C) at a hearing; or
- (D) in an emergency.

*Rule 3.538 adopted effective July 1, 2013.*

### **Rule 3.539 Hearing procedures**

- (A) After service of the Notice of Assignment, the hearing will be scheduled to take place
  - (1) within forty-five days if a sole arbitrator has been assigned; or
  - (2) within ninety days if a panel has been assigned.
- (B) Within fifteen days of assignment and at least fifteen days before the hearing, the sole arbitrator or panel chair will serve a Notice of Hearing on each party and the State Bar. Appearance at the hearing waives any claim of defective service of the notice.
- (C) The date of a scheduled hearing will be extended by fifteen days from the date a new arbitrator is assigned to replace an arbitrator who has been removed because of disqualification or challenge.<sup>24</sup>
- (D) Upon stipulation or application to the assigned sole arbitrator or panel chair, the sole arbitrator or panel chair may continue a matter for good cause shown.
- (E) Hearings will convene via a remote communications platform or by video or telephone conference unless the presiding arbitrator determines that good cause exists for an in-person hearing.

*Rule 3.539 adopted effective July 1, 2013.*

### **Rule 3.540 Preparation for hearing**

- (A) Discovery is not permitted except as provided by this rule.
- (B) Nothing in these rules deprives a client of the right to inspect and obtain the client's file kept by the attorney. A non-client does not have the right to inspect the client's or attorney's file.
- (C) Before a hearing the parties
  - (1) are encouraged to agree to issues not in dispute and to voluntarily exchange documents;
  - (2) may be required by the sole arbitrator or panel chair to clarify issues, submit additional documentation, or exchange documents, and the sole arbitrator or panel may decline to admit into evidence any document a party was required to exchange but did not; and

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<sup>24</sup> Rule 3.536.

- (3) may request issuance of a subpoena in accordance with these rules.
- (D) A party seeking to have a subpoena issued must submit to the State Bar a completed but unsigned subpoena form approved by the State Bar, with proof of service on all parties. Upon a showing of good cause, the presiding arbitrator, or panel chair if appointed, may issue a signed subpoena. The requesting party is responsible for service of the subpoena and any witness fees.
- (E) At least ten days before the hearing a party may submit a written request that the sole arbitrator or panel chair permit the party to
  - (1) waive personal appearance and submit testimony and exhibits by declaration under penalty of perjury; or
  - (2) designate an attorney or non-attorney representative because of inability to attend the hearing.
- (F) The personal representative of a deceased party or the guardian or conservator of an incompetent party may represent the party.

*Rule 3.540 adopted effective July 1, 2013; amended effective July 16, 2020.*

#### **Rule 3.541 Hearing**

- (A) Any relevant evidence is admissible at a hearing if it is of the sort responsible persons customarily rely on in the conduct of serious affairs, regardless of any common law or statutory rule to the contrary.
- (B) Evidence relating to claims of malpractice or professional misconduct is admissible only to the extent it affects the fees to which the attorney is entitled.
- (C) Testimony may be given under oath or affirmation administered by the assigned sole arbitrator or panel chair.
- (D) The order of proof is determined by the sole arbitrator or panel chair.
- (E) Upon a party's request, the sole arbitrator or panel chair may permit
  - (1) a client to be accompanied by another person, absent the objection of a party;
  - (2) a party or party's witness to be assisted by an interpreter at the requesting party's expense unless payment by the State Bar is otherwise required by law;
  - (3) the attendance of other persons, absent the objection of a party; and

- (4) the attendance of witnesses during the hearing, absent the objection of a party.
- (F) A hearing is closed to the public; recording of any kind is prohibited; and any participant or attendee is bound by the confidentiality requirements of these rules.<sup>25</sup>

*Rule 3.541 adopted effective July 1, 2013.*

#### **Rule 3.542 Arbitration without a hearing**

The parties may stipulate that the sole arbitrator or panel decide all matters without a hearing and base the decision on the request, the reply, and any other written material submitted by a party, which must be filed with the sole arbitrator or the panel and served on all other parties by the date ordered.

*Rule 3.542 adopted effective July 1, 2013.*

#### **Rule 3.543 Failure to respond or participate**

- (A) If a party required to participate in arbitration fails to do so, the arbitration may proceed as scheduled and an award will be made based on the evidence presented. The award may include findings regarding the willfulness of a party's failure to appear at the hearing.
- (B) A party who willfully fails to appear at a hearing is not entitled to request a trial after non-binding arbitration. That party has the burden of proving the non-appearance was not willful. The determination of willfulness is made by the court.<sup>26</sup>

*Rule 3.543 adopted effective July 1, 2013.*

#### **Rule 3.544 Award form and content; approval**

- (A) Following the hearing, the original of the signed award will be submitted to the State Bar by
  - (1) a sole arbitrator within fifteen days; or
  - (2) a panel chair within twenty-five days.
- (B) The award must be in writing on the State Bar Arbitration Award form and
  - (1) be signed by the sole arbitrator or at least two concurring panel members and include a dissent, if any, signed by the dissenting panel member;

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<sup>25</sup> Rule 3.512.

<sup>26</sup> Business & Professions Code § 6204(a).

- (2) determine all questions submitted to the panel that are necessary to resolve the controversy;
  - (3) indicate whether it is binding or non-binding; and
  - (4) identify all responsible attorneys.
- (C) The award may
  - (1) include relevant findings of fact;
  - (2) state the circumstances regarding the willfulness of any party's non-appearance;
  - (3) be a stipulated award that incorporates by reference a written settlement agreement reached by the parties before or after assignment of a sole arbitrator or panel;
  - (4) include a refund of unearned fees paid to an attorney; and
  - (5) allocate the filing fee.
- (D) The award may not
  - (1) include any other fees, such as attorney fees for the arbitration, notwithstanding an agreement between the parties; or
  - (2) include damages, offset, or any other affirmative relief for malpractice or professional misconduct.
- (E) An award may be made in favor of a party who fails to appear at a hearing if the evidence so warrants, but may not be made against the absent party solely because of the absence. If only one party appears at the hearing, an award may be made; the party who is present must submit any evidence the sole arbitrator or panel chair requires to support the award. If no party appears or waiver of personal appearance has not been approved, the sole arbitrator or panel may issue an award based on the evidence submitted.
- (F) An award is not final until the State Bar approves it for procedural compliance. The State Bar serves each party with an approved award and the Notice of Rights After Arbitration.
- (G) When an award is issued in a binding arbitration, there can be no trial on the issue of fees, but for reasons set forth in statute<sup>27</sup> a trial court may correct,<sup>28</sup> vacate,<sup>29</sup> or

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<sup>27</sup> Code of Civil Procedure §§ 1285-1287.6.

<sup>28</sup> Code of Civil Procedure § 1286.8.

confirm<sup>30</sup> a binding award.

*Rule 3.544 adopted effective July 1, 2013.*

#### **Rule 3.545 Correction or amendment of award**

- (A) An award may be corrected or amended by the sole arbitrator or at least two concurring members of a panel. Correction is permitted only for an evident mistake in calculation or a description of a person, thing, or property, or for a defect of form not affecting the merits of the dispute.<sup>31</sup> Amendment is permitted when an award is inadvertently incomplete and amendment does not substantially prejudice the legitimate interests of a party. Unless requested by the arbitrator, no additional testimony or documentary evidence may be submitted.
- (1) Any party may submit a written request that the State Bar correct an award. The requesting party must submit the request to the State Bar with proof of service and serve a copy on each party within ten days after service of the award. The State Bar must forward a copy of the party's request to each arbitrator. Any correction or denial of the request will be made by the sole arbitrator or panel chair within thirty days of service of the award.
- (2) A written request to correct an award does not extend the thirty-day deadline to request a trial or arbitration after a non-binding award has been issued.
- (3) Any party may submit a written request that the State Bar amend an award. The requesting party must submit the request to the State Bar with proof of service and serve a copy on any other party at any time prior to judicial confirmation of the award.
- (B) Any party may submit to the State Bar a written objection to a request for correction or amendment.
- (C) The State Bar must serve all parties with a corrected or amended award or denial of a request for correction or amendment.

*Rule 3.545 adopted effective July 1, 2013.*

#### **Rule 3.546 Referral to Office of Chief Trial Counsel**

The State Bar or a sole arbitrator or panel appointed by the State Bar may refer an attorney to the State Bar Office of Chief Trial Counsel for possible disciplinary investigation because of conduct disclosed in an arbitration proceeding. Such a disclosure does not violate the

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<sup>29</sup> Code of Civil Procedure § 1286.2.

<sup>30</sup> Code of Civil Procedure § 1286.

<sup>31</sup> Code of Civil Procedure § 1286.6.

confidentiality that otherwise applies to the proceeding.

*Rule 3.546 adopted effective July 1, 2013.*

### **Article 3. Enforcement**

#### **Rule 3.560 Enforcement authority**

Upon request, the State Bar may assist in enforcing a final and binding arbitration award, judgment, stipulated award, or mediation settlement requiring the attorney to refund fees previously paid to the attorney if the attorney has not timely complied with the terms of the final and binding arbitration award, judgment, stipulated award, or mediation settlement.

*Rule 3.560 adopted effective July 1, 2013.*

#### **Rule 3.561 Request for State Bar Enforcement**

- (A) A client may submit a written request for enforcement no earlier than 100 days and no later than four years from the date of service of a final and binding arbitration award, judgment, stipulated award, or mediation settlement.<sup>32</sup> The request must be in writing on the State Bar Request for Enforcement form.<sup>33</sup> The request may include any other party who was awarded or who is liable for a refund of attorney fees. An arbitration award is not enforceable by the State Bar if it refunds the client only some or all of the arbitration filing fee and does not include a refund of attorney's fees or costs.
- (B) Before submitting a Request for State Bar Enforcement, a client must make a reasonable effort to obtain payment, including at a minimum a written request to the attorney for payment. The State Bar may require proof of such an effort before accepting the request.
- (C) The State Bar must serve the Request for State Bar Enforcement on the attorney.
- (D) If a client has filed a petition in a civil court to confirm the arbitration award, the State Bar may proceed with enforcement proceedings or abate enforcement until the court enters a judgment confirming the award.

*Rule 3.561 adopted effective July 1, 2013.*

#### **Rule 3.562 Attorney response to Request for State Bar Enforcement**

- (A) Within thirty days of service of a Request for State Bar Enforcement, an attorney must<sup>34</sup>

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<sup>32</sup> Business & Professions Code § 6203(d)(5).

<sup>33</sup> Rule 1.24.

<sup>34</sup> Business & Professions Code § 6203(d)(2).



- (1) provide the State Bar satisfactory proof of compliance with the arbitration award, judgment, stipulated award, or mediation settlement;
  - (2) agree to a payment plan accepted by the State Bar or the client; or
  - (3) establish inability to pay or lack of personal responsibility for payment in accordance with statutory requirements<sup>35</sup> and the provisions of this rule.
- (B) To establish inability to pay, an attorney must support a response to a Request for Enforcement with a completed Attorney's Statement of Financial Status form signed under penalty of perjury. Any party may challenge the response, and the presiding arbitrator may require the parties to submit additional information.
- (C) To establish lack of personal responsibility for payment, an attorney must state reasons for this belief in the response to the client request for State Bar enforcement. The response may name another attorney or other attorneys as responsible for payment. The State Bar must serve each attorney named in the response with the Request for Enforcement and a copy of the attorney's response. Any counter-response must be submitted within twenty days of service.
- (D) After considering the request, the response, and supporting documentation, the presiding arbitrator must issue a final order. The final order may
  - (1) require compliance;
  - (2) terminate or abate enforcement because the attorney is unable to comply; or
  - (3) find that another attorney is responsible for payment.

*Rule 3.562 adopted effective July 1, 2013.*

### **Rule 3.563 Payment plans**

- (A) If the attorney proposes to comply with the arbitration award, judgment, or agreement by a payment plan, the State Bar shall promptly send the proposed plan to the client.
- (B) The client may accept or reject a proposed payment plan. If the plan is rejected, the attorney must file a confidential Attorney's Statement of Financial Status with the State Bar so that the presiding arbitrator may
  - (1) determine that the plan is reasonable and approve it;
  - (2) reject the plan; or

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<sup>35</sup> Business & Professions Code § 6203(d)(2).

- (3) specify amendments that would make the plan acceptable.
- (C) The State Bar shall monitor approved payment plans for compliance. If a client informs the State Bar that an attorney has failed to comply with the plan, the presiding arbitrator may request that the State Bar Court place the attorney on involuntary inactive status,<sup>36</sup> unless the attorney provides proof that they
  - (1) are unable to pay;
  - (2) have fully refunded the fees; or
  - (3) have received approval of a revised payment plan from the client or the State Bar.

*Rule 3.563 adopted effective July 1, 2013.*

**Rule 3.564 Administrative penalties; rescission or modification of penalties**

- (A) Prior to filing a motion in State Bar Court to enroll an attorney as involuntarily inactive, the presiding arbitrator may impose administrative penalties<sup>37</sup> on an attorney who fails to
  - (1) comply with a final and binding arbitration award, judgment, stipulated award, or mediation settlement that includes a refund of fees paid to the attorney;
  - (2) submit a written response to a Client Request for Enforcement of an Arbitration Award; or
  - (3) cooperate with the State Bar after an initial response to a Request for Enforcement.
- (B) An order for administrative penalties may not exceed twenty percent of the amount awarded or \$1,000, whichever is greater. Such an order is final. Unpaid penalties are added to the annual license fees for the next calendar year.<sup>38</sup>
- (C) In response to an attorney's written request made within thirty days of service of an order for administrative penalties, the presiding arbitrator may modify or rescind an order for administrative penalties if all of the following conditions are met:
  - (1) the attorney has complied with the award;
  - (2) the attorney was not served with the order for administrative penalties; and

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<sup>36</sup> Rule 3.565.

<sup>37</sup> See also Rule 3.565.

<sup>38</sup> Business & Professions Code § 6203(d)(3).

- (3) the attorney satisfactorily establishes in a declaration under penalty of perjury that they promptly submitted a request that warranted modification or rescission of the penalties.
- (D) Before deciding an attorney's request to modify or rescind an order for administrative penalties, the presiding arbitrator may require the attorney to submit additional information or declarations under penalty of perjury within a specified time. Failure to comply is grounds for dismissal of the request.
- (E) The presiding arbitrator may rescind or modify an order imposing administrative penalties, but not if a request was made more than thirty days after service of the order.
- (F) The presiding arbitrator's decision to rescind or modify an order imposing penalties is final.

*Rule 3.564 adopted effective July 1, 2013; amended effective January 25, 2019.*

### **Rule 3.565 Inactive enrollment for noncompliance**

The presiding arbitrator may move the State Bar Court to enroll an attorney involuntarily inactive<sup>39</sup> for failure to

- (A) refund client fees as required by a final and binding arbitration award, judgment, stipulated award, or mediation settlement;
- (B) agree to or comply with a payment plan;
- (C) prove an inability to comply with the terms of a final and binding arbitration award, judgment, stipulated award, or mediation settlement; or
- (D) prove lack of personal responsibility for compliance with the terms of a final and binding arbitration award, judgment, stipulated award, or mediation settlement.

*Rule 3.565 adopted effective July 1, 2013.*

### **Rule 3.566 Termination of enforcement**

State Bar enforcement concludes upon submission of satisfactory proof of compliance with the arbitration award, judgment, stipulated award, or mediation settlement. The State Bar will notify the parties that its enforcement efforts have ended.

*Rule 3.566 adopted effective July 1, 2013.*

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<sup>39</sup> Business & Professions Code §§ 6203(d)(1), 6066, and 6125 et seq.

## **Article 4. Appointment and Requirements of Arbitrators**

### **Rule 3. \_\_\_\_\_ Appointment of Arbitrators**

- (A) To administer the Fee Arbitration Program, the Board of Trustees of the State Bar shall appoint a presiding arbitrator and assistant presiding arbitrator(s) who shall serve for a term of four years and may be reappointed.
- (B) All attorney and lay arbitrators participating in the Fee Arbitration Program shall be appointed by the Appointments Committee pursuant to the qualifications required by these rules.

### **Rule 3. \_\_\_\_\_ Arbitrator Qualifications**

- (A) Presiding arbitrators and assistant presiding arbitrators shall meet all of the following qualifications:
  - (1) Be, and have been for at least five years an active licensee in good standing with the State Bar of California or be a retired judge who is an active licensee of the state of California;
  - (2) Not have a pending open investigation or disciplinary matter filed with the State Bar Court, any federal court or agency, or other state bar discipline authority. Conviction of a crime for any felony or misdemeanor required to be reported under Business and Professions Code section 6068(o)(5) may constitute grounds for rejection of the applicant. The imposition of any public discipline by the State Bar Court, or a federal court or agency or other state bar discipline authority authorized to impose comparable professional discipline against attorneys may also constitute grounds for rejection of an application;
  - (3) Have basic technological proficiency; and
  - (4) Have served as an arbitrator for a local bar or the State Bar program for a minimum of five years.
  - (5) In addition of meeting the above qualifications, the Board of Trustees shall consider all other relevant qualifications, including but not limited to, prior arbitration experience, quality of prior work, and demonstrated leadership with a local bar fee arbitration program.
- (B) Attorney arbitrators shall meet all of the following qualifications:
  - (1) Be, and have been for at least five years an active licensee in good standing with the State Bar of California or be a retired judge who is an active licensee of the state of California;
  - (2) Not have a pending open investigation or disciplinary matter filed with the State Bar Court, any federal court or agency, or other state bar discipline authority. Conviction of a crime for any felony or misdemeanor required to be reported under Business and Professions Code section 6068(o)(5) may constitute grounds for rejection of the applicant. The imposition of any public discipline by the State Bar Court, or a federal court or agency or other state bar

discipline authority authorized to impose comparable professional discipline against attorneys may also constitute grounds for rejection of an application; and

(3) Have basic technological proficiency.

(C) Lay arbitrators shall meet all of the following qualifications:

(1) Have never been an active or inactive licensee of the bar of any state or the District of Columbia;

(2) Have never worked regularly for a public or private law office or practice, court of law or attended law school for any period of time;

(3) Have never worked as a paralegal, law firm staff, or law clerk;

(4) Have never been convicted of a felony, or a misdemeanor involving dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or a misdemeanor of any type; and

(5) Have basic technological proficiency

(D) The Board of Trustees and/or the Appointments Committee may consider, any additional relevant factors in connection with any decision to accept or exclude any applicant for appointment.

### **Rule 3.\_\_\_\_\_ Requirements of Arbitrators**

(A) During the term of service, all attorney arbitrators are required to report to the Fee Arbitration Program the following:

(1) The existence of any open investigation or disciplinary complaint filed with the State Bar Court or imposition of public professional discipline by the State Bar of California or by any federal court or agency authorized to impose comparable professional discipline against attorneys.

(2) The existence of any criminal conviction of a felony or misdemeanor required to be reported under Business and Professions Code section 6068(o)(5).

(B) During the term of service, all lay arbitrators are required to report to the Fee Arbitration Program the existence of any criminal conviction of a felony, or a misdemeanor involving dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or a misdemeanor of any type.

(C) All arbitrators must affirmatively state every three years, on a form approved by the State Bar, that they still meet the minimum requirements.

(D) All arbitrators are required to complete training on conducting arbitrations within 90 days of appointment. Arbitrators may not conduct arbitrations prior to completion of this training. Thereafter, arbitrators must complete training every three years to maintain their appointment.

(E) Failure to complete any of these requirements may be cause for removal.

**Rule 3. \_\_\_\_\_ Removal of Arbitrators**

(A) Arbitrators may be removed by the Appointments Committee or the presiding arbitrator for any of the following reasons:

- (1) Failure to complete any of the requirements under these rules.
- (2) Failure to maintain the minimum qualifications under these rules.
- (3) Prolonged unavailability or lack of participation in arbitrations.
- (4) Other good cause.

**TITLE 3. PROGRAMS AND SERVICES**

Adopted July 2007

**DIVISION 4. CONSUMERS**

**Chapter 2. Fee Arbitration**

**Article 1. General Provisions**

**Rule 3.500 Scope**

(A) As required by statute, the Board of Trustees of the State Bar has adopted these rules for arbitration of disputes regarding attorney fees.<sup>1</sup>

(B) In these rules, unless otherwise indicated:

(1) "Appointments Committee" means a committee consisting of the presiding arbitrator and at least one staff member from the State Bar's Fee Arbitration department;

(2) "assistant presiding arbitrator" means a person to whom the presiding arbitrator has delegated duties or who acts in place of the presiding arbitrator when they are not available;

(3) "attorney arbitrator" means an active licensee in good standing with the State Bar for at least five years or a retired judge who is an active licensee of the State Bar;

(4)(4) "award" means the decision of the arbitrator or arbitrators in a fee arbitration hearing;

(2)(5) "client" means the person who directly or through an authorized representative obtains an attorney's legal services;

(3)(6) "non-client" means a person who is not the client of an attorney but who may be liable for, or entitled to a refund of, the attorney's fees; references to "client" also apply to "non-client";

(4)(7) "declaration" means a document that is based on personal knowledge and signed under penalty of perjury and otherwise complies with the requirements of Code of Civil Procedure section 2015.5;

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<sup>1</sup> Business & Professions Code §§ 6010, 6200-6206.

~~(5)~~(8) “fees” means attorney fees, costs, or both;

~~(6)~~(9) “hearing” means a fee arbitration hearing conducted by the State Bar;

~~(7)~~(10) “lay arbitrator” means a non-attorney who has not been admitted to practice law in any jurisdiction; who has never worked regularly for a court or a law practice of any kind as a paralegal, law clerk, or in any other capacity; or who has never attended law school;

~~(8)~~(11) “presiding arbitrator” is the arbitrator appointed by the Board of Trustees to supervise the arbitrators in the State Bar Fee Arbitration program and to decide the matters indicated by these rules; ~~or the designee of the presiding arbitrator;~~

(12) “designee” means an assistant presiding arbitrator or staff of the State Bar Fee Arbitration program;

~~(9)~~(13) “State Bar” means the ~~Mandatory~~ State Bar Fee Arbitration program;

(14) “trial” after non-binding arbitration means either an action in the court having jurisdiction over the amount in controversy or arbitration pursuant to the parties’ pre-existing arbitration agreement;

(15) “Request for Arbitration” means the initiating submission made by a party requesting fee arbitration using the approved State Bar form and paying the appropriate filing fee as established by the State Bar;

~~(10)~~(16) “received” means when a mailed Request for Arbitration is postmarked, or when a Request for Arbitration or other submission is received by the State Bar by mail or electronically.

- (C) Unless otherwise provided by rule or law, the presiding arbitrator may delegate their ~~his or her~~ duties.

*Rule 3.500 adopted effective July 1, 2013.*

### **Rule 3.501 Right to arbitration of fee disputes**

- (A) California law entitles a client to arbitration of a dispute regarding an attorney’s fees for legal services. If initiated by a client, fee arbitration is mandatory for an attorney.<sup>2</sup> Fee arbitration is voluntary for a client unless the parties have agreed in writing to submit their fee disputes to mandatory fee arbitration.<sup>3</sup>

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<sup>2</sup> Business & Professions Code § 6201.

<sup>3</sup> Business & Professions Code § 6200(c).



- (B) An attorney must provide the client with the mandatory State Bar Notice of Client's Right to Fee Arbitration form before or at the time of
  - (1) service of summons in a lawsuit against the client for fees; or
  - (2) commencing any other proceeding against the client for fees under a contract that provides for an alternative to mandatory fee arbitration.<sup>4</sup>
- (C) Failure to provide the notice is grounds for dismissal of the lawsuit or other proceeding.<sup>5</sup>
- (D) Where the existence of an attorney-client relationship is in dispute, the parties may stipulate to submit the issue for determination by the State Bar.

*Rule 3.501 adopted effective July 1, 2013.*

#### **Rule 3.502 Waiver of right to arbitration**

- (A) A client's right to request or maintain fee arbitration is waived<sup>6</sup> if
  - (1) a complete State Bar Request for Arbitration has not been ~~postmarked or~~ received by the State Bar within thirty days of the client's receipt of the State Bar Notice of Client's Right to Fee Arbitration;<sup>7</sup>
  - (2) the client commences a legal action or files a pleading seeking either of the following:
    - (a) judicial resolution of a fee dispute subject to arbitration; or
    - (b) affirmative relief against an attorney for alleged malpractice or professional misconduct; or
  - (3) the client receives a State Bar Notice of Client's Right to Fee Arbitration but does either of the following before submitting a State Bar Request for Arbitration:
    - (a) answers or otherwise responds to a complaint filed in court by the attorney; or
    - (b) files a response in another proceeding regarding fees initiated by the attorney.

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<sup>4</sup> Business & Professions Code § 6201(a).

<sup>5</sup> Business & Professions Code § 6201(a).

<sup>6</sup> Business & Professions Code § 6201.

<sup>7</sup> Business & Professions Code § 6201(a).

- (B) If the fee dispute is transferred to a different fee arbitration program after the Request for Arbitration is filed with the State Bar, the date that determines whether the request was made by the thirty-day deadline is one of the following:

~~the date of the postmark of the Request for Arbitration;~~

- (1) the date the request was received by the State Bar; or
- (2) the date ordered by the presiding arbitrator.

*Rule 3.502 adopted effective July 1, 2013.*

### **Rule 3.503 Exclusions**

These rules do not apply to<sup>8</sup>

- (A) claims for fees that are determinable by statute or court order;
- (B) claims made by a party requesting arbitration who is not liable for the fees or entitled to a refund;
- (C) claims for damages or other affirmative relief based on alleged malpractice or professional misconduct;
- (D) claims for fees where services were not rendered in California in any material part by an attorney who maintains no office in California, whether the attorney is admitted in California or only in another jurisdiction;<sup>9</sup>
- (E) claims for fees where the client has assigned the claim; or
- (F) claims between attorneys for division of fees.

*Rule 3.503 adopted effective July 1, 2013.*

### **Rule 3.504 Representation**

A party to arbitration may be represented by an attorney at their~~his or her~~ expense.

*Rule 3.504 adopted effective July 1, 2013.*

### **Rule 3.505 Original jurisdiction**

- (A) Fee arbitration is conducted by a bar association in the county where the legal services

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<sup>8</sup> Business & Professions Code § 6200(b).

<sup>9</sup> Business & Professions Code § 6200(b)(1).

giving rise to the fees in dispute were substantially performed or in the county where at least one attorney involved in the dispute had an office at the time the services were rendered.

- (B) Fee arbitration may be initiated and conducted by the State Bar if
  - (1) no local bar association program has jurisdiction;
  - (2) a party submits a State Bar Request for Arbitration that explains in a declaration why the party cannot obtain a fair hearing before the local bar association; or
  - (3) the local bar association that would normally arbitrate the matter demonstrates to the satisfaction of the State Bar that it has no jurisdiction or is otherwise unable to arbitrate the matter.
- (C) The State Bar will waive original jurisdiction if a local bar association is willing to accept it and the parties consent in writing to jurisdiction of the local bar association.

*Rule 3.505 adopted effective July 1, 2013.*

#### **Rule 3.506 Removal jurisdiction**

- (A) Arbitration within the jurisdiction of a local program may be removed to the State Bar when a party seeking removal establishes in a declaration under penalty of perjury a factual basis for removal and the presiding arbitrator determines there is good cause for the State Bar to arbitrate the dispute.
- (B) The State Bar serves notice of a request for State Bar jurisdiction on any other party identified in the request and on the local bar association that has jurisdiction. A written reply to the notice may be submitted to the State Bar. The reply must be received at the State Bar within fifteen days of service of the request.
- (C) The presiding arbitrator must deny a request for removal of a fee dispute within the jurisdiction of a local program if
  - (1) another party or the local program would be prejudiced by removal and such prejudice outweighs an allegation of inability to obtain a fair hearing;
  - (2) during the local arbitration proceedings the party requesting removal has acted in a manner inconsistent with the allegation of inability to obtain a fair hearing; or
  - (3) the party requesting removal has waived any claim of inability to obtain a fair hearing.
- (D) A party requesting removal of jurisdiction must provide any additional information the

State Bar requires by the deadline it specifies.

- (E) The presiding arbitrator's decision regarding a request for removal is final.

*Rule 3.506 adopted effective July 1, 2013.*

### **Rule 3.507 Venue**

- ~~(A) State Bar arbitration of a fee dispute is heard in the county where the legal services giving rise to the fees in dispute were substantially performed or in the county where at least one attorney involved in the dispute had an office at the time the services were rendered. For good cause, a request for change of venue from the county of original jurisdiction<sup>10</sup> may be submitted by~~
- ~~(1) a client no later than fifteen days after filing a Request for State Bar Arbitration;~~  
~~or~~
- ~~(2) an attorney no later than fifteen days after being served with a copy of a Request for Arbitration.~~
- ~~(B) A party requesting a change of venue must provide any additional information the State Bar requires by the deadline it specifies.~~
- ~~(C) The presiding arbitrator may for good cause grant or deny the request. The decision is final.~~

*Rule 3.507 adopted effective July 1, 2013.*

### **Rule 3.5078 Non-binding and binding arbitration**

- (A) Fee arbitration is non-binding unless every party agrees in writing to binding arbitration. The written agreement must be made after the dispute arises and before the taking of evidence at the arbitration hearing.<sup>11</sup>
- (B) A non-binding fee arbitration award becomes final and binding unless within thirty days of service of the award a party requests a trial.<sup>12</sup>
- (C) A party who initiates a request for binding arbitration may submit a written election for non-binding arbitration instead if the respondent
- (1) has not replied;

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<sup>10</sup> ~~Rule 3.505(A).~~

<sup>11</sup> Business & Professions Code § 6204(a).

<sup>12</sup> Business & Professions Code § 6203(b).

- (2) has not agreed to binding arbitration in the reply; or
  - (3) has replied and agreed to binding arbitration, but sought to materially increase the amount in dispute, provided the election is sent to the State Bar within ten days of receipt of the reply.
- (D) Parties who have agreed in writing to binding arbitration may change their election to non-binding arbitration, provided they all agree in writing before the taking of evidence.

*Rule 3.508 adopted effective July 1, 2013.*

### **Rule 3.50~~89~~ Consolidation**

- (A) A party may request consolidation of two or more arbitration matters for hearing. The request must be in writing. The State Bar will serve a copy of the request on the other parties. A written reply to the request must be submitted to the State Bar within fifteen days of service. The decision of the presiding arbitrator regarding a request for consolidation is final.
- (B) If an attorney is in arbitration with a non-client and the client then files a Request for Arbitration of the same dispute, the client is automatically joined to the arbitration and the matters are consolidated absent a showing of good cause.
- (C) Consolidation does not entitle a party to a refund or reduction of filing fees.

*Rule 3.509 adopted effective July 1, 2013.*

### **Rule 3.50~~910~~ Withdrawal; dismissal**

- (A) A client who has requested arbitration may withdraw from arbitration
  - (1) with the written consent of all parties if they have contractually agreed in writing to State Bar arbitration;
  - (2) with the written consent of all parties if the arbitration is binding and the matter has not been settled; or
  - (3) in all other cases, without the consent of other parties if withdrawal occurs before the taking of evidence.
- (B) Arbitration requested by an attorney may be dismissed only upon written agreement of each party.
- (C) The State Bar or sole arbitrator or panel chair appointed by the State Bar must dismiss arbitration without prejudice when the parties confirm that the dispute has been settled.

Rule 3.510 adopted effective July 1, 2013.

### Rule 3.51~~01~~ Stay of proceeding<sup>13</sup>

- (A) If an attorney or an attorney's assignee initiates a legal proceeding in a court or other forum to collect fees that are otherwise subject to arbitration, the proceeding is automatically stayed by filing a State Bar Request for Arbitration. The court or other forum must immediately be notified of the request, on an appropriate form if applicable, and be provided with a copy of the request by
- (1) the party requesting arbitration; or
  - (2) the plaintiff in a legal proceeding in which the party requesting arbitration has not appeared or is not subject to jurisdiction of the court or other forum.<sup>14</sup>
- (B) Upon request, the State Bar may ~~file the Judicial Council Notice of Stay of Proceedings form or~~ provide a copy of the form to a party so that the party may complete and file the form.

Rule 3.511 adopted effective July 1, 2013.

### Rule 3.51~~12~~ Confidentiality

- (A) A ~~R~~request for ~~A~~arbitration, a reply, a State Bar file, an exhibit, an award, and any other record of an arbitration proceeding are confidential and may not be disclosed by the State Bar unless disclosure is required by court order.
- (B) The award is confidential except in a judicial challenge to, confirmation of, or enforcement of an award.
- (C) ~~Referral of an attorney for possible disciplinary investigation because of conduct disclosed in an arbitration proceeding~~ Use of any of the items set forth in rule 3.512(A) for disciplinary investigations or other State Bar proceedings does not violate the confidentiality required by these rules.<sup>15</sup>
- (D) Arbitration between an attorney and non-client does not abrogate an attorney's responsibility to exercise independent professional judgment on behalf of a client or to protect the client's confidential information,<sup>16</sup> unless the law requires it or the client consents to allow the disclosure of confidential information for the purposes of the proceeding.

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<sup>13</sup> Business and Professions Code § 6201(b)-(d).

<sup>14</sup> Rule of Court 3.650.

<sup>15</sup> Rule 3.546.

<sup>16</sup> Business & Professions Code § 6068(e); Rule of Professional Conduct 1.6.

- (E) A party's statement of financial status is confidential and is not provided to an opposing party.

*Rule 3.512 adopted effective July 1, 2013.*

### **Rule 3.51~~23~~ Service; receipt; dates**

- (A) Unless these rules provide otherwise, service is by personal delivery or by mail pursuant to Code of Civil Procedure section 1013(a). If a party is represented by counsel, service is required only upon that party's counsel, except for service of an award, which is served on the party as well as on counsel.
- (B) Service by mail is complete at the time of deposit in the United States mail or in a business facility used to collect and process correspondence for mailing with the United States Postal Service. The time for performing any act commences on the date service is complete and shall not be extended by reason of service by mail.
- (C) A client who is a party to an arbitration is served at the latest address provided to the State Bar. If a client fails to advise the State Bar of ~~their~~his or her current address, the State Bar may close a client ~~R~~equest for ~~A~~arbitration or enforcement thirty days after learning that the address is not current.
- (D) An attorney who is a party to an arbitration or who represents a party in an arbitration is served at the attorney's address of record with the State Bar.<sup>17</sup>
- ~~(E) A filing or other communication submitted to the State Bar by facsimile is deemed to be received on the date of receipt of the transmission only when the State Bar receives the original within five days of facsimile submission.~~

~~(F)~~(E) A filing or other communication submitted to the State Bar electronically is deemed to be received on the date of receipt of the transmission.

### ~~(G)~~(F) Electronic Service

- 1) In addition to the methods of service provided for in subdivision (A) of this rule, the parties to an arbitration ~~may~~presumptively consent to electronic service of documents upon each other pursuant to Code of Civil Procedure section 1010.6(a)(1)(A)-(C), unless they specify in writing that they do not consent.
- 2) The parties to an arbitration ~~may~~presumptively consent to receive electronic service of documents at their designated electronic address from the State Bar in lieu of service by mail, unless they specify in writing that they do not consent. ~~by providing to the State Bar written consent to receive electronic service of documents from the State Bar at the party's designated electronic address.~~

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<sup>17</sup> Rule 2.3.

### **Rule 3.51~~3~~<sup>4</sup> Effect of time requirements**

The failure of the State Bar or a sole arbitrator or panel appointed by the State Bar to comply with a time requirement of these rules does not by itself deprive the State Bar of jurisdiction, warrant dismissal of an arbitration, or provide grounds for invalidation or modification of an award.

*Rule 3.514 adopted effective July 1, 2013.*

## **Article 2. State Bar Fee Arbitration Proceedings and Award**

### **Rule 3.530 Request for Arbitration**

- (A) When the State Bar has jurisdiction or accepts it in accordance with these rules, a Request for Arbitration may be filed by
  - (1) a client; or
  - (2) an attorney claiming entitlement to fees from a client or a non-client.
- (B) If an attorney requests arbitration, the arbitration may proceed only if the client consents in writing on the approved form within thirty days of service of the request. Client consent is not required if the client has previously consented in writing to mandatory fee arbitration, or the request is for removal of arbitration initiated by the client.<sup>18</sup>
- (C) A client is entitled to appointment of an attorney arbitrator whose area of practice is civil law if the fee dispute relates to civil law, or criminal law if the dispute relates to criminal law.<sup>19</sup> A client must make the election in the Request for Arbitration or a reply to a request.
- (D) The State Bar must serve a notice of a Request for Arbitration and any supporting documentation on
  - (1) any attorney identified in the Request for Arbitration as a respondent, together with the Notice of Attorney Responsibility;
  - (2) a client if a request submitted by a non-client has not been signed by the client; and
  - (3) a client if an attorney has requested fee arbitration and the client has consented.

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<sup>18</sup> Rule 3.506.

<sup>19</sup> Business & Professions Code § 6200(e).



- (E) A client's Request for Arbitration must be ~~postmarked or~~ received no later than thirty days from the date the client received the Notice of Client's Right to Fee Arbitration.
- (F) A Request for Arbitration may be amended up to fifteen days after its receipt by the State Bar. The State Bar may subsequently request clarification that requires amendment of the request. Later amendment by a party may be made only with the permission of the presiding arbitrator, or the sole arbitrator or panel chair if assigned. If an amendment increases the amount in dispute, the State Bar may request a corresponding increase in the filing fee from the requesting party.

*Rule 3.530 adopted effective July 1, 2013.*

### **Rule 3.531 Reply to Request for Arbitration**

A respondent party may submit a reply to a Request for Arbitration to the State Bar within thirty days of service of the request. The State Bar will forward a copy of the reply to the requesting party.

*Rule 3.531 adopted effective July 1, 2013.*

### **Rule 3.532 Disputes below threshold minimum**

If the amount in dispute is less than the minimum amount set forth in the Schedule of Charges and Deadlines, the parties are not entitled to a hearing. Rather, the party requesting arbitration and any party replying to the request must each submit a complete written statement of the reasons for the dispute, with all supporting documents, written witness testimony, and citations to appropriate authority, if any. ~~of the reasons for the dispute.~~ The presiding arbitrator may then require any party to submit additional information, evidence, and/or authority within thirty days of receipt of the reply or the deadline for its receipt. ~~The parties are not entitled to a hearing.~~

*Rule 3.532 adopted effective July 1, 2013.*

### **Rule 3.533 Denial of Request for Arbitration; reconsideration**

If the State Bar believes that a Request for Arbitration is time barred or does not otherwise meet statutory requirements,<sup>20</sup> it must notify the parties and provide them an opportunity to submit additional written evidence or authority in support of State Bar jurisdiction, or provide the initiating party an opportunity to submit new evidence in a written request for reconsideration. A request for reconsideration must be submitted within fifteen days of service of the notice. The request is decided by the presiding arbitrator, whose decision is final.

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<sup>20</sup> Business & Professions Code §§ 6200-6206.

*Rule 3.533 adopted effective July 1, 2013.*

### **Rule 3.534 Fees; refund**

- (A) The party requesting arbitration must submit the filing fee set forth in the Schedule of Charges and Deadlines with the Request for Arbitration or when the State Bar accepts removal of jurisdiction in accordance with these rules.<sup>21</sup>
- (B) Joining a party does not increase the filing fee.
- (C) If ~~arbitration~~the fee dispute is settled or dismissed before the Request for Arbitration is served, the entire filing fee is refunded. If the fee dispute~~arbitration~~ is settled or dismissed after the request has been served, the State Bar retains some or all of the fee as set forth in the Schedule of Charges and Deadlines.
- (D) An award may include an allocation of all or part of a filing fee among the parties.
- (E) The filing fee is the only administrative fee that may be charged for arbitration. The hearing room, for either an in-person or remote hearing by phone or video conference, must be provided without charge.
- (F) Each party is responsible for its own costs, such as those for interpreters and expert witnesses unless payment by the State Bar is otherwise required by law.

*Rule 3.534 adopted effective July 1, 2013.*

### **Rule 3.535 Waiver of filing fee**

- (A) A Request for Waiver of Arbitration Filing Fee may be submitted by the party requesting arbitration. The State Bar may require that the request submitted by a party be supported by a statement of financial status.
- (B) A Request for Waiver of Arbitration Filing Fee may be granted, in whole or in part, for good cause, or denied ~~for good cause~~. The decision is final.

*Rule 3.535 adopted effective July 1, 2013.*

### **Rule 3.536 Arbitrators**

- (A) Except for disputes below a threshold minimum,<sup>22</sup> arbitration must be conducted by a sole attorney arbitrator or by a panel of three arbitrators appointed by the State Bar. A panel of three arbitrators must be chaired by an attorney arbitrator and include a lay arbitrator. A retired judge serving as an arbitrator must be an active licensee of the

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<sup>21</sup> Rule 3.506.

<sup>22</sup> Rule 3.532.

State Bar.

- (B) Whether the State Bar assigns a sole arbitrator or a panel of three arbitrators is determined by the amount in dispute that is set forth in the Schedule of Charges and Deadlines. If a three-member panel is assigned, the parties may stipulate to proceed with a sole attorney arbitrator conducting the arbitration. If the amount in dispute is less than the threshold minimum amount set forth in the schedule, the presiding arbitrator decides the arbitration in accordance with these rules.<sup>23</sup>
- (C) An attorney arbitrator must be a civil or criminal practitioner if a client has elected such an appointment in the request and the dispute involves the same area of law.<sup>24</sup>
- (D) A Notice of Appointment of Arbitrator must be served
  - (1) within sixty days of receipt of a reply to the Request for Arbitration;
  - (2) within sixty days of the passage of the reply deadline if no reply was received; or
  - (3) in either case as soon as reasonably possible after the receipt of the reply or the reply deadline.
- (E) Arbitrators may request compensation for a hearing that extends beyond four hours. In order for an arbitrator to receive compensation, the parties must agree in writing prior to the taking of evidence that they will compensate the arbitrator. 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. No compensation will be paid to arbitrators for services other than for formal hearings extending beyond four hours. Compensation is hourly at the rate set forth in the Schedule of Charges and Deadlines and is paid equally by the parties. Any dispute regarding compensation is decided by the presiding arbitrator, whose decision is final. 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.

*Rule 3.536 adopted effective July 1, 2013; amended effective January 25, 2019, amended effective September 19, 2019.*

### **Rule 3.537 Disqualification or discharge of arbitrators**

- (A) A party may disqualify one arbitrator without cause. A party is entitled to unlimited challenges of an arbitrator for cause. The State Bar must be notified of the disqualification within fifteen days of serving the Notice of Arbitrator Assignment.

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<sup>23</sup> Rule 3.532.

<sup>24</sup> Rule 3.530(C).

- (B) An arbitrator who believes he or she cannot render a fair and impartial decision or who believes there is an appearance that he or she cannot render a fair and impartial decision must disqualify himself or herself or accede to a party's challenge for cause. If the arbitrator believes there are insufficient grounds to accede to a challenge for cause, the presiding arbitrator decides the challenge. The decision is final.
- (C) Neither a presiding arbitrator nor an assistant presiding arbitrator may represent a party in a State Bar fee arbitration while serving in these roles.
- (D) An arbitrator vacancy due to disqualification or inability to serve must be filled by the State Bar. If a panel member fails to appear at a hearing, the parties may stipulate in writing that the hearing may proceed with a single attorney arbitrator. In no event may arbitration proceed with only two arbitrators or a single non-attorney arbitrator.
- (E) The presiding arbitrator may discharge an arbitrator or panel of arbitrators for unreasonable delay or for other good cause at any time up to the service of an award.

*Rule 3.537 adopted effective July 1, 2013; amended effective May 17, 2019.*

#### **Rule 3.538 Contact with arbitrator**

A party or a person acting on a party's behalf may communicate with an arbitrator only

- (A) ~~i~~n writing with a copy submitted to the State Bar and all other parties or their counsel;
- (B) ~~t~~To schedule a hearing;
- (C) ~~a~~At a hearing; or
- (D) ~~i~~n an emergency.

*Rule 3.538 adopted effective July 1, 2013.*

#### **Rule 3.539 ~~Hearing procedures~~Scheduling hearing**

- (A) After service of the Notice of Assignment, the hearing will be scheduled to take place
  - (1) within forty-five days if a sole arbitrator has been assigned; or
  - (2) within ninety days if a panel has been assigned.
- (B) Within fifteen days of assignment and at least fifteen days before the hearing, the sole arbitrator or panel chair will serve a Notice of Hearing on each party and the State Bar. Appearance at the hearing waives any claim of defective service of the notice.

- (C) The date of a scheduled hearing will be extended by fifteen days from the date a new arbitrator is assigned to replace an arbitrator who has been removed because of disqualification or challenge.<sup>25</sup>
- (D) Upon stipulation or application to the assigned sole arbitrator or panel chair, the sole arbitrator or panel chair may continue a matter for good cause shown. ~~A continuance of more than thirty days must be approved by the presiding arbitrator.~~
- (E) Hearings will convene via a remote communications platform or by video or telephone conference unless the presiding arbitrator determines that good cause exists for an in-person hearing.

*Rule 3.539 adopted effective July 1, 2013.*

#### **Rule 3.540 Preparation for hearing**

- (A) Discovery is not permitted except as provided by this rule.
- (B) Nothing in these rules deprives a client of the right to inspect and obtain the client's file kept by the attorney. A non-client does not have the right to inspect the client's or attorney's file. ~~This provision does not apply to a non-client.~~
- (C) Before a hearing the parties
  - (1) are encouraged to agree to issues not in dispute and to voluntarily exchange documents;
  - (2) may be required by the sole arbitrator or panel chair to clarify issues, submit additional documentation, or exchange documents, and the sole arbitrator or panel may decline to admit into evidence any document a party was required to exchange but did not; and
  - (3) may request issuance of a subpoena in accordance with these rules.
- (D) A party seeking to have a subpoena issued must submit to the State Bar a completed but unsigned subpoena form approved by the State Bar, with proof of service on all parties. Upon a showing of good cause, the presiding arbitrator, or panel chair if appointed, may issue a signed subpoena. The requesting party is responsible for service of the subpoena and any witness fees.
- (E) At least ten days before the hearing a party may submit a written request that the sole arbitrator or panel chair permit the party to

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<sup>25</sup> Rule 3.536.

(1) waive personal appearance and submit testimony and exhibits by declaration under penalty of perjury; or

~~(2) appear by telephone or videoconference; or~~

~~(3)~~(2) designate an attorney or non-attorney representative because of inability to attend the hearing.

(F) The personal representative of a deceased party or the guardian or conservator of an incompetent party may represent the party.

*Rule 3.540 adopted effective July 1, 2013; amended effective July 16, 2020.*

### **Rule 3.541 Hearing**

(A) Any relevant evidence is admissible at a hearing if it is of the sort responsible persons customarily rely on in the conduct of serious affairs, regardless of any common law or statutory rule to the contrary.

(B) Evidence relating to claims of malpractice or professional misconduct is admissible only to the extent it affects the fees to which the attorney is entitled.

(C) Testimony may be given under oath or affirmation administered by the assigned sole arbitrator or panel chair.

(D) The order of proof is determined by the sole arbitrator or panel chair.

(E) Upon a party's request, the sole arbitrator or panel chair may permit

(1) a client to be accompanied by another person, absent the objection of a party;

(2) a party or party's witness~~client~~ to be assisted by an interpreter at the requesting party's~~client's~~ expense unless payment by the State Bar is otherwise required by law;

(3) the attendance of other persons, absent the objection of a party; and

(4) the attendance of witnesses during the hearing, absent the objection of a party.

(F) A hearing is closed to the public; recording of any kind is prohibited; and any participant or attendee is bound by the confidentiality requirements of these rules.<sup>26</sup>

*Rule 3.541 adopted effective July 1, 2013.*

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<sup>26</sup> Rule 3.512.

### **Rule 3.542 Arbitration without a hearing**

The parties may stipulate that the sole arbitrator or panel decide all matters without a hearing and base the decision on the request, the reply, and any other written material submitted by a party, which must be filed with the sole arbitrator or the panel and served on all other parties by the date ordered.

*Rule 3.542 adopted effective July 1, 2013.*

### **Rule 3.543 Failure to respond or participate**

- (A) If a party required to participate in arbitration fails to do so, the arbitration may proceed as scheduled and an award will be made based on the evidence presented. The award may include findings regarding the willfulness of a party's failure to appear at the hearing.
- (B) A party who willfully fails to appear at a hearing is not entitled to request a trial after non-binding arbitration. That party has the burden of proving the non-appearance was not willful. The determination of willfulness is made by the court.<sup>27</sup>

*Rule 3.543 adopted effective July 1, 2013.*

### **Rule 3.544 Award form and content; approval**

- (A) Following the hearing, the original of the signed award will be submitted to the State Bar by
  - (1) a sole arbitrator within fifteen days; or
  - (2) a panel chair within twenty-five days.
- (B) The award must be in writing on the State Bar Arbitration Award form and
  - (1) be signed by the sole arbitrator or at least two concurring panel members and include a dissent, if any, signed by the dissenting panel member;
  - (2) determine all questions submitted to the panel that are necessary to resolve the controversy;
  - (3) indicate whether it is binding or non-binding; and
  - (4) identify all responsible attorneys.
- (C) The award may

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<sup>27</sup> Business & Professions Code § 6204(a).

- (1) include relevant findings of fact;
  - (2) state the circumstances regarding the willfulness of any party's non-appearance;
  - (3) be a stipulated award that incorporates by reference a written settlement agreement reached by the parties before or after assignment of a sole arbitrator or panel;
  - (4) include a refund of unearned fees paid to an attorney; and
  - (5) allocate the filing fee.
- (D) The award may not
- (1) include any other fees, such as attorney fees for the arbitration, notwithstanding an agreement between the parties; or
  - (2) include damages, offset, or any other affirmative relief for malpractice or professional misconduct.
- (E) An award may be made in favor of a party who fails to appear at a hearing if the evidence so warrants, but may not be made against the absent party solely because of the absence. If only one party appears at the hearing, an award may be made; the party who is present must submit any evidence the sole arbitrator or panel chair requires to support the award. If no party appears or waiver of personal appearance has not been approved, the sole arbitrator or panel may issue an award based on the evidence submitted.
- (F) An award is not final until the State Bar approves it for procedural compliance. The State Bar serves each party with an approved award and the Notice of Rights After Arbitration.
- (G) When an award is issued in a binding arbitration, there can be no trial on the issue of fees, but for reasons set forth in statute<sup>28</sup> a trial court may correct,<sup>29</sup> vacate,<sup>30</sup> or confirm<sup>31</sup> a binding award.

*Rule 3.544 adopted effective July 1, 2013.*

### **Rule 3.545 Correction or amendment of award**

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<sup>28</sup> Code of Civil Procedure §§ 1285-1287.6.

<sup>29</sup> Code of Civil Procedure § 1286.8.

<sup>30</sup> Code of Civil Procedure § 1286.2.

<sup>31</sup> Code of Civil Procedure § 1286.



- (A) An award may be corrected or amended by the sole arbitrator or at least two concurring members of a panel. Correction is permitted only for an evident mistake in calculation or a description of a person, thing, or property, or for a defect of form not affecting the merits of the dispute.<sup>32</sup> Amendment is permitted when an award is inadvertently incomplete and amendment does not substantially prejudice the legitimate interests of a party. Unless requested by the arbitrator, no additional testimony or documentary evidence may be submitted.
- (1) Any party may submit a written request that the State Bar correct an award. The requesting party must submit the request to the State Bar with proof of service and serve a copy on each party within ten days after service of the award. The State Bar must ~~forward~~serve a copy of the party's request ~~to~~on each arbitrator~~party~~. Any correction or denial of the request will be made by the sole arbitrator or panel chair within thirty days of service of the award.
- (2) A written request to correct an award does not extend the thirty-day deadline to request a trial or arbitration after a non-binding award has been issued.
- (3) Any party may submit a written request that the State Bar amend an award. The requesting party must submit the request to the State Bar with proof of service and serve a copy on any other party at any time prior to judicial confirmation of the award.
- (B) Any party may submit to the State Bar a written objection to a request for correction or amendment.
- (C) The State Bar must serve all parties with a corrected or amended award or denial of a request for correction or amendment.

*Rule 3.545 adopted effective July 1, 2013.*

### **Rule 3.546 Referral to Office of Chief Trial Counsel**

The State Bar or a sole arbitrator or panel appointed by the State Bar may refer an attorney to the State Bar Office of Chief Trial Counsel for possible disciplinary investigation because of conduct disclosed in an arbitration proceeding. Such a disclosure does not violate the confidentiality that otherwise applies to the proceeding.

*Rule 3.546 adopted effective July 1, 2013.*

## **Article 3. Enforcement**

### **Rule 3.560 Enforcement authority**

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<sup>32</sup> Code of Civil Procedure § 1286.6.

Upon request, the State Bar may assist in enforcing a final and binding arbitration award, judgment, stipulated award, or mediation settlement requiring the attorney to refund fees previously paid to the attorney if the attorney has not timely complied with the terms of the final and binding arbitration award, judgment, stipulated award, or mediation settlement.

*Rule 3.560 adopted effective July 1, 2013.*

### **Rule 3.561 Request for State Bar Enforcement**

- (A) A client may submit a written request for enforcement no earlier than 100 days and no later than four years from the date of service of a final and binding arbitration award, judgment, stipulated award, or mediation settlement.<sup>33</sup> The request must be in writing on the State Bar Request for Enforcement form.<sup>34</sup> The request may include any other party who was awarded or who is liable for a refund of attorney fees. An arbitration award is not enforceable by the State Bar if it refunds the client only some or all of the arbitration filing fee and does not include a refund of attorney's fees or costs.
- (B) Before submitting a Request for State Bar Enforcement, a client must make a reasonable effort to obtain payment, including at a minimum a written request to the attorney for payment. The State Bar may require proof of such an effort before accepting the request.
- (C) The State Bar must serve the Request for State Bar Enforcement on the attorney.
- (D) If a client has filed a petition in a civil court to confirm the arbitration award, the State Bar may proceed with enforcement proceedings or, ~~with approval of the client,~~ abate enforcement until the court enters a judgment confirming the award.

*Rule 3.561 adopted effective July 1, 2013.*

### **Rule 3.562 Attorney response to Request for State Bar Enforcement**

- (A) Within thirty days of service of a Request for State Bar Enforcement, an attorney must<sup>35</sup>
  - (1) provide the State Bar satisfactory proof of compliance with the arbitration award, judgment, stipulated award, or mediation settlement;
  - (2) agree to a payment plan accepted by the State Bar or the client; or
  - (3) establish inability to pay or lack of personal responsibility for payment in

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<sup>33</sup> Business & Professions Code § 6203(d)(5).

<sup>34</sup> Rule 1.24.

<sup>35</sup> Business & Professions Code § 6203(d)(2).

accordance with statutory requirements<sup>36</sup> and the provisions of this rule.

- (B) To establish inability to pay, an attorney must support a response to a Request for Enforcement with an completed Attorney's Statement of Financial Status form signed under penalty of perjury. Any party may challenge the response, and the presiding arbitrator may ~~then hold a hearing or~~ require the parties to submit additional information.
- (C) To establish lack of personal responsibility for payment, ~~because of changed circumstances subsequent to arbitration,~~ an attorney must state reasons for this belief in the response to the client request for State Bar enforcement. The response may name another attorney or other attorneys as responsible for payment. The State Bar must serve each attorney named in the response with the Request for Enforcement and a copy of the attorney's response. Any counter-response must be submitted within twenty days of service.
- (D) After considering the request, the response, and supporting documentation, the presiding arbitrator must issue a final order. The final order may
  - (1) require compliance;
  - (2) terminate or abate enforcement because the attorney is unable to comply; or
  - (3) find that another attorney is responsible for payment.

*Rule 3.562 adopted effective July 1, 2013.*

### **Rule 3.563 Payment plans**

- (A) If the attorney proposes to comply with the arbitration award, judgment, or agreement by a payment plan, the State Bar shall promptly ~~sends~~ the proposed plan to the client.
- (B) The client may accept or reject a proposed payment plan. If the plan is rejected, the attorney must file a confidential Attorney's Statement of Financial Status with the State Bar so that the presiding arbitrator may
  - (1) determine that the plan is reasonable and approve it;
  - (2) reject the plan; or
  - (3) specify amendments that would make the plan acceptable.
- (C) The State Bar shall ~~monitor~~ an-approved payment plans for compliance. If ~~the~~ client informs the State Bar that ~~the~~ an attorney has failed to comply with the plan, the

<sup>36</sup> Business & Professions Code § 6203(d)(2).

presiding arbitrator ~~must~~may request that the State Bar Court place the attorney on involuntary inactive status,<sup>37</sup> unless the attorney provides proof that ~~they~~he or she

- (1) ~~are~~is unable to pay;
- (2) ~~have~~has fully refunded the fees; or
- (3) ~~have~~has received approval of a revised payment plan from the client or the State Bar.

*Rule 3.563 adopted effective July 1, 2013.*

#### **Rule 3.564 Administrative penalties; rescission or modification of penalties**

- (A) Prior to ~~the~~ filing a motion in State Bar Court to enroll an attorney as involuntarily inactive, the presiding arbitrator may impose administrative penalties<sup>38</sup> on an attorney who fails to
  - (1) comply with a final and binding arbitration award, judgment, stipulated award, or mediation settlement that includes a refund of fees paid to the attorney;
  - (2) submit a written response to a Client Request for Enforcement of an Arbitration Award; or
  - (3) cooperate with the State Bar after an initial response to a Request for Enforcement.
- (B) An order for administrative penalties may not exceed twenty percent of the amount awarded or \$1,000, whichever is greater. Such an order is final. Unpaid penalties are added to the annual license fees for the next calendar year.<sup>39</sup>
- (C) In response to ~~the~~an attorney's written request made within thirty days of service of an order for administrative penalties, the presiding arbitrator may modify or rescind an order for administrative penalties if all of the following conditions are met:
  - (1) the attorney ~~has complied~~agrees to comply with the award;
  - (2) the attorney was not served with the order for administrative penalties; and
  - (3) the attorney satisfactorily establishes in a declaration under penalty of perjury that ~~they~~he or she promptly submitted a request that warranted modification or rescission of the penalties.

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<sup>37</sup> Rule 3.565.

<sup>38</sup> See also Rule 3.565.

<sup>39</sup> Business & Professions Code § 6203(d)(3).

- (D) Before deciding an attorney's request to modify or rescind an order for administrative penalties, the presiding arbitrator may require the attorney to submit additional information or declarations under penalty of perjury within a specified time. Failure to comply is grounds for dismissal of the request.
- (E) The presiding arbitrator may rescind or modify an order imposing administrative penalties, but not if a request was made more than thirty days after service of the order. ~~because the attorney failed to maintain a current address with the State Bar.~~
- (F) The presiding arbitrator's decision to rescind or modify an order imposing penalties is final.

*Rule 3.564 adopted effective July 1, 2013; amended effective January 25, 2019.*

### **Rule 3.565 Inactive enrollment for noncompliance**

The presiding arbitrator may move the State Bar Court to enroll an attorney involuntarily inactive<sup>40</sup> for failure to

- (A) refund client fees as required by a final and binding arbitration award, judgment, stipulated award, or mediation settlement;
- (B) agree to or comply with a payment plan;
- (C) prove an inability to comply with the terms of a final and binding arbitration award, judgment, stipulated award, or mediation settlement; or
- (D) prove lack of personal responsibility for compliance with the terms of a final and binding arbitration award, judgment, stipulated award, or mediation settlement.

*Rule 3.565 adopted effective July 1, 2013.*

### **Rule 3.566 Termination of enforcement**

State Bar enforcement concludes upon submission of satisfactory proof of compliance with the arbitration award, judgment, stipulated award, or mediation settlement. The State Bar will notify the parties that its enforcement efforts have ended.

*Rule 3.566 adopted effective July 1, 2013.*

## **Article 4. Appointment and Requirements of Arbitrators**

### **Rule 3. Appointment of Arbitrators**

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<sup>40</sup> Business & Professions Code §§ 6203(d)(1), 6066, and 6125 et seq.

(A) To administer the Fee Arbitration Program, the Board of Trustees of the State Bar shall appoint a presiding arbitrator and assistant presiding arbitrator(s) who shall serve for a term of four years and may be reappointed.

(B) All attorney and lay arbitrators participating in the Fee Arbitration Program shall be appointed by the Appointments Committee pursuant to the qualifications required by these rules.

### **Rule 3. Arbitrator Qualifications**

(A) Presiding arbitrators and assistant presiding arbitrators shall meet all of the following qualifications:

- (1) Be, and have been for at least five years an active licensee in good standing with the State Bar of California or be a retired judge who is an active licensee of the state of California;
- (2) Not have a pending open investigation or disciplinary matter filed with the State Bar Court, any federal court or agency, or other state bar discipline authority. Conviction of a crime for any felony or misdemeanor required to be reported under Business and Professions Code section 6068(o)(5) may constitute grounds for rejection of the applicant. The imposition of any public discipline by the State Bar Court, or a federal court or agency or other state bar discipline authority authorized to impose comparable professional discipline against attorneys may also constitute grounds for rejection of an application;
- (3) Have basic technological proficiency; and
- (4) Have served as an arbitrator for a local bar or the State Bar program for a minimum of five years.
- (5) In addition of meeting the above qualifications, the Board of Trustees shall consider all other relevant qualifications, including but not limited to, prior arbitration experience, quality of prior work, and demonstrated leadership with a local bar fee arbitration program.

(B) Attorney arbitrators shall meet all of the following qualifications:

- (1) Be, and have been for at least five years an active licensee in good standing with the State Bar of California or be a retired judge who is an active licensee of the state of California;
- (2) Not have a pending open investigation or disciplinary matter filed with the State Bar Court, any federal court or agency, or other state bar discipline authority. Conviction of a crime for any felony or misdemeanor required to be reported under Business and Professions Code section 6068(o)(5) may constitute grounds for rejection of the applicant. The imposition of any public discipline by the State Bar Court, or a federal court or agency or other state bar discipline authority authorized to impose comparable professional discipline against attorneys may also constitute grounds for rejection of an application; and

(3) Have basic technological proficiency.

(C) Lay arbitrators shall meet all of the following qualifications:

(1) Have never been an active or inactive licensee of the bar of any state or the District of Columbia;

(2) Have never worked regularly for a public or private law office or practice, court of law or attended law school for any period of time;

(3) Have never worked as a paralegal, law firm staff, or law clerk;

(4) Have never been convicted of a felony, or a misdemeanor involving dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or a misdemeanor of any type; and

(5) Have basic technological proficiency

(D) The Board of Trustees and/or the Appointments Committee may consider, any additional relevant factors in connection with any decision to accept or exclude any applicant for appointment.

### **Rule 3. Requirements of Arbitrators**

(A) During the term of service, all attorney arbitrators are required to report to the Fee Arbitration Program the following:

(1) The existence of any open investigation or disciplinary complaint filed with the State Bar Court or imposition of public professional discipline by the State Bar of California or by any federal court or agency authorized to impose comparable professional discipline against attorneys.

(2) The existence of any criminal conviction of a felony or misdemeanor required to be reported under Business and Professions Code section 6068(o)(5).

(B) During the term of service, all lay arbitrators are required to report to the Fee Arbitration Program the existence of any criminal conviction of a felony, or a misdemeanor involving dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or a misdemeanor of any type.

(C) All arbitrators must affirmatively state every three years, on a form approved by the State Bar, that they still meet the minimum requirements.

(D) All arbitrators are required to complete training on conducting arbitrations within 90 days of appointment. Arbitrators may not conduct arbitrations prior to completion of this training. Thereafter, arbitrators must complete training every three years to maintain their appointment.

(E) Failure to complete any of these requirements may be cause for removal.

**Rule 3. Removal of Arbitrators**

(A) Arbitrators may be removed by the Appointments Committee or the presiding arbitrator for any of the following reasons:

(1) Failure to complete any of the requirements under these rules.

(2) Failure to maintain the minimum qualifications under these rules.

(3) Prolonged unavailability or lack of participation in arbitrations.

(4) Other good cause.





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## GUIDELINES AND MINIMUM QUALIFICATIONS OF ARBITRATORS FOR THE STATE BAR OF CALIFORNIA FEE ARBITRATION PROGRAM

*(Adopted by the State Bar Committee on Mandatory Fee Arbitration 2001;  
revised May 12, 2006; revised January 12, 2007; revised May 3, 2019.)*

### I. ARBITRATOR APPOINTMENTS SELECTION COMMITTEE

The Appointments Selection Committee shall consist of the Presiding Arbitrator and at least one staff member from the State Bar's Mandatory Fee Arbitration Program. Recommendations for appointments of arbitrators are submitted to the appropriate State Bar Board Committee, which in turn forwards its recommendations to the full Board of Trustees for appointment.

### II. GUIDELINES FOR MINIMUM QUALIFICATIONS OF ARBITRATORS

- A. The following guidelines are intended to set forth the minimum qualifications for lawyer and nonlawyer arbitrator appointments as well as the retention of appointees on the arbitrator panel. Any information provided by the applicant on their application form will be evaluated and could be used as grounds for exclusion from appointment. An applicant's failure to show, upon request of the Appointments Selection Committee, that they affirmatively meet these minimum qualifications may result in the rejection of an applicant or removal of an arbitrator from the Fee Arbitration Program.
- B. In addition, the Appointments Selection Committee may consider, within its sole discretion, any additional factors it may deem relevant in connection with any decision to accept or exclude any applicant.

### III. APPOINTMENT TO THE MANDATORY FEE ARBITRATION PANEL

#### A. Requirements of all State Bar Fee Arbitrators

Prior to assignment to a panel, arbitrators are required to attend at least one comprehensive training program for arbitrators on attorney fee arbitration through a local bar association or the State Bar of California.

#### B. Lawyer Arbitrators

To be qualified for appointment as a lawyer arbitrator, an applicant must:

- 1. be, and have been for at least five years, an active licensee in good standing with the State Bar of California; or

2. be a retired judge who is an active licensee of the State Bar of California; and
3. not have a pending professional disciplinary matter filed with the State Bar Court, any federal court or agency, or other state bar discipline authority. Conviction of a crime for any felony or misdemeanor required to be reported under Business and Professions Code section 6068(o)(5) may constitute grounds for rejection of the applicant. The imposition of any public discipline by the State Bar Court, or a federal court or agency or other state bar discipline authority authorized to impose comparable professional discipline against attorneys may also constitute grounds for rejection of an application.

C. Nonlawyer Arbitrators

To be qualified for appointment as a nonlawyer arbitrator an applicant must:

1. provide sufficient information to the Appointments Selection Committee to its satisfaction concerning their business, professional or volunteer experience, education, or other relevant qualifications to serve as an arbitrator; and
2. have never been an active or inactive licensee of the bar of any state or the District of Columbia; and
3. have never worked regularly for a public or private law office or practice, court of law or attended law school for any period of time; and
4. have never worked as a paralegal, law firm staff, or law clerk.
5. have never been convicted of a felony, or a misdemeanor involving dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or a misdemeanor of any type.

#### IV. ONGOING REQUIREMENTS

- A. During the term of service, all lawyer arbitrators are required to report to the Fee Arbitration Program the existence of any professional disciplinary complaint filed with the State Bar Court or imposition of public professional discipline by the State Bar of California or by any federal court or agency authorized to impose comparable professional discipline against attorneys.
- B. During the term of service, all lawyer arbitrators are required to report to the Fee Arbitration Program the existence of any criminal conviction of a felony or misdemeanor required to be reported under Business and Professions Code section 6068(o)(5).
- C. During the term of service, all non-attorney arbitrators are required to report to the Fee Arbitration Program the existence of any criminal conviction of a felony, or a

misdemeanor involving dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or a misdemeanor of any type.

- D. Once appointed, all arbitrators shall attend a comprehensive training at least once every five years.

Comment #	Name or Organization	Licensure Status	Rules	Position (A/AM/ D/NP) <sup>1</sup>	Public Comment
1	John Schroeder	Attorney	Rule 3.539 - Hearing procedures  Rule 3.540 - Preparation for hearing  Rule 3.541 - Hearing	Rules 3.539, 3.540, and 3.541: AM	<p>Rule 3.539:</p> <p>I do not believe it is in the public's or State Bar's best interest to have remote appearances be the default method. IT should be an option for both parties. There should also be a statement added that the right to cross examination must be preserved regardless of the method of appearance. If the remote or in person appearance does not allow for the right of cross examination then the testimony should be struck absent good cause.</p>
2	LACBA Attorney Fee Dispute Committee	Attorney	Rule 3.511 - Stay of Proceeding  Rule 3.541 - Hearing	Rules 3.511 and 3.541: AM	<p>Rule 3.511:</p> <p>The language is unclear. I appears the Bar will be filing, with the Court, the form on behalf of a party (usually the Client.) However, there is, likely, a first appearance fee and the efilng fee. This could result in a fee of up to \$500. I am not aware of any exception to the fee. If I am correct, is the Bar permitted to expend funds for such a filing, on behalf of one party?</p> <p>Rule 3.541:</p> <p>While a support person is permitted to a Client, "other person" is not appropriate. There is no reason to allow more people who are not witnesses. It will create confusion and disruption. Additionally, the intended amendment makes no provision for the arbitrator to decline to allow more than 1 support person. Keeping this intended language, also, creates a circumstance where a party can argue that denial</p>

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

Comment #	Name or Organization	Licensure Status	Rules	Position (A/AM/ D/NP) <sup>1</sup>	Public Comment
					<p>of his/her "right" to have as many support people as "requested" was improper or biased.</p> <p>As for the interpreter issue, the ADA requires that ASL interpreters be provided, free of charge, to a party. The language that the party must pay for an interpreter only should apply to voice language interpreters and attorneys (because hearing impaired attorneys likely have their own ASL interpreters for daily activities.)</p>