

# The State Bar of California

## *Proposed Amendments* **Rules of Procedure for Fee Arbitrations and the Enforcement of Awards**

(Adopted by the Board of Governors on January 26, 1991; amended July 13, 1991; amended July 11, 1992; amended March 6, 1993; amended May 14, 1994; amended December 10, 1994; amended December 6, 1999; amended July 1, 2003; amended December 6, 2004; **amended** .)

### **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.
- 1.12 ASSIGNEE:** A person to whom a claim, right or property is transferred.
- 1.23 ASSISTANT PRESIDING ARBITRATOR:** The person to whom the Presiding Arbitrator has delegated duties or who acts in place of the Presiding Arbitrator when he or she is not available or is unable to perform the required duties.
- 1.34 AWARD:** The decision of the arbitrator or arbitrators in the fee arbitration proceeding.
- 1.45 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.
- 1.56 DIRECTOR:** The staff person responsible for administering the State Bar Mandatory Fee Arbitration Program.
- ~~**1.6 DAYS:** Days are all calendar days, not including legal holidays.~~

- 1.7 DECLARATION:** A declaration is a document in compliance with the requirements of Code of Civil Procedure section 2015.5, or an affidavit.
- 1.8 FEE ARBITRATION DEPARTMENT:** Panel of fee arbitrators appointed by the State Bar Board of Governors to hear State Bar fee arbitration cases.
- 1.9 FILE:** State Bar fee arbitration records and papers in a specific fee arbitration or client’s request for enforcement of award case.
- 1.10 HEARING PANEL:** One or three arbitrators assigned to hear the fee dispute and to issue the award.
- 1.11 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.**
- 1.12 PARTY:** A person who **initiates or is named in an** requests arbitration ~~of a fee dispute~~ **proceeding under these rules**, including **an attorney**, a client or other person who may be liable **for payment of**, or entitled to a refund of attorney’s fees., ~~or a person requesting or responding to enforcement of an award, or a member who is the subject of a request for arbitration or a request for enforcement.~~
- 1.13 PRESIDING ARBITRATOR:** The person **in the Mandatory Fee Arbitration Program** responsible for supervising the **Program’s** fee arbitrators **and for ruling on matters as set forth in these rules.** ~~of the State Bar Mandatory Fee Arbitration Department.~~
- 1.14 STATE BAR:** The State Bar of California, **hereinafter referred to as “the Program,”** ~~Unless indicated otherwise.,~~ ~~R~~reference to the State Bar means the State Bar’s Office of Mandatory Fee Arbitration.

## 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 3.0. Party's Attorney's Failure to Respond or Participate.**

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

**RULE 4.0 Disputes Covered.**

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

- 4.1** disputes where the attorney is admitted to practice in another jurisdiction, or where the attorney is only admitted to practice in another jurisdiction, and he or she maintains no office in the State of California, and no material portion of the services was rendered in the State of California;
- 4.2** claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct;
- 4.3** disputes where the fees or costs to be paid by the client or on the client's behalf have been determined or are determinable pursuant to statute or court order; ~~or~~
- 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. 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 arbitration award has been served. If a trial after arbitration is not requested, the 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.

**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 ~~appeal 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.

~~**5.3** After all parties have agreed in writing, **after the fee dispute arises**, to be bound by an arbitration award, a party may not withdraw from that agreement.~~

## **[new] Rule 6.0 Withdrawal of Binding Arbitration Election**

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

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

**6.3** If the party who initially requests arbitration requests that the arbitration will be binding, and the respondent party's Reply agrees to binding arbitration but also seeks to materially increase the amount in dispute, then the party who requested arbitration may withdraw his request that the arbitration be binding. Such

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

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

**RULE 67.0 Right to Counsel.** All parties, at their expense, may be represented by an attorney.

**RULE 78.0 Waiver of Right to Request or Maintain Arbitration.**

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

- 78.1** answers a complaint in a civil action or other equivalent response to the civil action before filing a request for arbitration, after the required form entitled "Notice of Client's Right to Arbitration" was given pursuant to Business and Professions Code section 6201(a);
- 78.2** commences an action or files any pleading seeking judicial resolution of a fee or cost dispute or seeking affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct;
- 78.3** fails to deliver to the ~~State Bar~~ **Program** a request for arbitration on the approved ~~State Bar~~ **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 jurisdiction exists.**

**RULE 89.0. 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 the ~~State Bar 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, 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 for showing that the proceeding is stayed. Upon request, the program may file its own notice of stay form or provide a copy of the notice of proceedings Judicial Council Form to the party.**

### ARTICLE III. STATE BAR PROGRAM

#### **RULE 910.0. Presiding Arbitrator and Assistant Presiding Arbitrator; Representation of Parties.**

**910.1** The Presiding Arbitrator supervises the arbitrators of the Fee Arbitration Department of the State Bar. The Presiding Arbitrator is responsible for ruling on matters as set forth in these rules and shall be a member of the State Bar Committee on Mandatory Fee Arbitration. The Presiding Arbitrator may designate one or more Assistant Presiding Arbitrators from members of the Fee Arbitration Department who shall act if the Presiding Arbitrator is absent, unable to act, or has delegated duties to the Assistant Presiding Arbitrators.

**910.2** Neither the Presiding Arbitrator, an Assistant Presiding Arbitrator, nor any member of the Committee on Mandatory Fee Arbitration shall represent any party in a matter arbitrated by the State Bar **Program**.

#### **RULE 11.0 Determination of Jurisdiction.**

**11.1** The ~~State Bar Program~~ shall reject any request for arbitration when it is clear from the face of the request that the provisions of ~~the State Bar Act, Article 13,~~ **Business and Professions Code section 6200** have not been met **or the matter is time barred under Business and Professions Code section 6206.** **Where the existence of an attorney-client relationship is in dispute, the parties**

may stipulate to submit the issue for a determination by the Program, ~~which otherwise lacks jurisdiction to determine that issue.~~

**11.2** The Presiding Arbitrator 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, the Presiding Arbitrator may assign the matter to a hearing panel to take evidence and make a determination of whether jurisdiction should be accepted.

**11.3** Within 15 days from service of notice **of a ruling on a challenge to jurisdiction or claim that the matter is time barred**, ~~that jurisdiction has not been accepted~~, a party may file a written request for reconsideration **based on new evidence**. The Presiding Arbitrator shall rule on the request for reconsideration.

**11.4** There is no appeal of the Presiding Arbitrator's decision following reconsideration of a ~~hearing panel's determination~~. **Any ruling on jurisdiction by a local bar program is final and there is no appeal to the State Bar.**

[new]**11.5** If there is an approved local bar association program that is **willing to accept jurisdiction and where the parties consent in writing to submit to such jurisdiction**, a local bar association program may assume jurisdiction over a matter even if that program does not have original jurisdiction.

## **RULE ~~10~~12.0 Jurisdiction of the State Bar of California.**

**~~10~~ 12.1** The State Bar **of California** will accept a matter for arbitration if:

- a) there is no approved local bar association program with jurisdiction over the dispute; or
- b) upon the approval of the Presiding Arbitrator **of the State Bar**, subject to Rules ~~10~~ **12.2** and ~~10~~ **12.3**, a party seeks removal from a local bar association program and ~~declares under penalty of perjury that the party cannot obtain a fair hearing in the local bar association program~~ **submits with the request for removal a State Bar Fee Arbitration Request form and a declaration under penalty of perjury from a party explaining why the party cannot obtain a fair hearing before the local bar association program or the local**

**bar association program establishes in writing to the satisfaction of the State Bar Program that it does not have jurisdiction to hear the matter, or otherwise cannot hear the matter; or**

- c) ~~prior to~~ **instead of** requesting arbitration with a local bar association program, a party asserts on the State Bar's Arbitration Request form that the party believes that the party cannot obtain a fair hearing **and submits with the form either a declaration under penalty of perjury from a party explaining why the party cannot obtain a fair hearing** before the local bar association or the local bar association **program establishes in writing to the satisfaction of the State Bar Program that it does not have jurisdiction to hear the matter, or otherwise cannot hear the matter.**

**[new] d) Acceptance of the Arbitration Request form for filing is subject to approval of the Presiding Arbitrator.**

~~de)~~ The State Bar will waive jurisdiction if there is an approved local bar association program that is willing to accept consensual jurisdiction and the parties consent in writing to submit to such jurisdiction.

**1012.2** If a request for arbitration has been filed with the local bar and a party to the arbitration requests removal **to the State Bar Program under subsection 10.1(b)above,**

- a) the party seeking removal from a local bar association program must submit a declaration signed under penalty of perjury asserting the factual basis for the removal. That party need not submit **an additional** the filing fee to the State Bar **Program** until there has been a final ruling by the **State Bar's** Presiding Arbitrator granting removal to the State Bar's **Program**.
- b) The State Bar **Program** shall serve the request for removal and supporting declaration on the other parties and the local bar program. Any written responses must be received by the State Bar within 15 days of service of the request for removal and declaration for consideration by the Presiding Arbitrator.

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

**1012.3** The 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 local bar **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.
- d) **The Presiding Arbitrator's ruling on a request for removal is final.**

**RULE 132.0. Venue.**

A fee dispute will be heard in the county in which substantial legal services that are the subject of the fee dispute were performed. For good cause shown, the Presiding Arbitrator may order that venue be moved to another county. A request for change of venue must be served on the ~~State Bar~~ **Program** no later than 15 days after filing of the request for arbitration if change of venue is sought by the client, or no later than 15 days after service of the request for arbitration if change of venue is sought by the attorney. The order of the Presiding Arbitrator shall be final.

**RULE 143.0 Effect of Failure to Adhere to Time Requirements.**

The ~~State Bar~~ **Program** shall neither lose jurisdiction, nor shall any arbitration be dismissed nor any award invalidated or modified in any way, solely because of the

~~State Bar's~~ **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 154.0 Request for Arbitration.**

**154.1** Arbitration is initiated by filing a written "Request For Arbitration" with the ~~State Bar of California~~ **Program** on the approved ~~State Bar~~ **Program** form and paying the appropriate filing fee as established by the ~~State Bar~~ **Program**. Service of the request on the ~~attorney~~ **other party** with whom there is a fee dispute named on the request form shall be made by the ~~State Bar~~ **Program**.

**154.2** At the time of service of a request on ~~the an~~ attorney, the ~~State Bar~~ **Program** shall serve with it a copy of the ~~approved State Bar~~ "Notice of Attorney Responsibility" form.

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

**154.4 The request for arbitration form must be signed by the client.**  
The client may include as a party to the arbitration any person who is not the client of the attorney but who may be liable for or entitled to a refund of the attorney's fees or costs or both **so long as that person signs the request.** ~~and If arbitration is requested by~~ any other ~~party~~ **person** who may be liable for or entitled to a refund of attorney's fees included by the client, **that person must also sign the request.**

### **[new]165.0 Filing Fee**

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

## **RULE 175.0 Request for Filing Fee Waiver.**

**175.1** A party seeking arbitration may file with the ~~State Bar Program~~ an application for a filing fee waiver on the approved ~~State Bar Program~~ form. A party ~~The person seeking waiver of the filing fee to the arbitration~~ 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 a financial statement regarding his or her own financial status to the State Bar to support the client's application for a filing fee waiver. If the **non-client** party replies to the ~~Program State Bar~~ that he or she no longer has an interest in the outcome of the arbitration, the application will proceed based on the ~~client~~ **client's** financial statement alone.

**175.2** For good cause shown, the Presiding Arbitrator may grant or deny the filing fee waiver or order a reduced fee. The order of the Presiding Arbitrator shall be final.

**[new]17.3** **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 186.0. Attorney's Response to Request for Arbitration.**

**186.1** The ~~attorney~~ **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 ~~State Bar 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 ~~Presiding Arbitrator~~ **Program** or designee.

**186.2** 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 **120.2** of a matter in which the client has already requested arbitration or has consented to an attorney's request for arbitration.

~~16.3~~ Consent by the client and Reply by the attorney to a request for arbitration shall be on the approved State Bar forms and submitted to the State Bar.

**RULE 197.0. Requests and Responses to Requests for Arbitration.**

Parties filing or responding to a Request for Arbitration shall file one original and ~~four~~ **the required number of** copies of all forms and supporting documentation with the State Bar Program. ~~if disputed amount entitles the parties to a single arbitrator is less than \$10,000 and six copies of all forms and supporting documents if the disputed amount entitles the parties to a three member panel is greater than \$10,000.~~ Copies of materials filed with the State Bar Program will be forwarded to the ~~opposing~~ **other** party and the hearing panel assigned to hear the matter.

**RULE 1820.0. Settlement of Disputes; Withdrawal from Arbitration; Refund Schedule.**

~~2018.1~~ 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 by the State Bar in the absence of an assigned hearing panel, or by the ~~P~~ **panel Chair** if a notice of assignment of the hearing panel has been served on the parties.

~~2018.2~~ If the client wishes to withdraw from a binding arbitration and the matter has not been settled, all parties must agree to the matter being withdrawn. If the arbitration is non-binding, or after reasonable confirmation that all agree to the withdrawal and for good cause shown, or there is no prior written agreement between the parties requiring fee arbitration, a request for arbitration may be withdrawn by the party requesting arbitration and the matter shall be dismissed as set forth in subsection ~~189.1~~ above.

**(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.**

**2018.3 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 State Bar, 100 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 ~~attorney~~ **respondent party** by the ~~State Bar~~ **Program** but before assignment of a panel, the ~~State Bar~~ **Program** shall retain 50 percent of the filing fee paid up to a maximum of \$100. After assignment of a hearing panel, if written notice of the settlement is received by the ~~State Bar~~ **Program** at least ~~24 hours by 10:00 a.m. one business day~~ **10 days prior** to the date of the scheduled hearing, the State Bar shall retain 50 percent of the filing fee up to a maximum of \$500. 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.**

#### **RULE 1921.0 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 ~~State Bar~~ **Program** within 15 days of service of the request for consolidation. The Presiding Arbitrator shall rule on all written requests to consolidate. The order of the Presiding Arbitrator shall be final. **Consolidation will not result in a refund of filing fees paid or reduction of filing fees owed to the Program.**

### **ARTICLE V. PANELS**

#### **RULE 220.0. Appointment of Panel.**

**220.1** For each dispute, the Director shall assign a hearing panel from the State Bar Fee Arbitration Department. A hearing panel shall consist of one attorney arbitrator if the amount in dispute is \$10,000 or less and three arbitrators if the amount in dispute is more than \$10,000, 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 \$10,000, the parties may agree, in writing, to have the matter heard by a single attorney arbitrator.

**220.2** Upon the client's request, the Director 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 State Bar form is submitted to the State Bar.

**220.3** If a fee dispute involves \$1,000 or less, the arbitration shall be decided by the Presiding Arbitrator or an Assistant Presiding Arbitrator. 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 State Bar of the reply to the arbitration request, which will be reflected in a proof of service. The record shall thereafter be forwarded to the Presiding Arbitrator or Assistant Presiding Arbitrator 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 Presiding Arbitrator or Assistant Presiding Arbitrator assigned to the matter, in addition to providing the written information required by this section. The State Bar 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 at the time of the State Bar's service of a completed arbitration request form.

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

**RULE 231.0. 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 242.0. Challenge - Disqualification of Arbitrator(s).**

Each party may disqualify one arbitrator without cause and shall have unlimited challenges for cause. Any disqualification or challenge **without cause** of an arbitrator shall be ineffective unless made in writing and served on the ~~State Bar~~ **Program** within 15 days of the service of ~~the a~~ **“Notice of Assignment of Panel”** or substitute arbitrator(s) if there is a disqualification or successful challenge. An arbitrator who believes that he or she cannot render a fair and impartial decision or who believes that there is an appearance that he or she cannot render a fair and impartial decision, shall disqualify themselves or shall accede to a party’s challenge for cause. If an arbitrator does not ~~disqualify themselves~~ **agree to be disqualified**, the challenge shall be decided by the Presiding Arbitrator.

**RULE 253.0. Discharge of Arbitrator or Panel.**

The Presiding Arbitrator shall have the authority to discharge an arbitrator or panel of arbitrators from further proceedings on a matter whenever the Presiding Arbitrator, 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 264.0 Ex Parte 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; or
- b) In writing with a copy to all other parties, ~~and~~ **or** their respective counsel, if any, and the State Bar; or
- c) For the sole purpose of scheduling a hearing date or other administrative procedures with notice of same to the other parties; or
- d) For the purpose of obtaining the issuance of a subpoena ~~under rule 29~~ **as set forth in these rules**; or
- e) In an emergency.

## **ARTICLE VI. THE HEARING**

### **RULE 275.0. Confidentiality.**

**275.1** 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.

**275.2** 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.

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

### **RULE 286.0. Waiver of Personal Appearance.**

**286.1** 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.

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

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

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

**RULE 297.0. Death or Incompetency of a Party.**

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

**RULE 28 30.0. Discovery.**

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

**RULE 2931.0. Subpoenas.**

The ~~Panel Chair~~ **Presiding Arbitrator** may issue subpoenas and/or subpoenas duces tecum at the request of a party. The ~~State Bar Program~~ shall ~~mail~~ **provide signed**, blank subpoenas to the requesting party who shall be responsible for ~~obtaining the Panel Chair's signature and for service of the subpoenas.~~ ~~Any request for subpoenas must be received by the State Bar Program no later than 10 days before the scheduled hearing date.~~ The party requesting subpoenas will be responsible for any witness fees and any costs of service of the subpoenas.

**RULE 3230.0. Commencement of Hearing; Notice; Attendance.**

**320.1** The hearing shall commence within 45 days for a single arbitrator panel ~~and~~ **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 **decided approved** by the Presiding Arbitrator.

**320.2** The panel shall serve written Notice of Hearing on each party at the address in the “Notice of Assignment of Panel” and the ~~State Bar~~ **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.

**320.3** 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.

**320.4** 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 ~~may~~ **will issue an award based on the evidence submitted.** ~~terminate the arbitration by making an award that neither party is entitled to any relief.~~

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

**[new] 32.6** 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 331.0. 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 342.0. Oaths.**

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

**RULE 353.0. 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 363.5: Clarification of Issues and Exchange of Documents**

The Panel Chair may ~~request~~ **require** that the parties clarify the issues, submit additional documentation, and exchange documents in advance of the hearing. ~~The hearing p~~**Panel** may, in its discretion, decline to admit into evidence ~~at the hearing a party's~~ documents that were required to be exchanged in advance but were not.

**RULE 374.0. Manner Order of Proof.**

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

**RULE 385.0 Interpreter.**

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

**RULE 396.0. Transcripts or Recordings.**

Any party may provide **and pay** for the attendance of a certified shorthand reporter at that party's expense. Every party to the arbitration shall be entitled to a copy of said reporter's transcript of the testimony upon ~~written~~ request and payment of the expense ~~thereof to the reporter.~~ **Any transcript shall remain confidential. No audio or video recording is permissible.**

**[new] RULE 40.0 Compensation of Arbitrators; Administrative Charges**

(a) **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 fou 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 Presiding Arbitrator, and its determination shall be binding on the parties, including the arbitrators.**

(b) **Except for the prescribed filing fees, no charges will be made by the 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.**

(c) **All parties will bear their own costs, including ~~and limited to~~ the costs of interpreters, reporters, and expert witnesses.**

## **ARTICLE VII. AWARD**

### **RULE ~~37~~ 41.0. Award.**

**~~37~~ 41.1** The award shall be **submitted to the Program** ~~made~~ 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 41.9 and then served on the parties forthwith by the Program.**

**~~37~~ 41.2** The award shall be in writing. **The award shall indicate whether it is binding or non-binding.** It shall include a determination of all questions submitted to the panel, the decision of which is necessary in order to determine the controversy, including the name of the responsible attorney(s). Arbitrators are encouraged, where appropriate, to include findings of fact in their awards. Where appropriate, the award ~~may~~ should also include **findings the circumstances bearing on** ~~as to~~ the willfulness of any party's nonappearance at the hearing.

**4137 .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.

**37 41.4** The award may include a refund of unearned fees, ~~or costs,~~ or both previously paid to the attorney.

**37 41.5** Whenever there are three arbitrators, a majority vote shall be sufficient for all decisions of the arbitrators, including the award. Any dissenting ~~from the~~ award shall be served with the award.

**37 41.6** Evidence relating to claims of malpractice ~~and 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.

**37 41.7** The award shall be signed by all arbitrators concurring with it.

**37 41.8** 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.

**37 41.9** The panel shall forward the original ~~and four copies~~ of the signed award to the State Bar, **Program**, which shall serve a copy of the award by mail on each party together with a Notice of Rights After Arbitration form approved by the State Bar Board of Governors. ~~—————~~ **No award is final or is to be issued until approved for procedural compliance and as to the form of the award by the Director for this purpose. After approval of the award as to the procedural compliance and as to the form of the award, the Program shall serve a copy of the award by mail on each party together with a Notice of Rights After Arbitration form approved by the State Bar Board of Governors.** ~~The panel shall return all exhibits and documents to the parties who submitted them. Any party who has submitted exhibits or documents to the panel shall, upon service of the award, make arrangements to retrieve them.~~

**RULE 38 42.0. Correction of Award by Hearing Panel.**

**38 42.1** The Hearing Panel may correct a binding or non-binding award only on the grounds set forth in Code of Civil Procedure section 1286.6, subdivision (a) [evident miscalculation of figures or evident mistake in the description of a person, thing or property referred to in the award] and subdivision(c) [the award is

imperfect in a matter of form, not affecting the merits of the controversy] under the procedures set forth in Code of Civil Procedure section 1284. An application for such a correction does not extend the deadline for seeking a civil trial after a non-binding award is rendered, and a non-binding award will automatically become binding 30 days after it is served on the parties.

**38 42.2** A party requesting correction or amendment under this rule must file a request in writing to the ~~State Bar~~ **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.**

**[new]42.3 Any corrected or amended award will be served by the Program. The time for filing a petition to confirm, vacate or correct the award begins from the date of service of the amended or corrected award, the date of denial of the request for correction or amendment of the award, or the date that a request that a request for correction of amendment of the award is deemed denied under Code of Civil Procedure section 1284, whichever date is earlier.**

**38.3 42.4** 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.