

5.4 Request for Approval of Proposed Amendments to Beverly Hills Bar Association Mandatory Fee Arbitration Rules



The State Bar of California

OPEN SESSION AGENDA ITEM 5.4 MAY 2025 BOARD OF TRUSTEES

DATE: May 22, 2025

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: Request for Approval of Proposed Amendments to Beverly Hills Bar Association Mandatory Fee Arbitration Rules

EXECUTIVE SUMMARY

Statutorily mandated arbitration of attorney-client fee and cost disputes may be conducted by a local bar association. Fee arbitration rules of procedure promulgated by a local bar association are subject to review by the Board of Trustees. The Beverly Hills Bar Association (BHBA) seeks to update its fee arbitration rules with various amendments. The Mandatory Fee Arbitration (MFA) program's presiding arbitrator and staff have reviewed BHBA's proposed rule amendments and determined that they comport with the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs (Minimum Standards) as approved by the Board.

RECOMMENDED ACTION

Staff recommends the Board approve BHBA's proposed amendments to its Rules of Procedure for Fee Arbitrations, as set forth in Attachment A.

DISCUSSION

Under Business and Professions Code section 6200, subdivision (d), bar associations are authorized to sponsor MFA programs. Local bar programs' rules of procedure must comply with Business and Professions Code sections 6200–6206 and the minimum standards adopted by the Board. Specifically, arbitration rules of procedure promulgated by local bar programs are subject to review by the Board, or a committee designated by the Board, to ensure that the

rules provide for a fair, impartial, and speedy hearing and arbitration award. The Board's approval of a bar association's rules of procedure gives that program jurisdiction to arbitrate fee disputes submitted under the auspices of the MFA program (Minimum Standards, para 1).

In 2020, the BHBA's MFA Rules of Procedure were updated to permit videoconference hearings. Aside from this minor revision, the BHBA rules were last revised over ten years ago. The BHBA now seeks to update its rules to expand its filing jurisdiction to include Ventura County, raises the three-arbitrator panel threshold to \$25,000 in dispute, and to permit electronic submission and service of documents. In addition, the proposed amendments aim to simplify BHBA's filing fee schedule and clarify existing definitions and procedures. Many of the proposed amendments to the BHBA rules mirror the State Bar Model Rules of Procedure for Fee Arbitrations, State Bar MFA rules, and other local bar programs' rules. Significant substantive updates to the rules are discussed in detail below.

Rule 10.2, Filing Jurisdiction

Currently, the BHBA program will arbitrate fee disputes involving attorneys who performed substantial services in Los Angeles County, or where at least one attorney involved in the dispute has or maintained an office in Los Angeles County at the time the services were rendered. Now, the BHBA seeks to add Ventura County to its filing jurisdiction. The Ventura County Bar Association (VCBA) discontinued its MFA program in March 2024 and, at present, fee disputes involving attorneys from Ventura County are filed with the State Bar program.

The VCBA is aware of the BHBA's proposed amendment to add Ventura County to its filing jurisdiction and does not oppose this amendment as the VCBA does not have any plan at present to resume offering mandatory fee arbitration in the near future. This amendment would also alleviate the burden on the State Bar program by permitting the BHBA to accept jurisdiction of cases involving attorneys from Ventura County.

Rule 14.4, Filing Fee Schedule

The BHBA seeks to update and simplify its filing fee schedule by switching to a 5 percent formula and eliminating the \$50 minimum filing fee. The maximum filing fee remains capped at \$5,000.

Previously, the BHBA employed a tiered filing fee schedule and charged \$50 plus either six or seven percent of the disputed amount. The proposed amendment will simplify filing fee calculations and will reduce the cost of fee arbitration for applicants.

Rule 20.1, Appointment of Panel

The BHBA proposes to increase the disputed amount threshold when a panel of three arbitrators will be appointed to hear a case from more than \$15,000 in dispute to more than \$25,000 in dispute. Cases involving disputed amounts of \$25,000 or less would be heard by one attorney arbitrator, while three-arbitrator panels are composed of two attorney arbitrators and one nonattorney arbitrator. This \$25,000 threshold is used by several other Los Angeles County bar association programs and is also the three-panel threshold for the State Bar MFA program.

Rule 25.6, Confidentiality

This proposed amendment clarifies that the entire arbitration case file, including the award, is confidential.

Rule 29.2, Compelling Production of Documents at the Hearing by Subpoena or Notice

This proposed new rule is modeled after a rule currently in use by the Los Angeles County Bar Association’s fee arbitration program, and is designed to give a party the option of requesting desired documents that may be necessary to the fee dispute by written notice instead of through the subpoena process.

Rule 30.0, Commencement of Hearing; Notice; Attendance.

This proposed amendment adopts State Bar Rule 3.539 language related to the scheduling of the hearing within 45 or 90 days from the Notice of Assignment of panel, and also clarifies that the arbitrator has the discretion to determine the mode of conducting the hearing, including by telephone or videoconference.

Rule 39.0, Correction or Amendment of Award by Hearing Panel

Proposed amendments to this rule are based on State Bar Rule 3.545 on correction or amendment of an arbitration award.

Rule 40.0, Service

This rule was amended to permit electronic service of documents with the written consent of the parties.

Rule 41.0, Enforcement Authority

Proposed amendments to this rule reflect recent revisions to the State Bar’s MFA rules related to enforcement of fee arbitration awards.

State Bar staff and Presiding Arbitrator, Clark S. Stone, have reviewed the BHBA’s revised MFA rules and have determined that they comply with Business and Professions Code sections 6200 et seq. and the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs. Therefore, it is recommended that the Board of Trustees approve the BHBA’s MFA rules as presented in Attachment A.

PREVIOUS ACTION

None

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None – core business operations

RESOLUTIONS

Should the Board of Trustees, sitting as the Regulation and Discipline Committee, concur, it is:

RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee hereby approves the Beverly Hills Bar Association’s amendments to the Rules of Procedure for Fee Arbitrations, in the form attached as Attachment A, as being in compliance with Business and Professions Code sections 6200–6206 and the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitrations.

ATTACHMENTS LIST

- A.** Beverly Hills Bar Association Mandatory Fee Arbitration Program Rules of Procedure for Fee Arbitrations (redline)
- B.** Beverly Hills Bar Association Mandatory Fee Arbitration Program Rules of Procedure for Fee Arbitrations (clean)
- C.** Model Rules of Procedure for Fee Arbitrations

**BEVERLY HILLS BAR ASSOCIATION
MANDATORY FEE ARBITRATION PROGRAM
Rules of Procedure for Fee Arbitrations**

**ARTICLE I.
PURPOSE AND INTENT OF MANDATORY FEE ARBITRATION**

Rule 1.0 Application and Interpretation of These Rules.

California law entitles a Client to Mandatory Fee Arbitration of a dispute regarding an attorney's fees for legal services. It is the intent of these rules to provide for a fair, speedy, economical, and impartial Hearing and Award, and these rules shall be applied, interpreted, and construed consistent with that intent.

**ARTICLE II.
DEFINITIONS**

RULE ~~12~~.0. Definitions.

As used in this chapter:

Each of the following terms appearing herein are defined as indicated:

- ~~2.1.1~~ **ACTION:** **Action:** A civil judicial proceeding or an arbitration brought to enforce, redress or protect a right.
- ~~1.2~~ **ADMINISTRATOR:** ~~2.2~~ **Administrator:** The staff person responsible for administering the ~~local bar association's Mandatory Fee Arbitration Program~~ Program.
- ~~12.3~~ **AWARD:** **Attorney Arbitrator:** 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.
- ~~2.4~~ **Award:** The decision of the arbitrator or arbitrators in the fee arbitration proceeding, including any award entered by stipulation or request of the Parties.
- ~~1.4~~ **CLIENT:** ~~2.5~~ **Client:** A person who directly, or through an authorized representative, consults with, retains, or secures legal services or advice from an attorney in the attorney's professional capacity.

- ~~1.5~~ ~~COMMITTEE CHAIR:~~ **2.6 Committee Chair:** The person on the Mandatory Fee Arbitration ~~program~~Program responsible for supervising the ~~program's~~Program's fee arbitrators and for ruling on matters as set forth in these rules.
- ~~1.6~~ ~~DECLARATION:~~ **2.7 Declaration:** A declaration is a document in compliance with the requirements of Code of Civil Procedure section 2015.5, or an affidavit.
- ~~1.7~~ ~~FILE~~**2.8 Fees:** Attorney fees, costs, or both.
- 2.9 File:** Fee arbitration records and papers in a specific fee arbitration case.
- ~~1.8~~ ~~HEARING PANEL:~~ **2.10 Hearing:** A fee arbitration hearing conducted by the Program.
- 2.11 Hearing Panel:** One or three arbitrators assigned to hear the fee dispute and to issue the ~~award~~Award.
- ~~1.9~~ ~~PANEL CHAIR:~~ ~~Refers~~**2.12 Lay Arbitrator:** A non-attorney who has not been admitted to either 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.
- 2.13 Mandatory Fee Arbitration:** The arbitration of disputes concerning Fees under California Business & Professions Code §§ 6200 - 6206.
- 2.14 Non-Client:** 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 a "Non-Client."
- 2.15 Notice Of Client's Right to Fee Arbitration:** The State Bar approved form an attorney is required to provide to a Client before or at the time of service of summons in a lawsuit against the Client for the recovery of Fees, for professional services rendered, to notify Client of their right to arbitrate a fee dispute under Business and Professions Code sections 6200-6206.
- 2.16 Panel Chair:** Either the sole arbitrator or ~~Panel Chair~~panel chair of a three-member panel assigned to hear a matter. -The ~~Panel Chair~~three-member panel chair is responsible for ruling on matters pertaining to the individual case assigned as set forth in these rules.
- ~~1.10~~ ~~PARTY:~~ **2.17 Party:** A person who initiates or is named in an arbitration proceeding under these rules, including an attorney, a ~~client~~Client, or other person who may be liable for payment of, or entitled to a refund of ~~attorney's fees~~Fees.

~~1.11 PROGRAM: 2.18~~ **Program:** Unless indicated otherwise, reference to the ~~program~~Program means the Mandatory Fee Arbitration ~~Program~~program of the Beverly Hills Bar Association.

~~1.12 STATE BAR: 2.19~~ **Receipt, Received, Receives:** The day on which a mailed Request for Arbitration or a mailed Notice of Client's Right to Fee Arbitration is postmarked, or the day on which a Request for Arbitration or any other submission is received by the Program by mail or electronically.

2.20 Request for Arbitration: The initiating submission made by a Party requesting fee arbitration using the form approved by the Program and paying the appropriate filing fee as established by the Program.

2.21 State Bar of California: Unless indicated otherwise, reference to the State Bar means the State Bar's ~~Office of~~ Mandatory Fee Arbitration—Program.

ARTICLE II.

2.22 Trial: A formal legal proceeding occurring if any Party timely rejects the Award, either in a court having jurisdiction over the amount in controversy or, if the Parties have a pre-existing arbitration agreement, in arbitration.

2.23 Tribunal: A Court or a private arbitrator presiding over a dispute between a lawyer and a Client.

ARBITRATION GENERALLY

RULE 23.0 Arbitration is Mandatory ~~For~~ Attorneys.

~~Arbitration under Business and Professions Code sections 6200-6206~~

California law entitles a Client to arbitration of a dispute regarding an attorney's Fees for legal services. If initiated by Client, fee arbitration is mandatory for an attorney. Fee arbitration is voluntary for a ~~client~~,Client unless the ~~parties~~Parties have agreed in writing to submit their fee disputes to ~~arbitration~~, and mandatory for an attorney if commenced by a ~~client~~.Mandatory Fee Arbitration.

RULE 34.0 Party's Failure To Respond Or Participate.

~~In a mandatory fee arbitration, if~~

4.1 If a ~~party~~Party fails to respond to a ~~request~~Request for ~~arbitration~~Arbitration or refuses to participate, the ~~arbitration~~Mandatory Fee Arbitration Hearing will proceed as scheduled and an ~~award~~Award will be made on the basis of the evidence presented to the ~~hearing panel~~.Hearing Panel. The ~~award~~Award may include findings ~~on the subject of~~ concerning a ~~party's~~Party's failure to participate or to appear at the ~~arbitration~~Hearing.

4.2 A Party who willfully fails to appear at a Hearing is not entitled to request a Trial after non-binding Mandatory Fee Arbitration. The Party that failed to appear has the burden of proving their non-appearance was not willful. The Tribunal shall determine whether the Party's non-appearance was willful and it may consider any findings made by the Hearing Panel.

RULE 45.0 Disputes Covered.

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

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

RULE 56.0 Non-Binding and Binding Arbitration.

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

award may be corrected, vacated or confirmed pursuant to Code of Civil Procedure section 1285 et seq.

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

RULE 6.0 ~~;~~ **Withdrawal of Binding Arbitration Election** ~~;~~

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

6.2 Unless a Party requests a Trial within 30 days of the date of service of a non-binding arbitration Award, the non-binding Award shall automatically become binding.

~~6.3~~ A party who has requested binding arbitration ~~A Party who requested a binding Award may withdraw that their request for binding arbitration by submitting a written request and request a change, if the respondent:~~

a) has not replied;

b) has not agreed to non-binding arbitration in writing to the program and the other parties, so long as the other parties have not already reply; or

has replied and agreed to binding arbitration.

¹

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

6.4 ~~Except as provided above, if the parties~~ 6.4 In the event a Party submits a written request to withdraw its consent to binding arbitration, the Program shall provide a copy of the written request to the arbitrator and the other Parties within 10 days of receipt. The Program shall provide a copy of the written request within ten days of the Program's receipt of that Party's Reply.

6.5 Except as provided above, if the Parties have already agreed to binding arbitration, the binding election may be changed to non-binding arbitration only

by written agreement signed by all ~~parties~~Parties and ~~sent~~delivered to the ~~program~~Program.

6.6 Any Award that is or has become binding may be corrected, vacated or confirmed pursuant to Code of Civil Procedure section 1285 et seq.

RULE 7.0 Right ~~To~~To Counsel.

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

All Parties, at their own expense, may be represented by an attorney. The Party or the Party's attorney shall notify the Program in writing of the name, address, and telephone number of the attorney. Thereafter, notices and other communications from the Program, including notices from the Hearing Panel, shall be sent to counsel. In the absence of such written notification, all notices will be sent to the Parties.

RULE 8.0 Waiver ~~Of~~of Right ~~To~~To Request ~~Or~~or Maintain Arbitration.

8.1 A ~~client's~~Client's right to request or maintain ~~arbitration~~a Mandatory Fee Arbitration is waived if the ~~client~~Client:

- a) **8.1** —answers a complaint in a civil ~~action~~Action or ~~other~~files an equivalent response to the civil ~~action~~Action before filing a ~~request~~Request for ~~arbitration~~Arbitration, after receiving the ~~required form entitled~~“Notice of Client’s Right to Arbitration” ~~was given pursuant to Business and Professions Code section 6201(a);~~;
- b) **8.2** —commences ~~an action~~a legal Action or files any pleading seeking judicial resolution of a fee or cost dispute or seeking affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct;or
- c) **8.3** —fails to deliver to the ~~program~~Program a ~~request~~Request for ~~arbitration~~Arbitration on the approved ~~program~~Program form that is postmarked or ~~received~~Received on or before the 30th day from the date of the ~~client's~~Client's mailing of the ~~form entitled~~“Notice of Client's Right to Arbitration” ~~given pursuant to Business and Professions Code section 6201, subdivision (a);~~;

8.2 Should the fee dispute transfer to a different fee arbitration program after the ~~request~~Request for ~~arbitration~~Arbitration is filed, the original date of postmark or ~~receipt~~Receipt of the arbitration request will be preserved for purposes of determining whether the ~~request~~Request for ~~arbitration~~Arbitration was made within the 30-day time period.

8.3 If the Client waives the right to Mandatory Fee Arbitration, the Parties may agree in writing to set aside the waiver and to proceed with Mandatory Fee Arbitration.

RULE 9.0 Stay ~~Of~~ Proceedings.

9.1 If an attorney, or the attorney's assignee, commences an ~~action~~Action to collect ~~fees or costs~~Fees in any court or other proceeding, with limited exceptions including provisional remedies, the court ~~action~~Action or other proceeding is automatically stayed upon filing a request for fee arbitration with a ~~State Bar approved fee arbitration program.~~the Program.

9.2 The ~~party~~Party who requested ~~fee arbitration~~Mandatory Fee Arbitration has a duty to notify the ~~court~~Tribunal of the stay and attach a copy of the ~~arbitration request form.~~Request for Arbitration. If the person who requested or caused the stay has not appeared in the ~~action~~Action or other proceeding, or is not subject to the jurisdiction of the court, the plaintiff must immediately file a notice of stay and attach a copy of the arbitration request form showing that the proceeding is stayed. Upon request, the ~~program~~Program may provide a copy of a notice of automatic stay to the ~~party~~Party.

ARTICLE IV.

ARTICLE III. **PROGRAM**

RULE 10.0 ~~Determination Of~~ Jurisdiction.

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

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

~~10.3~~—Within 15 days from service of notice of a ruling on a challenge to jurisdiction or claim that the matter is time barred, a party may file a written request for reconsideration based on new evidence. 10.1 The Program has jurisdiction over disputes concerning Fees, as set forth in Rule 5.0.

~~10.2 The Committee Chair shall rule on the request for reconsideration.~~

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

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

RULE 11.0 — Jurisdiction by the Program

11.4 The Program shall have jurisdiction over a fee dispute if a substantial portion of the services were performed in the county where the Program is located, or at least one of the attorneys involved in the dispute has an office in Los Angeles County or Ventura County or maintained an office in Los Angeles County or Ventura County at the times the services were rendered, or where the majority of legal services were provided.

~~10.3 Where the existence of an attorney-client relationship is in dispute, the Parties may agree in writing to submit the issue for a determination by the Program, which otherwise lacks jurisdiction to determine that issue.~~

~~10.4 The Program may, but is not required to, accept jurisdiction pursuant to a written agreement of the Parties to submit to the Program's jurisdiction, if the Program does not have original jurisdiction.~~

~~10.5 The Program shall reject any Request for Arbitration when it is clear from the face of the request that the provisions of Business & Professions Code § 6200 have not been met or the matter is time barred under Business & Professions Code § 6201(a).~~

~~10.6 If the Program believes the Request for Arbitration was not timely submitted or that the Mandatory Fee Arbitration does not meet statutory requirements, the Program must request that the Parties submit written statements supporting their respective positions on the issue of whether the Program has jurisdiction over their fee dispute or whether the dispute is time barred.~~

~~10.7 Within 15 days from service of notice of a ruling on a challenge to jurisdiction or claim that the matter is time barred, a Party may file a written request for reconsideration based on new evidence. The Committee Chair shall rule on the request for reconsideration. For good cause, the Committee Chair may assign the matter to a Hearing Panel to take evidence and determine whether jurisdiction should be accepted. There is no appeal of the Committee Chair's decision or an assigned a panel's decision. A ruling on request for reconsideration by either the Committee Chair or an assigned panel is final and not appealable to the Program or the State Bar.~~

11.2 10.8 In the event of a dispute between the ~~parties~~Parties as to ~~which whether~~the Program or another Mandatory Fee Arbitration program should hear the matter, the ~~program~~Mandatory Fee Arbitration provider where the arbitration request was first filed shall determine that the arbitration will be conducted in the county where “the majority of legal services were provided,”¹ and such ruling is final and not appealable ~~either to the Program or~~ to the State Bar. -Should the fee dispute transfer to a different ~~fee arbitration program~~Mandatory Fee Arbitration provider after the ~~request~~Request for ~~arbitration~~Arbitration is filed, the original date of postmark or receipt of the arbitration request will be preserved for purposes of determining whether jurisdiction exists.

RULE ~~1211.0~~ Removal to the State Bar of California

1211.1 If a ~~request~~Request for ~~arbitration~~Arbitration has been filed with the ~~program~~Program and a ~~party~~Party to the arbitration ~~requests~~believes they cannot obtain a fair or impartial hearing before the Program, that Party may request removal to the State Bar ~~program~~;

- a) ~~The~~ Party seeking removal from the ~~program~~Program must submit a ~~declaration~~Declaration signed under penalty of perjury asserting the factual basis for the removal. -That ~~party~~Party need not submit an additional filing fee to the State Bar until there has been a final ruling by the State Bar’s Presiding Arbitrator granting removal to the State Bar.
- b) ~~The~~ State Bar will serve the request for removal and supporting ~~declaration~~Declaration on the other ~~parties~~Parties and the ~~program~~Program. Any written response must be ~~received~~Received by the State Bar within 15 days of service of the request for removal and ~~declaration~~Declaration for consideration by the State Bar’s Presiding Arbitrator.
- c) ~~The~~ Party seeking removal must provide all additional information requested by the State Bar within the time limits set by the State Bar.
- d) ~~A~~ request for removal to the State Bar will be decided by the State Bar’s Presiding Arbitrator under the applicable rules of procedure of the State Bar. Upon service of an order granting a request for removal, the ~~party~~Party who paid the filing fee to the ~~program~~Program shall receive a refund of the filing fee from the Program.

1211.2 The State Bar’s Presiding Arbitrator shall deny a request for removal if ~~he or she~~determines that they determine:

- a) ~~a)~~ The other ~~parties~~Parties to the local bar ~~program's~~Program's arbitration or the ~~program~~Program itself would be prejudiced by removal and such prejudice outweighs the allegations by the ~~party~~Party seeking removal that

- the ~~party~~Party believes that a fair hearing through the local bar's ~~program~~Program cannot be obtained; or
- b) ~~The~~ conduct of the ~~party~~Party seeking removal during the course of the arbitration proceedings before the local bar ~~program~~Program is clearly inconsistent with a bona fide belief by that ~~party~~Party that ~~he or she~~they cannot obtain a fair hearing in that forum; or
- c) The ~~party~~Party seeking removal has waived any claim that the ~~party~~Party cannot obtain a fair hearing before the local bar's arbitration ~~program~~Program.

RULE ~~1312.0~~Effect Of Failure to Adhere to Time Requirements.

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

ARTICLE V.

~~ARTICLE IV.~~

INITIATION OF ARBITRATION PROCEEDING

RULE ~~1413.0~~Request For Arbitration

~~1413.1~~The Request for Arbitration may be ~~initiated~~filed by (i) ~~the Client~~, (ii) ~~a client, an attorney Non-Client but who may be liable for~~ or ~~a third party~~ entitled to ~~request mandatory fee arbitration~~ a refund of Fee, or (iii) ~~the attorney claiming entitlement to Fees against a Non-Client.~~

~~1413.2~~An arbitration is ~~initiated by filing~~deemed filed when the ~~Program Receives~~ a written "Request ~~For~~for Arbitration" ~~with the program on the form~~ approved ~~program form by the Program~~ and ~~paying~~the initiating Party either pays the appropriate filing fee as established by the ~~program. Service of the request on the other party with whom~~ ~~Program or applies~~ for a waiver of the filing fee under Rule 15.0. ~~In the event the manner of submitting a written Request for Arbitration does not allow for the immediate payment of the filing fee, then the filing fee must be paid promptly by the initiating Party as directed by the Program.~~

~~13.3~~ If the attorney files a Request for Arbitration, and there is a fee dispute named no written agreement between the Parties that fee disputes be submitted to Mandatory Fee Arbitration, arbitration shall proceed only if the Client consents

~~in writing on the Program's approved form within 30 days of service on the request form shall be made by the program~~Client of the Request for Arbitration.

~~14.3~~ **13.4** The Program will cause the Request for Arbitration to be served on the other Party or Parties identified therein. At the time of service of a request on an attorney, the ~~program~~Program shall serve with it a copy of the approved "Notice of Attorney Responsibility" form.

~~14.4~~**13.5** The ~~party~~Party requesting arbitration may amend ~~the request up to its Request for Arbitration within~~ 15 days ~~after of its initial submission by~~ mailing it to the ~~program~~, unless a request for clarification is made by the ~~program~~.or electronically submitting the amendment to the Program. Thereafter, ~~the Request for Arbitration~~ may be amended only with the approval of the Committee Chair or by the Panel Chair, if a ~~notice~~Notice of ~~assignment~~Assignment of the ~~hearing panel~~Hearing Panel has been served on the ~~parties~~Parties. At any time, the Program or the Panel Chair may request clarification of the Request for Arbitration that requires amendment of the Request for Arbitration.

~~14.5~~—The request for arbitration may be made by (i) a person who is not the client but who may be liable for or entitled to a refund of attorney's fees or costs ("non-client"), or (ii) the attorney claiming entitlement to fees against a non-client. A fee arbitration between an attorney and a non-client is not intended to abrogate the requirement that the attorney exercise independence of professional judgment on behalf of the client or the protection of client confidences and secrets. Absent the client's written consent to disclosure of confidential information, a fee arbitration with a non-client is not intended to abrogate the attorney's duty to maintain confidences and secrets, unless such disclosure is otherwise permitted by law. Absent the client's signature on the request for arbitration, when an arbitration with a non-client is initiated, notice of the request must be sent to the client by first class mail at the client's last known address. The program shall adopt procedures to insure that such notice has been sent to the client.

~~15.0~~ **Filing Fee**

~~15~~

RULE 14.0 Filing Fee.

~~14.1~~ The ~~party~~Party requesting fee arbitration shall either pay a filing fee with the request form. The ~~arbitrator shall, at his or her or~~ apply for a waiver of the filing fee at the time of initiating the Mandatory Fee Arbitration. In the event the Program does not grant an application for a fee waiver, then the Party initiating the Mandatory Fee Arbitration shall pay a filing fee as directed by the Program.

~~14.2~~ Within the Award, the Panel may, in its discretion, allocate the entire amount of the filing fee, or a ~~portion thereof, to one or more of the parties.~~Parties. Such allocation shall be clearly stated in ~~the~~ Award.

~~15.2~~**14.3** The joining of additional ~~parties~~Parties as petitioner or respondent shall not increase the filing ~~—~~fee.

~~15.3~~ **Filing Fee Schedule**

14.4 The filing fee ~~schedule~~ for arbitration is ~~based on~~5% of the amount in dispute:

(a) ~~Fifty dollars (\$50) plus five percent (5%) of the amount in dispute when the total amount in dispute is less than \$10,000.~~

(b) ~~Fifty dollars (\$50) plus seven percent (7%) of the amount in dispute when the total amount in dispute is \$10,000 or more, with a \$5,000 maximum filing fee of \$5,000.~~

RULE ~~16~~15.0 Request ~~For Filing~~for Fee Waiver.

16~~15~~**.1** A ~~party~~Party seeking arbitration may file with the ~~program~~Program an application for a filing fee waiver on the approved ~~program~~Program form. ~~The person seeking waiver~~Program may require that a request be supported by a statement of the filing fee status or other documentation. A Party who is not a client and who may be liable for or entitled fails or refuses to a refund of attorney's fees identified by the client as set forth provide any requested information in Rule 14.4, may ~~in a~~timely fashion shall be required~~to submit a supporting documents regarding his or her own financial status to the program to support the client's application~~have withdrawn its request for a filing fee waiver. ~~If the non-client party replies to the program that he or she no longer has an interest in the outcome of the arbitration, the application will proceed based on the client's supporting documents alone.~~

16~~15~~**.2** For good cause shown, the Committee Chair may grant or deny the filing fee waiver or order a reduced fee. ~~The order of the Committee Chair shall be final and is not appealable.~~

16~~15~~**.3** The financial statement or other information filed in support of a request for a fee waiver shall not be disclosed by the ~~program~~Program to any other Party or to the other party~~arbitrators~~.

RULE ~~17~~16.0 Response ~~To~~to Request ~~For~~for Arbitration.

17~~16~~**.1** The ~~respondent party's~~responding Party's reply to a Request for Arbitration, ~~together with any response, if the respondent party is an attorney, to the issue of the attorney's responsibility for any award that refunds fees or costs or both to the client,~~ shall be submitted to the ~~program~~Program on its approved form within 30 days of the service of the request, unless an extension of time to reply is obtained from the ~~program~~Program. If the responding Party is an attorney, any response concerning the issue of the attorney's responsibility for any Award that refunds Fees to the Client, shall be filed at the same time as the reply.

1716.2 As reflected in Rule 13.3, If the attorney ~~seeks arbitration~~ files a Request for Arbitration, and there is no written agreement between the ~~parties~~ Parties that fee disputes be submitted to ~~fee arbitration~~ Mandatory Fee Arbitration, arbitration shall proceed only if the ~~client~~ Client consents in writing on the approved form within 30 days of service ~~on the Client~~ of the request, ~~unless the attorney is seeking removal from a local bar program under rule 10.2 of a matter in which the client has already requested arbitration or has consented to an attorney's request for arbitration~~ Request for Arbitration.

RULE 1817.0 Requests and Responses to Requests for Arbitration.

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

RULE 1918.0 Settlement Of Disputes; Withdrawal From Arbitration; Refund Schedule.

1918.1 Upon confirmation by the ~~parties~~ Parties or the ~~hearing panel~~ Hearing Panel if one has been assigned that ~~thea~~ dispute has been settled, the matter shall be dismissed without prejudice by the ~~program~~ Program in the absence of an assigned ~~hearing panel~~, Hearing Panel or by the ~~panel chair~~ Panel Chair if a notice of assignment of the ~~hearing panel~~ Hearing Panel has been served on the ~~parties~~ Parties.

1918.2(a) Procedures to withdraw a Request for Arbitration:

- a) If a ~~party~~ Party wishes to withdraw from a binding arbitration and the matter has not been settled, all other ~~parties~~ Parties must agree to the matter being withdrawn.
- b) If there is a written agreement between the ~~parties~~ Parties requiring arbitration of the fee dispute through the Mandatory Fee Arbitration Program, all other ~~parties~~ Parties must consent to a request for withdrawal before the proceeding is dismissed.
- c) If arbitration has been requested by the attorney, the matter may only be dismissed with the agreement of the other ~~parties~~ Parties.
- d) In all other cases, the ~~party~~ Party who requested arbitration may withdraw from the arbitration proceeding without the consent of other ~~parties~~ Parties at any time before evidence is taken.

1918.3 ~~Refund~~ The refund of Program fees shall be on the filing fee following terms:

~~(a)~~ The Program will retain a \$50 non-refundable fee on all cases filed. No refund is

a) ~~—~~ available for filing fees of \$50 or less.

~~(b)~~ If a case closes prior to the assignment of a mediator or arbitrator(s), the ~~Arbitration~~ Program shall retain 50% of the total filing fee with a \$50 minimum.

a) ~~(c)~~ In cases closed after the assignment of a mediator or arbitrator(s), and written notice is ~~received~~ Received at least ten (10) days prior to the date of the scheduled ~~hearing~~ Hearing, the Program shall retain 75% of the total filing fee with a \$50 minimum.

b) ~~(d)~~ After mediator or ~~hearing panel~~ Hearing Panel assignment and less than ten (10) days before the ~~hearing~~ Hearing, there shall be no refund of filing fees.

~~(e)~~ If a mediation session or arbitration ~~hearing~~ Hearing has commenced, no refund will be made.

1918.4 If the ~~parties~~ Parties settle the fee dispute and wish to obtain a stipulated ~~award~~ Award incorporating the terms of a written settlement agreement, the Committee Chair, if no ~~hearing panel~~ Hearing Panel has been assigned, or the Panel Chair, if the ~~hearing panel~~ Hearing Panel has been assigned, may issue a stipulated ~~award~~ Award incorporating by reference the ~~parties'~~ Parties' written settlement agreement. -The Program will serve the stipulated ~~award~~ Award in the same manner as it would serve an ~~arbitration award~~ Award as prescribed elsewhere in these rules.

RULE 2019.0 Consolidations.

19.1 A ~~party~~ Party may request, in writing, that two or more arbitration matters be consolidated for ~~hearing~~ Hearing. The Program will serve the other ~~party~~ Party with a copy of the request. -A written reply may be filed with the ~~program~~ Program within 15 days of service of the request for consolidation. -The Committee Chair shall rule on all written requests to consolidate. -The order of the Committee Chair shall be final. -Consolidation will not result in a refund of filing fees paid or reduction of ~~filing fees~~ owed to the Program.

19.2 If a ~~client~~ Client requests fee arbitration against an attorney, who is already a ~~party~~ Party in a ~~non-client~~ Non-Client fee arbitration relating to the ~~client's~~ Client's matter or joins a fee arbitration as a ~~party~~ Party in a dispute between the ~~client's~~ Client's attorney and a ~~non-client~~ Non-Client, consolidation of the

arbitration matters is automatic absent a showing of good cause to the contrary.

ARTICLE VI.
ARTICLE V.
PANELS AND ARBITRATORS

RULE 2120.0 Appointment ~~Of~~ Panel.

2120.1 For each dispute, the Program shall assign a ~~hearing panel~~ Hearing Panel from the ~~program's~~ Program's roster of fee arbitrators. A ~~hearing panel~~ Hearing Panel shall consist of one ~~attorney arbitrator~~ Attorney Arbitrator if the amount in dispute is \$~~1525~~,000 or less and three arbitrators if the amount in dispute is more than \$~~1525~~,000, one of ~~which~~ whom shall be a non-lawyer. -An ~~attorney arbitrator~~ Attorney Arbitrator shall be designated as Panel Chair. -If the amount in dispute is more than \$~~1525~~,000, the ~~parties~~ Parties may agree, in writing, to have the matter heard by a single ~~attorney arbitrator~~ Attorney Arbitrator.

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

~~**21.3**~~ **20.2** 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, if the Client has elected such an appointment in the Request for Arbitration.

~~**20.3** All appointed arbitrators must have basic technological proficiency, including the ability to operate videoconferencing systems.~~

20.4 If a fee dispute involves \$1,000 or less, the arbitration shall be decided by the Committee Chair or designee. Each ~~party~~ Party shall submit all supporting documents and a complete written statement of the reasons for the dispute, a response, or both, under penalty of perjury. -The ~~parties~~ Parties have 30 days from the service by the ~~program~~ Program of the reply to the ~~arbitration request~~ Request for Arbitration, which will be reflected in a proof of service. The record shall thereafter be forwarded for action to the Committee Chair or designee ~~for action~~, who may require either or both ~~parties~~ Parties to submit additional information within 30 days. -However, if the amount in controversy is less than \$1,000 but greater than \$500, the ~~parties~~ Parties upon the request of any ~~party~~ Party, may appear at a ~~hearing~~ Hearing, either in person ~~or,~~

telephonically or videoconference, before the Committee Chair or designee assigned to the matter, in addition to providing the written information required by this section. -The ~~program~~Program shall keep a permanent record of the number of fee disputes in which the amount in controversy is between \$500 and \$1,000 and of that number, the number of fee disputes in which any ~~party~~Party requested a ~~hearing~~Hearing. The ~~parties~~Parties shall be informed of this ~~rule~~Rule 20.4 at the time of the ~~program's~~Program's service of ~~a completed arbitration request form~~the Request for Arbitration.

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

RULE ~~2221.0~~2221.0 Notice ~~Of~~of Appointment ~~Of~~of Panel.

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

RULE ~~2322.0~~2322.0 Challenge, Disqualification ~~Of~~of, and Recusal ~~of~~of Arbitrator(s).

~~Each party~~

22.1 ~~A Party~~ A Party may disqualify one arbitrator without cause ~~and shall have~~. A Party is entitled to unlimited challenges for cause. ~~Any disqualification without cause of of an arbitrator shall for cause. The Program must be ineffective unless made in writing and served on notified of the program request for disqualification within 15 fifteen days of serving the service of a notice of assignment~~Notice of panel or substitute arbitrator(s) if there is a disqualification or successful challenge. Arbitrator Assignment.

22.2 No person appointed as an arbitrator shall arbitrate a dispute if they have any financial or personal interest in the result of the arbitration or if they determine that they are not qualified to act as to that dispute for any other reason. An arbitrator who believes ~~that~~ he or she cannot render a fair and impartial decision or who believes ~~that~~ there is an appearance that he or she cannot render a fair and impartial decision, ~~shall~~ must disqualify ~~themselves~~himself or ~~shall accede to a party's~~ 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. ~~If an arbitrator does not agree to be disqualified, the challenge shall be decided by,~~ the Committee Chair. shall decide the challenge. The Committee Chair's decision is final and non-appealable.

RULE ~~2423.0~~2423.0 Discharge ~~Of~~of Arbitrator ~~Or~~or Panel.

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

RULE ~~25~~24.0 Prohibited Contacts With Arbitrators.

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

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

~~ARTICLE VII.~~ ~~ARTICLE VI.~~ **THE HEARING**

RULE ~~26~~25.0 Confidentiality.

~~26.1~~ 25.1 ~~All hearings~~ Mandatory Fee Arbitrations are confidential proceedings. Pursuant to California Business & Professions Code § 6202, disclosure of privileged communications, attorney work product, or other confidential information during the Mandatory Fee Arbitration process, including at or during the Hearing, shall not be deemed to be a waiver of the confidential character of such matters for any other purpose.

~~25.2~~ Mandatory Fee Arbitration Hearings shall be closed to the public. ~~However, in~~

~~25.3~~ In the discretion of the ~~hearing panel~~ Panel Chair and in the absence of any objections by the ~~parties~~ Parties, witnesses may be present during the ~~hearing~~ Hearing.

~~26.2~~ 25.4 The ~~hearing panel~~ Hearing Panel, upon request of the ~~client~~ Client, shall permit the ~~client~~ Client to be accompanied by another person and may also permit additional persons to attend. ~~Any such~~ In the event a Party objects to the

attendance of such an individual, the challenge will be determined by the Panel Chair.

25.5 As a condition of attending the Hearing, any person shall be subject to the confidentiality of the arbitration proceedings permitted to attend under Rule 25.3 or Rule 25.4, shall be advised that the proceedings are confidential and must agree to preserve the confidential nature of any information to which they are exposure during their participation.

26.325.6 The arbitration award is public; the arbitration case file, including the request, reply, and exhibits and transcripts, remains confidential, as well as the award itself, are to remain confidential. Absent a court order compelling disclosure of the award, the program may not disclose the award to any individual or entity that was not a party to the arbitration proceeding.

25.7 An award shall remain confidential except as may be necessary in connection with a judicial challenge to, confirmation or enforcement of, the award, or as otherwise required by law or judicial decision.

25.8 No arbitrator appointed under these Rules shall be competent to testify in any subsequent civil proceeding, as to any statement or conduct occurring during the course of the arbitration proceeding, except as permitted by California Evidence Code § 703.5.

RULE 2726.0 Waiver Of Personal Appearance.

2726.1 Upon advance approval of the Panel Chair, any ~~party~~Party may waive personal appearance and submit to the ~~hearing panel~~Hearing Panel testimony and exhibits by written ~~declaration~~Declaration under penalty of perjury or such other means approved by the Panel Chair.

2726.2 Any ~~party~~Party unable to attend a ~~hearing~~Hearing may designate a lawyer or non-lawyer representative.

2726.3 Any ~~party~~Party may request to appear by telephone or videoconference, subject to the advance approval of the Panel Chair.

2726.4 A request for waiver of appearance or designation of a representative and the submission of testimony by written ~~declaration~~Declaration or request for telephonic or videoconference appearance pursuant to this rule shall be filed with the Panel Chair and served on all ~~parties~~Parties at least 10 days prior to the ~~hearing~~Hearing.

RULE 2827.0 ~~Death Or~~ **Incompetence Of** a Party.

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

RULE 2928.0 **Discovery.**

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

28.2 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 Party does not have the right to inspect the Client's or attorney's file.

RULE 3029.0 ~~Subpoenas (Includes Compelling Production of Witnesses and Documents at the Hearing By Subpoena Duces Tecum) or Notice.~~

A party

29.1 A Party seeking to compel the attendance of a person at the Hearing or the production of documents, books or records, may request a subpoena for such purposes. A Party seeking to have a subpoena issued shall submit a completed but unsigned Judicial Council subpoena form to the Committee Chair, prior to the appointment of a panel, or, after the appointment of a panel, to the Panel Chair if one has been appointed, with proof of service on all ~~parties.~~ Parties. Upon showing of good cause, the Committee Chair or Panel Chair, as appropriate, may issue a subpoena requested by a ~~party.~~ Party. In the event the Committee Chair or Panel Chair approves the issuance of a subpoena, the Committee Chair or Panel Chair shall sign the submitted subpoena and provide any executed subpoena to the requesting ~~party~~Party, who shall be responsible for service of the subpoena. The ~~party~~Party requesting a subpoena will be responsible for any witness fees and costs of service of the subpoena. No subpoena may be served on any ~~party~~Party or third ~~party~~Party unless it has been approved and signed by the Committee Chair or Panel Chair pursuant to this rule.

29.2 Any Party may require another Party to bring to the Hearing books, documents, electronically stored information, or other things in their possession, by serving a written request on the other Party 10 days in advance of the Hearing. The request shall state the exact materials or things desired.

RULE 3130.0 **Commencement of Hearing; Notice; Attendance.**

31.1 ~~The hearing~~**30.1** The Panel Chair shall serve written Notice of Hearing on each Party at the address in the Notice of Assignment of Panel and the Program within 15 days of its assignment and at least 15 days prior to the

Hearing date. Appearance by a Party at a scheduled Hearing shall constitute waiver by said Party of any deficiency with respect to the giving of Notice of Hearing.

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

31.230.3 The panelPanel Chair shall serve written notice of hearing on each party at the addresshave sole discretion to determine whether the Hearing will be held in person, via videoconference, telephonically, or any combination thereof. Within the “Notice of Assignment of Panel”Hearing, the Parties shall be advised of the physical location, the telephone number. or the videoconference service and the program withincredentials that will be necessary to attend Hearing.

30.4 A disqualification or allowed challenge of an assigned arbitrator will result in a 15-days-day extension from the date of itsthe assignment and at least 15 days prior to the hearing date. Appearance by a party at a scheduled hearing shall constitute waiver by said party of any deficiency with respectreplacement member(s).

30.5 Upon stipulation or application to the giving of “Notice ofPanel Chair, the Hearing.” may be continued for good cause shown.

30.6 Notwithstanding the failure of either partyParty to attend, the hearingHearing shall proceed as scheduled and a decision made on the basis of evidence submitted.

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

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

31.5 —30.7 If one of the panel members fails to appear, upon written stipulation of the partiesParties, the —hearingHearing may proceed with either of the attorney arbitratorsAttorney Arbitrators acting as the sole arbitrator. — Under no circumstances will the hearingHearing proceed with two arbitrators or with oneonly a lay ———arbitrator.

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

RULE ~~32~~31.0 Stipulations Agreements Encouraged.

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

RULE 33.0 — Oaths.

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

RULE 34.0 —

RULE 32.0 Hearing Procedure.

32.1 The Panel Chair shall preside at the Hearing.

32.2 The Parties shall present their proof in a manner determined by the Panel Chair.

32.3 The Parties to the arbitration are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at the Hearing, but the rules of evidence and rules of judicial procedure applicable in the courts of California need not be observed. Upon request of any Party to the arbitration or upon request of any arbitrator, the testimony of witnesses shall be given under oath. The Panel Chair may administer oaths to witnesses appearing or testifying at the Hearing. The sole arbitrator or panel shall have the power to limit and regulate the number, timing, form and length of the Parties' written or oral presentation.

32.4 The Panel Chair shall rule on the admission and exclusion of evidence and on questions of procedure, and shall exercise all powers relating to the conduct of the Hearing.

32.5 The Panel Chair has the power to preserve and enforce order in the proceedings and to provide for the orderly conduct of the proceedings.

RULE 33.0 Evidence.

33.1 Any relevant evidence shall be admitted if it is the sort of evidence ~~upon~~ which responsible persons are accustomed to ~~rely~~ relying upon in the conduct of

serious affairs, regardless of the existence of any common law or statutory rule to the contrary.

33.2 Evidence relating to claims of malpractice or professional misconduct, whether or not the Client was actually harmed, shall be admissible, but only to the extent that those claims bear upon the Fees to which the attorney is entitled.

33.3 The Parties may object to the introduction of information or evidence that is privileged under any applicable law, unless there has been a waiver of any applicable privilege.

RULE 34.50 Clarification ~~Of~~ Issues And Exchange ~~Of~~ Documents.

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

RULE 35.0 ~~Order Of Proof.~~

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

RULE 36.0—Interpreter.

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

RULE ~~37~~36.0 Transcripts or Recordings.

No stenographic, audio~~-or,~~ video~~-,~~ or other form of recording is permissible.

RULE ~~38~~37.0 Compensation of Arbitrators; Administrative Charges

3837.1 No arbitrator shall be entitled to compensation for services unless the ~~hearings~~ extend~~Hearing extends~~ beyond four hours. Unless waived in writing, each arbitrator will be compensated at the rate of \$150 for each additional hour after a four hour hearing. -A ~~hearing~~Hearing of four hours or less in one day will be considered as a one-half day hearing. -A ~~hearing~~Hearing of more than four hours in one day will be considered as a one-day hearing. The compensation shall be paid equally by each ~~party~~Party, to each arbitrator, for each day of ~~hearing~~the Hearing on which compensation is payable. -No compensation will be paid to arbitrators for services other than during formal ~~hearing~~Hearing sessions extending beyond four hours. Any disputes concerning compensation

of the arbitrators will be determined by the Committee Chair, and its determination shall be binding on the partiesParties, including the arbitrators.

3837.2 Except for the prescribed filing fees, no charges will be made by the programProgram, nor by any arbitrator, for administrative or clerical services. A hearing room will be provided by an arbitrator or by the programProgram without charge to the partiesParties.

3837.3 All partiesParties will bear their own costs, including the costs of interpreters and expert witnesses.

ARTICLE VIII.

ARTICLE VII.
AWARD

RULE 3938.0 Award.

3938.1 The awardAward shall be submitted to the Program within 15 days of the close of the hearingHearing in any matter heard by a sole arbitrator and within 25 days of the close of the hearing in any matter heard by a three- member panel. -The awardAward shall be reviewed pursuant to rule 39.938.11 and then served on the partiesParties forthwith by the Program.

3938.2 The awardAward shall be in writing. The awardAward shall indicate whether it is binding or non-binding. It shall include a determination of all questions submitted to the panelHearing Panel, the decision of which is necessary in order to determine the controversy, including the name of the responsible attorney(s). Arbitrators are encouraged, where appropriate, to include findings of fact. -If a partyParty failed to appear for non-binding arbitration, the awardAward should also include the circumstances bearing on the willfulness of any party'sParty's nonappearance at the hearingHearing.

3938.3 The awardAward shall include substantially the following language, as appropriate:

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

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

Subtotal

\$ _____ \$ _____

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

~~[-]~~ [] is awarded in the amount of
\$ _____

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

Client: \$ _____
Attorney: \$ _____

For a net amount of: _____
\$ _____

Accordingly, the following award is made:

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

OR

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

OR

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

3938.4 ~~The award~~ Award may include a refund of unearned ~~fees, or costs, or both~~ Fees previously paid to the attorney. In the event a refund is determined to be owed to the Client and where questions are raised as to who the responsible attorney(s) in the arbitration is, the Panel shall make that determination and shall include in the award the name of the attorney(s) and, if appropriate, the law firm(s).

39.538.5 The Award shall provide for interest to accrue on the award 30 days after the service of the award.

38.6 Whenever there are three arbitrators, a majority vote shall be sufficient for all decisions of the arbitrators, including the ~~award~~. Award. The Award shall be signed by all arbitrators concurring with it. Any dissent from the ~~award~~ Award shall be served with the ~~award~~ Award.

~~39.6~~ Evidence relating to claims of malpractice or professional misconduct, whether or not the client was actually harmed, shall be admissible, but only to the extent that those claims bear upon the fees and/or costs to which the attorney is entitled. The panel **38.7** The Hearing Panel shall not award affirmative relief in the form of damages or offset or otherwise, ~~for injuries underlying any such on the basis of a claim.~~

39.7 ~~The award shall be signed for malpractice or professional misconduct. Nothing herein shall be construed to prevent the Hearing Panel from awarding a refund of unearned Fees previously paid by all arbitrators concurring with it.~~ the Client

39.8 ~~The award~~ Award may include an allocation of the filing fee; ~~however, it.~~ The absence of such allocation in the Award will be deemed to mean each Party is responsible for the fee arbitration filing fee paid by that Party.

38.9 The Award shall not include an award —for any other costs of the arbitration, including attorneys' fees resulting from the arbitration proceeding notwithstanding any contact between the ~~parties~~ Parties providing for such an award of costs or attorney's fees.

39.10 ~~The panel~~ Hearing Panel shall forward the original of the signed ~~award~~ Award to the Program, which shall serve a copy of the ~~award~~ Award by mail on each ~~party~~ Party together with a Notice of Rights After Arbitration form approved by the State Bar Board of Governors.

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

RULE 4039.0. Correction ~~Of or~~ Amendment of Award ~~Byby~~ Hearing Panel.

4039.1 ~~The Hearing Panel~~ An Award may ~~correct a binding or non-binding award~~ be corrected or amended by the sole arbitrator or at least two concurring members of panel. Correction is permitted only on the grounds set forth in Code of Civil Procedure section 1286.6, subdivision (a) [evident miscalculation of figures or for an evident mistake in the calculation or description of a person, thing, or property referred to in the award] and subdivision (c) [the award is imperfect in a matter, or for defect of form, not affecting the merits of the controversy] under the procedures set forth in Code of Civil Procedure section 1284. An application for such dispute. Amendment is permitted when an Award is inadvertently incomplete and amendment does not substantially prejudice the legitimate interests of a Party. Unless requested by Panel Chair, no additional testimony or documentary evidence may be submitted

39.2 Any Party may submit to the Panel Chair a written request for a correction of an Award. The requesting Party must submit the request to the Panel Chair with

proof of service and serve a copy on each Party within ten days after service of the Award. Any correction or denial of the request will be made by the Panel Chair within thirty days of service of the Award.

~~39.3~~ A written request to correct an Award does not extend the thirty-day deadline for seeking to request a civil trial-Trial or arbitration after a non-binding award is rendered, and Award has been issued.

~~39.4~~ Any Party may submit a non-binding award will automatically become binding 30 days after it is served on the parties. written request to the Panel Chair for the amendment of an Award. The requesting Party must submit the request to the Panel Chair with proof of service and serve a copy on any other Party at the time prior to judicial confirmation of the Award.

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

~~40.3~~ Any 39.5 Any Party may submit to the Panel Chair a written objection to a request for correction or amendment of an Award.

~~39.6~~ The Program must serve all Parties with a corrected or amended award will be served by the Program. The time for filing a petition to confirm, vacate Award or correct the award begins from the date of service of the amended or corrected award, the date of denial of the request for correction or amendment of the award, or the date that a request that a request for correction of amendment of the award is deemed denied under Code of Civil Procedure 1284, whichever date is earlier.

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

~~ARTICLE VIII.~~

ARTICLE IX. **SERVICE; ADDRESS**

RULE ~~4140.0~~Service.

~~4140.1~~ Unless otherwise specifically stated in these rules, service on the client Client shall be by electronic means, personal delivery, by deposit in the United States mail, or by deposit in a business facility used for collection and processing of correspondence for mailing with the United States Postal Service pursuant to Code of Civil Procedure section 1013(a), postage paid, addressed to the person on whom it is to be served, at his or her their address as last given, on any document which has been filed in the arbitration. ~~The client~~ The Client and the

Client's attorney shall keep the programProgram advised of ~~his or her~~their current address.

4140.2 Unless otherwise specifically stated in these rules, service on an individual attorney shall be at the latest address shown on the official membership records of the State Bar. Service shall be in accordance with subsection ~~46~~40.1 above.

4140.3 If either partyParty is represented by counsel, service shall be on the partyParty as indicated in subsections 40.1 and 40.2 of this rule, and on the counsel at the latest address shown on the official membership records of the State Bar.

4140.4 The service is complete at the time of deposit. - The time for performing any act shall commence on the date service is complete and shall not be extended by reason of service by mail.

~~**4140.5** Where a facsimile or email transmission is used to communicate with the program or to file any document, it will not be considered received unless the program also receives within five days of the date of the transmission, the original of the faxed document.~~

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

40.6 Electronic Service

a) In addition to the methods of service provided for in subdivision (A) of this rule, the Parties to an arbitration may consent to electronic service of documents upon each other pursuant to Code of Civil Procedure section 1010.6(a)(1)(A)-(C).

b) The Parties to an arbitration may consent to receive electronic service of documents from the Program in lieu of service by mail by providing to the Program written consent to receive electronic service of documents from the Program at the Party's designated electronic address.

c) Service pursuant to this subsection is complete upon transmission.

ARTICLE ~~IX~~IX ENFORCEMENT

42RULE 41.0 Enforcement Authority.

4241.1 Upon request, the State Bar may assist in enforcing a final and binding arbitration awardAward, judgment, stipulated awardAward, or mediation

settlement requiring the attorney to refund ~~fees~~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~~Award, or mediation settlement.

43Rule 42.0 Request for State Bar Enforcement.

4342.1—(Unless otherwise directed by the State Bar, a Party submitting an Award for enforcement must comply with the following procedures:

- a) ~~A) A~~ client 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~~Award, judgment, stipulated ~~award~~Award, or mediation settlement. The request must be in writing on the State Bar Request for Enforcement form. The request may include any other ~~party~~Party who was awarded or who is liable for a refund of attorney ~~fees~~Fees. An ~~arbitration award~~Award is not enforceable by the State Bar if it refunds the ~~client~~Client only some or all of the arbitration filing fee and does not include a refund of ~~attorney's fees or costs~~Fees.

- ~~(Bb)~~ Before submitting a Request for State Bar Enforcement, a ~~client~~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.

- ~~(Cc)~~ The State Bar must serve the Request for State Bar Enforcement on the attorney.

- ~~(Dd)~~ If a ~~client~~Client has filed a petition in a civil court to confirm the ~~arbitration award~~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~~Award.

ARTICLE ~~XXI~~XXI. **REFERRAL OF ATTORNEY TO STATE BAR**

4443.0Referral of Attorney to State Bar.

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

**BEVERLY HILLS BAR ASSOCIATION
MANDATORY FEE ARBITRATION PROGRAM
Rules of Procedure for Fee Arbitrations**

**ARTICLE I.
PURPOSE AND INTENT OF MANDATORY FEE ARBITRATION**

Rule 1.0 Application and Interpretation of These Rules.

California law entitles a Client to Mandatory Fee Arbitration of a dispute regarding an attorney's fees for legal services. It is the intent of these rules to provide for a fair, speedy, economical, and impartial Hearing and Award, and these rules shall be applied, interpreted, and construed consistent with that intent.

**ARTICLE II.
DEFINITIONS**

RULE 2.0. Definitions.

Each of the following terms appearing herein are defined as indicated:

- 2.1 Action:** A civil judicial proceeding or an arbitration brought to enforce, redress or protect a right.
- 2.2 Administrator:** The staff person responsible for administering the Program.
- 2.3 Attorney Arbitrator:** 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.
- 2.4 Award:** The decision of the arbitrator or arbitrators in the fee arbitration proceeding, including any award entered by stipulation or request of the Parties.
- 2.5 Client:** A person who directly, or through an authorized representative, consults with, retains, or secures legal services or advice from an attorney in the attorney's professional capacity.
- 2.6 Committee Chair:** The person on the Mandatory Fee Arbitration Program responsible for supervising the Program's fee arbitrators and for ruling on matters as set forth in these rules.
- 2.7 Declaration:** A declaration is a document in compliance with the requirements of Code of Civil Procedure section 2015.5, or an affidavit.
- 2.8 Fees:** Attorney fees, costs, or both.

- 2.9 File:** Fee arbitration records and papers in a specific fee arbitration case.
- 2.10 Hearing:** A fee arbitration hearing conducted by the Program.
- 2.11 Hearing Panel:** One or three arbitrators assigned to hear the fee dispute and to issue the Award.
- 2.12 Lay Arbitrator:** 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.
- 2.13 Mandatory Fee Arbitration:** The arbitration of disputes concerning Fees under California Business & Professions Code §§ 6200 - 6206.
- 2.14 Non-Client:** 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 a "Non-Client."
- 2.15 Notice Of Client's Right to Fee Arbitration:** The State Bar approved form an attorney is required to provide to a Client before or at the time of service of summons in a lawsuit against the Client for the recovery of Fees, for professional services rendered, to notify Client of their right to arbitrate a fee dispute under Business and Professions Code sections 6200-6206.
- 2.16 Panel Chair:** Either the sole arbitrator or panel chair of a three-member panel assigned to hear a matter. The three-member panel chair is responsible for ruling on matters pertaining to the individual case assigned as set forth in these rules.
- 2.17 Party:** A person who initiates or is named in an arbitration proceeding under these rules, including an attorney, a Client, or other person who may be liable for payment of, or entitled to a refund of Fees.
- 2.18 Program:** Unless indicated otherwise, reference to the Program means the Mandatory Fee Arbitration program of the Beverly Hills Bar Association.
- 2.19 Receipt, Received, Receives:** The day on which a mailed Request for Arbitration or a mailed Notice of Client's Right to Fee Arbitration is postmarked, or the day on which a Request for Arbitration or any other submission is received by the Program by mail or electronically.
- 2.20 Request for Arbitration:** The initiating submission made by a Party requesting fee arbitration using the form approved by the Program and paying the appropriate filing fee as established by the Program.

- 2.21 State Bar:** Unless indicated otherwise, reference to the State Bar means the State Bar's Mandatory Fee Arbitration Program.
- 2.22 Trial:** A formal legal proceeding occurring if any Party timely rejects the Award, either in a court having jurisdiction over the amount in controversy or, if the Parties have a pre-existing arbitration agreement, in arbitration.
- 2.23 Tribunal:** A Court or a private arbitrator presiding over a dispute between a lawyer and a Client.

ARBITRATION GENERALLY

RULE 3.0 Arbitration is Mandatory for Attorneys.

California law entitles a Client to arbitration of a dispute regarding an attorney's Fees for legal services. If initiated by Client, fee arbitration is mandatory for an attorney. Fee arbitration is voluntary for a Client unless the Parties have agreed in writing to submit their fee disputes to Mandatory Fee Arbitration.

RULE 4.0 Party's Failure To Respond Or Participate.

- 4.1** If a Party fails to respond to a Request for Arbitration or refuses to participate, the Mandatory Fee Arbitration Hearing will proceed as scheduled and an Award will be made on the basis of the evidence presented to the Hearing Panel. The Award may include findings concerning a Party's failure to participate or to appear at the Hearing.
- 4.2** A Party who willfully fails to appear at a Hearing is not entitled to request a Trial after non-binding Mandatory Fee Arbitration. The Party that failed to appear has the burden of proving their non-appearance was not willful. The Tribunal shall determine whether the Party's non-appearance was willful and it may consider any findings made by the Hearing Panel.

RULE 5.0 Disputes Covered.

Disputes concerning Fees charged for professional services by an attorney are subject to Mandatory Fee Arbitration under these rules, except for:

- a) disputes where the attorney is admitted to practice only in another jurisdiction, where the attorney maintains no office in the State of California, and no material portion of the services was rendered in the State of California;

- b) claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct;
- c) disputes where the fees or costs to be paid by the Client or on the Client's behalf have been determined or are determinable pursuant to statute or court order;
- d) disputes where the Request for Arbitration is made by a person who is not liable for or entitled to a refund of attorney's fees or costs;
- e) disputes where the claim has been assigned by the Client; or
- f) claims between attorneys for division of fees.

RULE 6.0 Non-Binding and Binding Arbitration; Withdrawal of Binding Election.

- 6.1** Mandatory Fee Arbitration is non-binding. If, after the fee dispute arises, the Parties agree in writing to binding arbitration, the arbitration shall proceed as a binding arbitration. The Parties may request binding arbitration as provided on the Program forms. In the absence of a written agreement for binding arbitration made after the fee dispute arises, the arbitration shall be non-binding.
- 6.2** Unless a Party requests a Trial within 30 days of the date of service of a non-binding arbitration Award, the non-binding Award shall automatically become binding.
- 6.3** A Party who requested a binding Award may withdraw their request for binding arbitration by submitting a written request, if the respondent:
- a) has not replied;
 - b) has not agreed to binding arbitration in the reply; or
 - c) has replied and agreed to binding arbitration, but sought to materially increase the amount in dispute, provided the election is sent to the Program within ten days of receipt of the reply.
- 6.4** In the event a Party submits a written request to withdraw its consent to binding arbitration, the Program shall provide a copy of the written request to the arbitrator and the other Parties within 10 days of receipt. The Program shall provide a copy of the written request within ten days of the Program's receipt of that Party's Reply.
- 6.5** Except as provided above, if the Parties have already agreed to binding arbitration, the binding election may be changed to non-binding arbitration only by written agreement signed by all Parties and delivered to the Program.

6.6 Any Award that is or has become binding may be corrected, vacated or confirmed pursuant to Code of Civil Procedure section 1285 et seq.

RULE 7.0 Right to Counsel.

All Parties, at their own expense, may be represented by an attorney. The Party or the Party's attorney shall notify the Program in writing of the name, address, and telephone number of the attorney. Thereafter, notices and other communications from the Program, including notices from the Hearing Panel, shall be sent to counsel. In the absence of such written notification, all notices will be sent to the Parties.

RULE 8.0 Waiver of Right to Request or Maintain Arbitration.

8.1 A Client's right to request or maintain a Mandatory Fee Arbitration is waived if the Client:

- a) answers a complaint in a civil Action or files an equivalent response to the civil Action before filing a Request for Arbitration, after receiving the Notice of Client's Right to Arbitration;
- b) commences a legal Action or files any pleading seeking judicial resolution of a fee or cost dispute or seeking affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct; or
- c) fails to deliver to the Program a Request for Arbitration on the approved Program form that is postmarked or Received on or before the 30th day from the date of the Client's mailing of the Notice of Client's Right to Arbitration.

8.2 Should the fee dispute transfer to a different fee arbitration program after the Request for Arbitration is filed, the original date of postmark or Receipt of the arbitration request will be preserved for purposes of determining whether the Request for Arbitration was made within the 30-day time period.

8.3 If the Client waives the right to Mandatory Fee Arbitration, the Parties may agree in writing to set aside the waiver and to proceed with Mandatory Fee Arbitration.

RULE 9.0 Stay of Proceedings.

9.1 If an attorney, or the attorney's assignee, commences an Action to collect Fees in any court or other proceeding, with limited exceptions including provisional

remedies, the court Action or other proceeding is automatically stayed upon filing a request for fee arbitration with the Program.

- 9.2** The Party who requested Mandatory Fee Arbitration has a duty to notify the Tribunal of the stay and attach a copy of the Request for Arbitration. If the person who requested or caused the stay has not appeared in the Action or other proceeding or is not subject to the jurisdiction of the court, the plaintiff must immediately file a notice of stay and attach a copy of the arbitration request form showing that the proceeding is stayed. Upon request, the Program may provide a copy of a notice of automatic stay to the Party.

ARTICLE IV. PROGRAM

RULE 10.0 Jurisdiction.

- 10.1** The Program has jurisdiction over disputes concerning Fees, as set forth in Rule 5.0.
- 10.2** The Program shall have jurisdiction over a fee dispute if a substantial portion of the services were performed in the county where the Program is located, or at least one of the attorneys involved in the dispute has an office in Los Angeles County or Ventura County or maintained an office in Los Angeles County or Ventura County at the times the services were rendered, or where the majority of legal services were provided.
- 10.3** Where the existence of an attorney-client relationship is in dispute, the Parties may agree in writing to submit the issue for a determination by the Program, which otherwise lacks jurisdiction to determine that issue.
- 10.4** The Program may, but is not required to, accept jurisdiction pursuant to a written agreement of the Parties to submit to the Program's jurisdiction, if the Program does not have original jurisdiction.
- 10.5** The Program shall reject any Request for Arbitration when it is clear from the face of the request that the provisions of Business & Professions Code § 6200 have not been met or the matter is time barred under Business & Professions Code § 6201(a).
- 10.6** If the Program believes the Request for Arbitration was not timely submitted or that the Mandatory Fee Arbitration does not meet statutory requirements, the Program must request that the Parties submit written statements supporting their respective positions on the issue of whether the Program has jurisdiction over their fee dispute or whether the dispute is time barred.

- 10.7** Within 15 days from service of notice of a ruling on a challenge to jurisdiction or claim that the matter is time barred, a Party may file a written request for reconsideration based on new evidence. The Committee Chair shall rule on the request for reconsideration. For good cause, the Committee Chair may assign the matter to a Hearing Panel to take evidence and determine whether jurisdiction should be accepted. There is no appeal of the Committee Chair's decision or an assigned a panel's decision. A ruling on request for reconsideration by either the Committee Chair or an assigned panel is final and not appealable to the Program or the State Bar.
- 10.8** In the event of a dispute between the Parties as to whether the Program or another Mandatory Fee Arbitration program should hear the matter, the Mandatory Fee Arbitration provider where the arbitration request was first filed shall determine that the arbitration will be conducted in the county where the majority of legal services were provided, and such ruling is final and not appealable either to the Program or to the State Bar. Should the fee dispute transfer to a different Mandatory Fee Arbitration provider after the Request for Arbitration is filed, the original date of postmark or receipt of the arbitration request will be preserved for purposes of determining whether jurisdiction exists.

RULE 11.0 Removal to the State Bar of California

- 11.1** If a Request for Arbitration has been filed with the Program and a Party to the arbitration believes they cannot obtain a fair or impartial hearing before the Program, that Party may request removal to the State Bar:
- a) The Party seeking removal from the Program must submit a Declaration signed under penalty of perjury asserting the factual basis for the removal. That Party need not submit an additional filing fee to the State Bar until there has been a final ruling by the State Bar's Presiding Arbitrator granting removal to the State Bar.
 - b) The State Bar will serve the request for removal and supporting Declaration on the other Parties and the Program. Any written response must be Received by the State Bar within 15 days of service of the request for removal and Declaration for consideration by the State Bar's Presiding Arbitrator.
 - c) The Party seeking removal must provide all additional information requested by the State Bar within the time limits set by the State Bar.
 - d) A request for removal to the State Bar will be decided by the State Bar's Presiding Arbitrator under the applicable rules of procedure of the State Bar. Upon service of an order granting a request for removal, the Party who paid

the filing fee to the Program shall receive a refund of the filing fee from the Program.

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

RULE 12.0 Effect of Failure to Adhere to Time Requirements.

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

**ARTICLE V.
INITIATION OF ARBITRATION PROCEEDING**

RULE 13.0 Request for Arbitration

- 13.1** The Request for Arbitration may be filed by (i) the Client, (ii) a Non-Client but who may be liable for or entitled to a refund of Fee, or (iii) the attorney claiming entitlement to Fees against a Non-Client.
- 13.2** An arbitration is deemed filed when the Program Receives a written Request for Arbitration on the form approved by the Program and the initiating Party either pays the appropriate filing fee as established by the Program or applies for a waiver of the filing fee under Rule 15.0. In the event the manner of submitting a written Request for Arbitration does not allow for the immediate payment of the filing fee, then the filing fee must be paid promptly by the initiating Party as directed by the Program.
- 13.3** If the attorney files a Request for Arbitration, and there is no written agreement between the Parties that fee disputes be submitted to Mandatory Fee

Arbitration, arbitration shall proceed only if the Client consents in writing on the Program's approved form within 30 days of service on the Client of the Request for Arbitration.

- 13.4** The Program will cause the Request for Arbitration to be served on the other Party or Parties identified therein. At the time of service of a request on an attorney, the Program shall serve with it a copy of the approved Notice of Attorney Responsibility form.
- 13.5** The Party requesting arbitration may amend its Request for Arbitration within 15 days of its initial submission by mailing or electronically submitting the amendment to the Program. Thereafter, the Request for Arbitration may be amended only with the approval of the Committee Chair or by the Panel Chair, if a Notice of Assignment of the Hearing Panel has been served on the Parties. At any time, the Program or the Panel Chair may request clarification of the Request for Arbitration that requires amendment of the Request for Arbitration.

RULE 14.0 Filing Fee.

- 14.1** The Party requesting fee arbitration shall either pay a filing fee or apply for a waiver of the filing fee at the time of initiating the Mandatory Fee Arbitration. In the event the Program does not grant an application for a fee waiver, then the Party initiating the Mandatory Fee Arbitration shall pay a filing fee as directed by the Program.
- 14.2** Within the Award, the Panel may, in its discretion, allocate the entire amount of the filing fee, or a portion thereof, to one or more of the Parties. Such allocation shall be clearly stated in the Award.
- 14.3** The joining of additional Parties as petitioner or respondent shall not increase the filing fee.
- 14.4** The filing fee for arbitration is 5% of the amount in dispute, with a maximum filing fee of \$5,000.

RULE 15.0 Request for Fee Waiver.

- 15.1** A Party seeking arbitration may file with the Program an application for a filing fee waiver on the approved Program form. The Program may require that a request be supported by a statement of status or other documentation. A Party who fails or refuses to provide any requested information in a timely fashion shall be deemed to have withdrawn its request for a filing fee waiver.

- 15.2** For good cause shown, the Committee Chair may grant or deny the filing fee waiver or order a reduced fee. The order of the Committee Chair shall be final and is not appealable.
- 15.3** The financial statement or other information filed in support of a request for a fee waiver shall not be disclosed by the Program to any other Party or to the arbitrators.

RULE 16.0 Response to Request for Arbitration.

- 16.1** The responding Party's reply to a Request for Arbitration shall be submitted to the Program on its approved form within 30 days of the service of the request, unless an extension of time to reply is obtained from the Program. If the responding Party is an attorney, any response concerning the issue of the attorney's responsibility for any Award that refunds Fees to the Client, shall be filed at the same time as the reply.
- 16.2** As reflected in Rule 13.3, If the attorney files a Request for Arbitration, and there is no written agreement between the Parties that fee disputes be submitted to Mandatory Fee Arbitration, arbitration shall proceed only if the Client consents in writing on the approved form within 30 days of service on the Client of the Request for Arbitration.

RULE 17.0 Requests and Responses to Requests for Arbitration.

Parties filing or responding to a Request for Arbitration by mail shall file one original and the required number of copies of all forms and supporting documentation with the Program. Copies of materials filed with the Program will be forwarded to the other Party and the Hearing Panel assigned to hear the matter.

RULE 18.0 Settlement Of Disputes; Withdrawal From Arbitration; Refund Schedule.

- 18.1** Upon confirmation by the Parties or the Hearing Panel if one has been assigned that a dispute has been settled, the matter shall be dismissed without prejudice by the Program in the absence of an assigned Hearing Panel or by the Panel Chair if a notice of assignment of the Hearing Panel has been served on the Parties.
- 18.2** Procedures to withdraw a Request for Arbitration:
- a) If a Party wishes to withdraw from a binding arbitration and the matter has not been settled, all other Parties must agree to the matter being withdrawn.

- b) If there is a written agreement between the Parties requiring arbitration of the fee dispute through the Mandatory Fee Arbitration Program, all other Parties must consent to a request for withdrawal before the proceeding is dismissed.
- c) If arbitration has been requested by the attorney, the matter may only be dismissed with the agreement of the other Parties.
- d) In all other cases, the Party who requested arbitration may withdraw from the arbitration proceeding without the consent of other Parties at any time before evidence is taken.

18.3 The refund of Program fees shall be on the following terms:

- a) The Program will retain a \$50 non-refundable fee on all cases filed. No refund is available for filing fees of \$50 or less.
- b) If a case closes prior to the assignment of a mediator or arbitrator(s), the Program shall retain 50% of the total filing fee with a \$50 minimum.
- c) In cases closed after the assignment of a mediator or arbitrator(s), and written notice is Received at least ten (10) days prior to the date of the scheduled Hearing, the Program shall retain 75% of the total filing fee with a \$50 minimum.
- d) After mediator or Hearing Panel assignment and less than ten (10) days before the Hearing, there shall be no refund of filing fees.
- e) If a mediation session or arbitration Hearing has commenced, no refund will be made.

18.4 If the Parties settle the fee dispute and wish to obtain a stipulated Award incorporating the terms of a written settlement agreement, the Committee Chair, if no Hearing Panel has been assigned, or the Panel Chair, if the Hearing Panel has been assigned, may issue a stipulated Award incorporating by reference the Parties' written settlement agreement. The Program will serve the stipulated Award in the same manner as it would serve an Award as prescribed elsewhere in these rules.

RULE 19.0 Consolidations.

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

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

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

ARTICLE VI. PANELS AND ARBITRATORS

RULE 20.0 Appointment of Panel.

- 20.1** For each dispute, the Program shall assign a Hearing Panel from the Program's roster of fee arbitrators. A Hearing Panel shall consist of one Attorney Arbitrator if the amount in dispute is \$25,000 or less and three arbitrators if the amount in dispute is more than \$25,000, one of whom shall be a non-lawyer. An Attorney Arbitrator shall be designated as Panel Chair. If the amount in dispute is more than \$25,000, the Parties may agree, in writing, to have the matter heard by a single Attorney Arbitrator.
- 20.2** 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, if the Client has elected such an appointment in the Request for Arbitration.
- 20.3** All appointed arbitrators must have basic technological proficiency, including the ability to operate videoconferencing systems.
- 20.4** If a fee dispute involves \$1,000 or less, the arbitration shall be decided by the Committee Chair or designee. Each Party shall submit all supporting documents and a complete written statement of the reasons for the dispute, a response, or both, under penalty of perjury. The Parties have 30 days from the service by the Program of the reply to the Request for Arbitration, which will be reflected in a proof of service. The record shall thereafter be forwarded for action to the Committee Chair or designee, who may require either or both Parties to submit additional information within 30 days. However, if the amount in controversy is less than \$1,000 but greater than \$500, the Parties upon the request of any Party, may appear at a Hearing, either in person, telephonically or videoconference, before the Committee Chair or designee assigned to the matter, in addition to providing the written information required by this section. The Program shall keep a permanent record of the number of fee disputes in

which the amount in controversy is between \$500 and \$1,000 and of that number, the number of fee disputes in which any Party requested a Hearing. The Parties shall be informed of this Rule 20.4 at the time of the Program's service of the Request for Arbitration.

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

RULE 21.0 Notice of Appointment of Panel.

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

RULE 22.0 Challenge, Disqualification, and Recusal of Arbitrator(s).

22.1 A Party may disqualify one arbitrator without cause. A Party is entitled to unlimited challenges of an arbitrator for cause. The Program must be notified of the request for disqualification within fifteen days of serving the Notice of Arbitrator Assignment.

22.2 No person appointed as an arbitrator shall arbitrate a dispute if they have any financial or personal interest in the result of the arbitration or if they determine that they are not qualified to act as to that dispute for any other reason. 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 Committee Chair shall decide the challenge. The Committee Chair's decision is final and non-appealable.

RULE 23.0 Discharge of Arbitrator or Panel.

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

RULE 24.0 Prohibited Contacts With Arbitrators.

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

- a) at scheduled Hearings;
- b) in writing with a copy to all other Parties, or their respective counsel, if any, and the Program;
- c) for the sole purpose of scheduling a Hearing date or other administrative procedures with notice of same to the other Parties;
- d) for the purpose of obtaining the issuance of a subpoena as set forth in these rules; or
- e) in an emergency.

ARTICLE VII. THE HEARING

RULE 25.0 Confidentiality.

- 25.1** Mandatory Fee Arbitrations are confidential proceedings. Pursuant to California Business & Professions Code § 6202, disclosure of privileged communications, attorney work product, or other confidential information during the Mandatory Fee Arbitration process, including at or during the Hearing, shall not be deemed to be a waiver of the confidential character of such matters for any other purpose.
- 25.2** Mandatory Fee Arbitration Hearings shall be closed to the public.
- 25.3** In the discretion of the Panel Chair and in the absence of any objections by the Parties, witnesses may be present during the Hearing.
- 25.4** The Hearing Panel, upon request of the Client, shall permit the Client to be accompanied by another person and may also permit additional persons to attend. In the event a Party objects to the attendance of such an individual, the challenge will be determined by the Panel Chair.
- 25.5** As a condition of attending the Hearing, any person permitted to attend under Rule 25.3 or Rule 25.4, shall be advised that the proceedings are confidential and must agree to preserve the confidential nature of any information to which they are exposure during their participation.
- 25.6** The arbitration case file, including the request, reply, and exhibits, as well as the award itself, are to remain confidential. Absent a court order compelling

disclosure of the award, the program may not disclose the award to any individual or entity that was not a party to the arbitration proceeding.

- 25.7** An award shall remain confidential except as may be necessary in connection with a judicial challenge to, confirmation or enforcement of, the award, or as otherwise required by law or judicial decision.
- 25.8** No arbitrator appointed under these Rules shall be competent to testify in any subsequent civil proceeding, as to any statement or conduct occurring during the course of the arbitration proceeding, except as permitted by California Evidence Code § 703.5.

RULE 26.0 Waiver of Personal Appearance.

- 26.1** Upon advance approval of the Panel Chair, any Party may waive personal appearance and submit to the Hearing Panel testimony and exhibits by written Declaration under penalty of perjury or such other means approved by the Panel Chair.
- 26.2** Any Party unable to attend a Hearing may designate a lawyer or non-lawyer representative.
- 26.3** Any Party may request to appear by telephone or videoconference, subject to the advance approval of the Panel Chair.
- 26.4** A request for waiver of appearance or designation of a representative and the submission of testimony by written Declaration or request for telephonic or videoconference appearance pursuant to this rule shall be filed with the Panel Chair and served on all Parties at least 10 days prior to the Hearing.

RULE 27.0 Death or Incompetence of a Party.

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

RULE 28.0 Discovery.

- 28.1** No discovery is allowable except as specifically set forth in these rules.
- 28.2** 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 Party does not have the right to inspect the Client's or attorney's file.

RULE 29.0 Compelling Production of Witnesses and Documents at the Hearing By Subpoena or Notice.

- 29.1** A Party seeking to compel the attendance of a person at the Hearing or the production of documents, books or records, may request a subpoena for such purposes. A Party seeking to have a subpoena issued shall submit a completed but unsigned Judicial Council subpoena form to the Committee Chair, prior to the appointment of a panel, or, after the appointment of a panel, to the Panel Chair, with proof of service on all Parties. Upon showing of good cause, the Committee Chair or Panel Chair, as appropriate, may issue a subpoena requested by a Party. In the event the Committee Chair or Panel Chair approves the issuance of a subpoena, the Committee Chair or Panel Chair shall sign the submitted subpoena and provide any executed subpoena to the requesting Party, who shall be responsible for service of the subpoena. The Party requesting a subpoena will be responsible for any witness fees and costs of service of the subpoena. No subpoena may be served on any Party or third Party unless it has been approved and signed by the Committee Chair or Panel Chair pursuant to this rule.
- 29.2** Any Party may require another Party to bring to the Hearing books, documents , electronically stored information, or other things in their possession, by serving a written request on the other Party 10 days in advance of the Hearing. The request shall state the exact materials or things desired.

RULE 30.0 Commencement of Hearing; Notice; Attendance.

- 30.1** The Panel Chair shall serve written Notice of Hearing on each Party at the address in the Notice of Assignment of Panel and the Program within 15 days of its assignment and at least 15 days prior to the Hearing date. Appearance by a Party at a scheduled Hearing shall constitute waiver by said Party of any deficiency with respect to the giving of Notice of Hearing.
- 30.2** The Hearing shall commence within 45 days for a single arbitrator panel or 90 days for a three- member panel after the date of service of the Notice of Assignment of Panel.
- 30.3** The Panel Chair shall have sole discretion to determine whether the Hearing will be held in person, via videoconference, telephonically, or any combination thereof. Within the Notice of Hearing, the Parties shall be advised of the physical location, the telephone number. or the videoconference service and credentials that will be necessary to attend Hearing.

- 30.4** A disqualification or allowed challenge of an assigned arbitrator will result in a 15-day extension from the date of the assignment of replacement member(s).
- 30.5** Upon stipulation or application to the Panel Chair, the Hearing may be continued for good cause shown.
- 30.6** Notwithstanding the failure of either Party to attend, the Hearing shall proceed as scheduled and a decision made on the basis of evidence submitted. An Award shall not be made against a Party solely because of the Party's absence. The panel shall require the Party who is present to submit such evidence as may be required to support the making of an Award. An Award may be made in favor of a Party who is absent if the evidence so warrants. If neither Party appears and the Panel Chair has not approved waiver of personal appearance, the panel will issue an Award based on the evidence submitted.
- 30.7** If one of the panel members fails to appear, upon written stipulation of the Parties, the Hearing may proceed with either of the Attorney Arbitrators acting as the sole arbitrator. Under no circumstances will the Hearing proceed with two arbitrators or with only a lay arbitrator. If all Parties agree in writing, the sole arbitrator or Hearing Panel shall decide all matters without a Hearing based upon the Petition, Reply and any other written materials provided by the Parties. All such written materials shall be filed with the Hearing Panel and served on all other Parties.

RULE 31.0 Agreements Encouraged.

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

RULE 32.0 Hearing Procedure.

- 32.1** The Panel Chair shall preside at the Hearing.
- 32.2** The Parties shall present their proof in a manner determined by the Panel Chair.
- 32.3** The Parties to the arbitration are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at the Hearing, but the rules of evidence and rules of judicial procedure applicable in the courts of California need not be observed. Upon request of any Party to the arbitration or upon request of any arbitrator, the testimony of witnesses shall be given under oath. The Panel Chair may administer oaths to witnesses appearing or testifying at the Hearing. The sole arbitrator or panel shall have the power to limit and regulate the number, timing, form and length of the Parties' written or oral presentation.

32.4 The Panel Chair shall rule on the admission and exclusion of evidence and on questions of procedure, and shall exercise all powers relating to the conduct of the Hearing.

32.5 The Panel Chair has the power to preserve and enforce order in the proceedings and to provide for the orderly conduct of the proceedings.

RULE 33.0 Evidence.

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

33.2 Evidence relating to claims of malpractice or professional misconduct, whether or not the Client was actually harmed, shall be admissible, but only to the extent that those claims bear upon the Fees to which the attorney is entitled.

33.3 The Parties may object to the introduction of information or evidence that is privileged under any applicable law, unless there has been a waiver of any applicable privilege.

RULE 34.0 Clarification of Issues And Exchange of Documents.

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

RULE 35.0 Interpreter.

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

RULE 36.0 Transcripts or Recordings.

No stenographic, audio, video, or other form of recording is permissible.

RULE 37.0 Compensation of Arbitrators; Administrative Charges

- 37.1** No arbitrator shall be entitled to compensation for services unless the Hearing extends beyond four hours. Unless waived in writing, each arbitrator will be compensated at the rate of \$150 for each additional hour after a four hour hearing. A Hearing of four hours or less in one day will be considered as a one-half day hearing. A Hearing of more than four hours in one day will be considered as a one-day hearing. The compensation shall be paid equally by each Party, to each arbitrator, for each day of the Hearing on which compensation is payable. No compensation will be paid to arbitrators for services other than during formal Hearing sessions extending beyond four hours. Any disputes concerning compensation of the arbitrators will be determined by the Committee Chair, and its determination shall be binding on the Parties, including the arbitrators.
- 37.2** Except for the prescribed filing fees, no charges will be made by the Program, nor by any arbitrator, for administrative or clerical services. A hearing room will be provided by an arbitrator or by the Program without charge to the Parties.
- 37.3** All Parties will bear their own costs, including the costs of interpreters and expert witnesses.

ARTICLE VIII. AWARD

RULE 38.0 Award.

- 38.1** The Award shall be submitted to the Program within 15 days of the close of the Hearing in any matter heard by a sole arbitrator and within 25 days of the close of the hearing in any matter heard by a three- member panel. The Award shall be reviewed pursuant to rule 38.11 and then served on the Parties forthwith by the Program.
- 38.2** The Award shall be in writing. The Award shall indicate whether it is binding or non-binding. It shall include a determination of all questions submitted to the Hearing Panel, the decision of which is necessary in order to determine the controversy, including the name of the responsible attorney(s). Arbitrators are encouraged, where appropriate, to include findings of fact. If a Party failed to appear for non-binding arbitration, the Award should also include the circumstances bearing on the willfulness of any Party's nonappearance at the Hearing.
- 38.3** The Award shall include substantially the following language, as appropriate:

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

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

Subtotal \$ _____

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

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

Client: \$ _____

Attorney: \$ _____

For a net amount of: \$ _____

Accordingly, the following award is made:

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

OR

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

OR

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

38.4 The Award may include a refund of unearned Fees previously paid to the attorney. In the event a refund is determined to be owed to the Client and where questions are raised as to who the responsible attorney(s) in the arbitration is, the Panel shall make that determination and shall include in the award the name of the attorney(s) and, if appropriate, the law firm(s).

38.5 The Award shall provide for interest to accrue on the award 30 days after the service of the award.

38.6 Whenever there are three arbitrators, a majority vote shall be sufficient for all decisions of the arbitrators, including the Award. The Award shall be signed by all arbitrators concurring with it. Any dissent from the Award shall be served with the Award.

38.7 The Hearing Panel shall not award affirmative relief in the form of damages or offset or otherwise, on the basis of a claim for malpractice or professional

misconduct. Nothing herein shall be construed to prevent the Hearing Panel from awarding a refund of unearned Fees previously paid by the Client

- 38.8** The Award may include an allocation of the filing fee. The absence of such allocation in the Award will be deemed to mean each Party is responsible for the fee arbitration filing fee paid by that Party.
- 38.9** The Award shall not include an award for any other costs of the arbitration, including attorneys' fees resulting from the arbitration proceeding notwithstanding any contact between the Parties providing for such an award of costs or attorney's fees.
- 38.10** The Hearing Panel shall forward the original of the signed Award to the Program, which shall serve a copy of the Award by mail on each Party together with a Notice of Rights After Arbitration form approved by the State Bar Board of Governors.
- 38.11** No Award is final or is to be issued until approved for procedural compliance and as to the form of the Award by the Committee Chair or such person as the Chair may designate for this purpose. After approval of the Award as to the procedural compliance and approval as to the form of the Award, the Program shall serve a copy of the Award by mail on each Party together with a Notice of Rights After Arbitration form approved by the State Bar Board of Trustees. Any Party who has submitted exhibits or documents to the panel shall, upon service of the Award, arrange to retrieve them.

RULE 39.0. Correction or Amendment of Award by Hearing Panel.

- 39.1** An Award may be corrected or amended by the sole arbitrator or at least two concurring members of panel. Correction is permitted only for an evident mistake in calculation or description of a person, thing, or property, or for defect of form not affecting the merits of the dispute. Amendment is permitted when an Award is inadvertently incomplete and amendment does not substantially prejudice the legitimate interests of a Party. Unless requested by Panel Chair, no additional testimony or documentary evidence may be submitted
- 39.2** Any Party may submit to the Panel Chair a written request for a correction of an Award. The requesting Party must submit the request to the Panel Chair with proof of service and serve a copy on each Party within ten days after service of the Award. Any correction or denial of the request will be made by the Panel Chair within thirty days of service of the Award.
- 39.3** 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.

- 39.4** Any Party may submit a written request to the Panel Chair for the amendment of an Award. The requesting Party must submit the request to the Panel Chair with proof of service and serve a copy on any other Party at the time prior to judicial confirmation of the Award.
- 39.5** Any Party may submit to the Panel Chair a written objection to a request for correction or amendment of an Award.
- 39.6** The Program must serve all Parties with a corrected or amended Award or denial of a request for correction or amendment.

ARTICLE IX. SERVICE; ADDRESS

RULE 40.0 Service.

- 40.1** Unless otherwise specifically stated in these rules, service on the Client shall be by electronic means, personal delivery, by deposit in the United States mail, or by deposit in a business facility used for collection and processing of correspondence for mailing with the United States Postal Service pursuant to Code of Civil Procedure section 1013(a), postage paid, addressed to the person on whom it is to be served, at their address as last given, on any document which has been filed in the arbitration. The Client and the Client's attorney shall keep the Program advised of their current address.
- 40.2** Unless otherwise specifically stated in these rules, service on an individual attorney shall be at the latest address shown on the official membership records of the State Bar. Service shall be in accordance with subsection 40.1 above.
- 40.3** If either Party is represented by counsel, service shall be on the Party as indicated in subsections 40.1 and 40.2 of this rule, and on the counsel at the latest address shown on the official membership records of the State Bar.
- 40.4** The service is complete at the time of deposit. The time for performing any act shall commence on the date service is complete and shall not be extended by reason of service by mail.
- 40.5** In the event that the Client fails to keep the Program advised of their current address, the Program may close the arbitration request, if it is made by the Client, after 30 days from the date that the Program learns of the invalid address.
- 40.6** Electronic Service

- a) In addition to the methods of service provided for in subdivision (A) of this rule, the Parties to an arbitration may consent to electronic service of documents upon each other pursuant to Code of Civil Procedure section 1010.6(a)(1)(A)-(C).
- e) The Parties to an arbitration may consent to receive electronic service of documents from the Program in lieu of service by mail by providing to the Program written consent to receive electronic service of documents from the Program at the Party's designated electronic address.
- f) Service pursuant to this subsection is complete upon transmission.

ARTICLE X. ENFORCEMENT

RULE 41.0 Enforcement Authority.

41.1 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 42.0 Request for State Bar Enforcement.

42.1 Unless otherwise directed by the State Bar, a Party submitting an Award for enforcement must comply with the following procedures:

- 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. The request must be in writing on the State Bar Request for Enforcement form. The request may include any other Party who was awarded or who is liable for a refund of attorney Fees. An 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 Fees.
- 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 Award, the State Bar may proceed with enforcement proceedings or, abate enforcement until the court enters a judgment confirming the Award.

**ARTICLE XI.
REFERRAL OF ATTORNEY TO STATE BAR**

43.0 Referral of Attorney to State Bar.

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

State Bar of California Model Rules of Procedure for Fee Arbitrations

(Approved November 17, 2006; rev. July 11, 2008; rev. Nov. 24, 2009;
rev. Mar. 10, 2010; rev. May 11, 2012; Sept. 19, 2019; July 16, 2020.)

ARTICLE I. DEFINITIONS

RULE 1.0. Definitions.

As used in this chapter:

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

- 1.12 PROGRAM:** Unless indicated otherwise, reference to the program means the Mandatory Fee Arbitration Program of the _____ Bar Association.
- 1.13 STATE BAR:** The State Bar of California. Unless indicated otherwise, reference to the State Bar means the State Bar’s Office of Mandatory Fee Arbitration.
- 1.14 TRIAL:** Trial after non-binding fee arbitration means: (1) an action in the court having jurisdiction over the amount in controversy or (2) arbitration pursuant to the parties’ pre-existing arbitration agreement.

ARTICLE II. ARBITRATION GENERALLY

RULE 2.0 Arbitration Mandatory For Attorneys.

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

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

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

RULE 3.0 Party’s Failure to Respond or Participate.

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

RULE 4.0 Disputes Covered.

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

- 4.1** disputes where the attorney is also admitted to practice in another jurisdiction or where the attorney is only admitted to practice in another jurisdiction, and he or she maintains no office in the State of California, and no material portion of the services was rendered in the State of California;

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

RULE 5.0 Non-Binding and Binding Arbitration.

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

RULE 6.0 Withdrawal of Binding Arbitration Election.

- 6.1 If the parties agree in writing, after the fee dispute arises, to binding arbitration, the arbitration shall proceed as binding. The parties may request binding arbitration as provided on the program forms. In the absence of a written agreement made after the fee dispute arises to submit to binding arbitration, the arbitration shall be non-binding.
- 6.2 A party who has requested binding arbitration may withdraw that request and request a change to non-binding arbitration in writing to the program and the other parties, so long as the other parties have not already agreed to binding arbitration.
- 6.3 If the party who initially requests arbitration requests that the arbitration will be binding, and the respondent party's Reply agrees to binding arbitration but also seeks to materially increase the amount in dispute, then the party who requested arbitration

may withdraw his request that the arbitration be binding. Such withdrawal of consent to binding arbitration, by the initiating party, must be communicated in writing to the Program within ten days of that party's receipt of the Reply.

- 6.4** Except as provided above, if the parties have already agreed to binding arbitration, the binding election may be changed to non-binding arbitration only by written agreement signed by all parties before the taking of evidence.

RULE 7.0 Right to Counsel.

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

RULE 8.0 Waiver of Right to Request or Maintain Arbitration.

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

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

RULE 9.0 Stay of Proceedings.

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

ARTICLE III. PROGRAM

RULE 10.0 Determination of Jurisdiction.

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

RULE 11.0 Jurisdiction by the Program.

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

RULE 12.0 Removal to the State Bar of California.

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

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

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

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

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

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

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

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

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

RULE 13.0 Effect of Failure to Adhere to Time Requirements.

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

ARTICLE IV. INITIATION OF ARBITRATION PROCEEDING

RULE 14.0 Request for Arbitration.

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

15.0 Filing Fee.

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

15.3 Filing Fee Schedule.

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

RULE 16.0 Request for Filing Fee Waiver.

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

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

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

RULE 17.0 Response to Request for Arbitration.

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

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

RULE 18.0 Requests and Responses to Requests for Arbitration.

Parties filing or responding to a Request for Arbitration shall file one original and the required number of copies of all forms and supporting documentation with the program. Copies of

materials filed with the program will be forwarded to the other party and the hearing panel assigned to hear the matter.

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

- 19.1** Upon confirmation by the parties or the hearing panel if one has been assigned that the dispute has been settled, the matter shall be dismissed without prejudice by the program in the absence of an assigned hearing panel, or by the panel chair if a notice of assignment of the hearing panel has been served on the parties.
- 19.2** a) If a party wishes to withdraw from a binding arbitration and the matter has not been settled, all other parties must agree to the matter being withdrawn.
- b) If there is a written agreement between the parties requiring arbitration of the fee dispute through the Mandatory Fee Arbitration Program, all other parties must consent to a request for withdrawal before the proceeding is dismissed.
- c) If arbitration has been requested by the attorney, the matter may only be dismissed with the agreement of the other parties.
- d) In all other cases, the party who requested arbitration may withdraw from the arbitration proceeding without the consent of other parties at any time before evidence is taken.
- 19.3** Refund of the filing fee: If the matter is settled or dismissed based on withdrawal before the request for arbitration is served on the attorney by the program, ___ percent of the filing fee shall be refunded to the party who paid it. If the matter is settled after the request for arbitration has been served on the respondent party by the program but before assignment of a panel, the program shall retain ___ percent of the filing fee paid up to a maximum of \$____. After assignment of a hearing panel, if written notice of the settlement is received by the program at least 10 days prior to the date of the scheduled hearing, the program shall retain ___ percent of the filing fee up to a maximum of \$____. The remaining fee shall be refunded to the party who paid it. After hearing panel assignment and less than 10 days before the hearing, there shall be no refund of filing fees.
- 19.4** If the parties settle the fee dispute and wish to obtain a stipulated award incorporating the terms of a written settlement agreement, the Committee Chair, if no hearing panel has been assigned, or the Panel Chair, if the hearing panel has been assigned, may issue a stipulated award incorporating by reference the parties' written settlement agreement. The Program will serve the stipulated award in the same manner as it would serve an arbitration award as prescribed elsewhere in these rules. A stipulated award can be enforced by the State Bar on behalf of the client in the same manner as an award after arbitration as provided by Business and Professions Code section 6203(d).

RULE 20.0 Consolidations.

A party may request, in writing, that two or more arbitration matters be consolidated for hearing. The Program will serve the other party with a copy of the request. A written reply may be filed with the program within 15 days of service of the request for consolidation. The Committee Chair shall rule on all written requests to consolidate. The order of the Committee Chair shall be final. Consolidation will not result in a refund of filing fees paid or reduction of filing fees owed to the Program.

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

ARTICLE V. PANELS

RULE 21.0 Appointment Of Panel.

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

addition to providing the written information required by this section. The parties shall be informed of this rule at the time of the program's service of a completed arbitration request form.

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

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

RULE 22.0 Notice of Appointment of Panel.

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

RULE 23.0 Challenge to Arbitrator(s).

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

RULE 24.0 Discharge of Arbitrator or Panel.

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

RULE 25.0 Prohibited Contacts With Arbitrators.

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

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

ARTICLE VI. THE HEARING

RULE 26.0 Confidentiality.

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

RULE 27.0 Waiver of Personal Appearance.

- 27.1** Upon advance approval of the Panel Chair, any party may waive personal appearance and submit to the hearing panel testimony and exhibits by written declaration under penalty of perjury.
- 27.2** Any party may designate a lawyer or non-lawyer representative.
- 27.3** Any party unable to attend a hearing may request to appear by telephone or videoconference, subject to the advance approval of the Panel Chair.
- 27.4** A request for waiver of appearance or designation of a representative and the submission of testimony by written declaration or request for telephonic or

videoconference appearance pursuant to this rule shall be filed with the Panel Chair and served on all parties at least 10 days prior to the hearing.

RULE 28.0 Death or Incompetence of a Party.

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

RULE 29.0 Discovery.

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

RULE 30.0 Subpoenas.

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

RULE 31.0 Commencement of Hearing; Notice; Attendance.

- 31.1** The hearing shall commence within 45 days for a single arbitrator or 90 days for a three-member panel after the date of service of the "Notice of Assignment of Panel." A disqualification or allowed challenge of an assigned arbitrator will result in a 15-day extension from the date of the assignment of replacement member(s). Upon stipulation or application to the Panel Chair, the matter may be continued for good cause shown except in the instance where the continuance is for 30 days or more, in which case the continuance must be approved by the Committee Chair.
- 31.2** The panel shall serve written notice of hearing on each party at the address in the "Notice of Assignment of Panel" and the program within 15 days of its assignment and at least 15 days prior to the hearing date. Appearance by a party at a scheduled hearing shall constitute waiver by said party of any deficiency with respect to the giving of "Notice of Hearing." Notwithstanding the failure of either party to attend, the hearing shall proceed as scheduled and a decision made on the basis of evidence submitted.
- 31.3** An award shall not be made against a party solely because of the party's absence. The panel shall require the party who is present to submit such evidence as may be required to support the making of an award.

- 31.4** An award may be made in favor of a party who is absent if the evidence so warrants. If neither party appears and the panel chair has not approved waiver of personal appearance, the panel will issue an award based on the evidence submitted.
- 31.5** If one of the panel members fails to appear, upon written stipulation of the parties, the hearing may proceed with either of the attorney arbitrators acting as the sole arbitrator. Under no circumstances will the hearing proceed with two arbitrators or with one lay arbitrator.
- 31.6** If all parties so stipulate, the sole arbitrator or Hearing Panel shall decide all matters without a hearing based upon the Petition, Reply and any other written materials provided by the parties. All such written materials shall be filed with the hearing panel and served on all other parties.

RULE 32.0 Stipulations Encouraged.

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

RULE 33.0 Oaths.

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

RULE 34.0 Evidence.

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

RULE 34.1 Clarification of Issues and Exchange of Documents.

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

RULE 35.0 Order of Proof.

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

RULE 36.0 Interpreter.

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

RULE 37.0 Transcripts or Recordings.

No stenographic, audio, or video recording is permissible.

RULE 38.0 Compensation of Arbitrators; Administrative Charges.

- 38.1** An arbitrator has the discretion to require compensation for a hearing that extends beyond four hours. The parties must agree in writing prior to the taking of evidence that they will compensate the arbitrator unless the arbitrator waives compensation. If this agreement is not timely entered into by the parties, then the arbitrator is not permitted to seek compensation for time beyond four hours. If agreed to in writing, each arbitrator will be compensated at the rate of \$150 for each additional hour after a four hour hearing. The compensation shall be paid equally by each party to the program for each day of hearing on which compensation is payable. No compensation will be paid to arbitrators for services other than during formal hearing sessions extending beyond four hours. Any disputes concerning compensation of the arbitrators will be determined by the Committee Chair, and its determination shall be binding on the parties, including the arbitrators. Regardless of whether there is or is not an agreement for compensation, the arbitrator retains the authority to control the total length of the proceedings in order to conduct a fair and thorough hearing.
- 38.2** Except for the prescribed filing fees, no charges will be made by the program, nor by any arbitrator, for administrative or clerical services. A hearing room will be provided by an arbitrator or by the program without charge to the parties.
- 38.3** All parties will bear their own costs, including the costs of interpreters and expert witnesses.

ARTICLE VII. AWARD

RULE 39.0 Award.

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

39.3 The award shall include substantially the following language:

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

\$ _____

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

Subtotal \$ _____

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

Client: \$ _____

Attorney: \$ _____

For a net amount of: \$ _____

Accordingly, the following award is made:

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

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

OR

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

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

OR

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

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

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

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

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

- 39.7** The award shall be signed by all arbitrators concurring with it.
- 39.8** The award may include an allocation of the filing fee; however, it shall not include an award for any other costs of the arbitration, including attorneys' fees resulting from the arbitration proceeding notwithstanding any contract between the parties providing for such an award of costs or attorney's fees.
- 39.9** The Hearing Panel shall deliver the original of the signed award to the Program., which shall serve a copy of the award by mail on each party together with a Notice of Your Rights After Arbitration form approved by the State Bar Board of Governors. No award is final or is to be served until approved for procedural compliance and as to the form of the award by the Committee Chair or such person as the Chair may designate for this purpose. Any party who has submitted exhibits or documents to the panel shall, upon service of the award, make arrangements to retrieve them.

RULE 40.0 Correction or Amendment of Award by Hearing Panel.

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

ARTICLE VIII. SERVICE; ADDRESS

RULE 41.0 Service.

- 41.1** Unless otherwise specifically stated in these rules, service on the client shall be by personal delivery, by deposit in the United States mail, or by deposit in a business facility used for collection and processing of correspondence for mailing with the United States Postal Service pursuant to Code of Civil Procedure section 1013(a), postage paid, addressed to the person on whom it is to be served, at his or her address as last given, on any document which has been filed in the arbitration. The client shall keep the program advised of his or her current address.
- 41.2** Unless otherwise specifically stated in these rules, service on an individual attorney shall be at the latest address shown on the official membership records of the State Bar. Service shall be in accordance with subsection 41.1 above.
- 41.3** If either party is represented by counsel, service shall be on the party as indicated in subsections 41.1 and 41.2 of this rule, and on the counsel at the latest address shown on the official membership records of the State Bar.
- 41.4** The service is complete at the time of deposit. The time for performing any act shall commence on the date service is complete and shall not be extended by reason of service by mail.
- 41.5** Where a facsimile or email transmission is used to communicate with the program or to file any document, it will not be considered received unless the program also receives within five days of the date of the transmission, the original of the faxed document.
- 41.6** In the event that the client fails to keep the program advised of his or her current address, the program may close the arbitration request, if it is made by the client, after 30 days from the date that the program learns of the invalid address.

ARTICLE IX. REFERRAL OF ATTORNEY TO STATE BAR

42.0 Referral of Attorney to State Bar.

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