

Rules of Procedure for Fee Arbitrations and the Enforcement of Awards by the State Bar of California

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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 ASSIGNEE:** A person to whom a claim, right or property is transferred.
- 1.3 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.
- 1.4 AWARD:** The decision of the arbitrator or arbitrators in the fee arbitration proceeding.
- 1.5 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.
- 1.6 DIRECTOR:** The staff person responsible for administering the State Bar Mandatory Fee Arbitration Program.
- 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 arbitration proceeding under these rules, including an attorney, a client or other person who may be liable for payment of or entitled to a refund of attorney's fees.

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

1.14 STATE BAR: The State Bar of California, hereinafter referred to as "the Program", unless indicated otherwise. 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 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.

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;
- 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, 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. If a trial after arbitration is not requested, the award automatically becomes binding 30 days after the award is served.
- 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 and sent to the program.

RULE 7.0 Right to Counsel.

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

RULE 8.0 Waiver of Right to Request or Maintain Arbitration.

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

- 8.1 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);
- 8.2 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; or
- 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 jurisdiction exists.

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 the 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 10.0 Presiding Arbitrator and Assistant Presiding Arbitrator; Representation of Parties.

10.1 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.

10.2 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 Program shall reject any request for arbitration when it is clear from the face of the request that the provisions of Business and Professions Code section 6200 have not been met or the matter is time barred under Business and Professions Code section 6206. Where the existence of an attorney-client relationship is in dispute, the parties may stipulate to submit the issue for a determination by the Program.

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, 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. Any ruling on

jurisdiction by a local bar program is final and there is no appeal to the State Bar.

11.5 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 local bar association program may assume jurisdiction over a matter even if that program does not have original jurisdiction.

RULE 12.0 Jurisdiction of the State Bar of California.

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;

b) upon the approval of the Presiding Arbitrator of the State Bar, subject to Rules 12.4 and 12.5, a party seeks removal from a local bar association program and 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) 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.

12.2 Acceptance of the Arbitration Request form for filing is subject to approval of the Presiding Arbitrator.

12.3 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.

12.4 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

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 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.

12.5 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;

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 13.0 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 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 14.0 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 15.0 Request for Arbitration.

15.1 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.

15.2 At the time of service of a request on an attorney, the Program shall serve with it a copy of "Notice of Attorney Responsibility" form.

15.3 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 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.

15.4 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. If arbitration is requested by any other 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.

RULE 16.0 Filing Fee.

The party requesting fee arbitration shall pay a filing fee with the request form. The hearing panel shall, at its 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 17.0 Request for Filing Fee Waiver.

17.1 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 15.4, 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 that he or she no longer has an interest in the outcome of the arbitration, the application will proceed based on the client's financial statement alone.

17.2 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.

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 18.0 Response to Request for Arbitration.

18.1 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

18.2 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 12.2 of a matter in which the client has already requested arbitration or has consented to an attorney's request for arbitration.

RULE 19.0 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 20.0 Settlement of Disputes; Withdrawal from Arbitration; Refund Schedule.

20.1 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 Panel Chair if a notice of assignment of the hearing panel has been served on the parties.

20.2

a) If a party wishes to withdraw from a binding arbitration and the matter has not been settled, all other parties must agree in writing 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 in writing 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.

20.3 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 respondent party by the Program but before assignment of a panel, the 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 Program at least 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 21.0 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 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 22.0 Appointment of Panel.

22.1 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.

22.2 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.

22.3 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.

22.4 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 23.0 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 24.0 Challenge - Disqualification of Arbitrator(s).

Each party may disqualify one arbitrator without cause and shall have unlimited challenges for cause. Any disqualification without cause of an arbitrator shall be ineffective unless made in writing and served on the Program within 15 days of the service of a "notice of assignment of 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 agree to be disqualified, the challenge shall be decided by the Presiding Arbitrator.

RULE 25.0 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 26.0 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 State Bar;
- 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;
- e) In an emergency.

**ARTICLE VI.
THE HEARING**

RULE 27.0 Confidentiality.

- 27.1** 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.
- 27.2** 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.
- 27.3** The arbitration award is public; the arbitration case file, including the request, reply, exhibits and transcripts, remains confidential.

RULE 28.0 Waiver of Personal Appearance.

- 28.1** 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.

- 28.2** Any party unable to attend a hearing may designate a lawyer or non-lawyer representative.
- 28.3** Any party may request to appear by telephone, subject to the advance approval of the Panel Chair.
- 28.4** 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 29.0 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 30.0 Discovery.

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

RULE 31.0 Subpoenas.

The Presiding Arbitrator may issue subpoenas and/or subpoenas duces tecum at the request of a party. The Program shall provide signed, blank subpoenas to the requesting party who shall be responsible for service of the subpoenas. The party requesting subpoenas will be responsible for any witness fees and any costs of service of the subpoenas.

RULE 32.0 Commencement of Hearing; Notice; Attendance.

- 32.1** 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 Presiding Arbitrator.
- 32.2** 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.

32.3 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.

32.4 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.

32.5 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.

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 33.0 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 34.0 Oaths.

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

RULE 35.0 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 36.0 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 37.0 Order of Proof.

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

RULE 38.0 Interpreter.

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

RULE 39.0 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 request and payment of the expense to the reporter. Any transcript shall remain confidential. No audio or video recording is permissible.

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 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 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 the costs of interpreters, reporters, and expert witnesses.

**ARTICLE VII.
AWARD**

RULE 41.0 Award.

- 41.1** 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 41.9 and then served on the parties forthwith by the Program.
- 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 should also include the circumstances bearing on the willfulness of any party's nonappearance at the hearing.

41.3 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.

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

41.5 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.

41.6 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.

- 41.7 The award shall be signed by all arbitrators concurring with it.
- 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.
- 41.9 The panel shall forward the original of the signed award to the Program. 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 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. Any party who has submitted exhibits or documents to the panel shall, upon service of the award, make arrangements to retrieve them.

RULE 42.0 Correction of Award by Hearing Panel.

- 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.
- 42.2 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.
- 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.
- 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.

**ARTICLE VIII.
ENFORCEMENT OF THE ARBITRATION OR
MEDIATION AWARD BY THE STATE BAR**

RULE 43.0 Jurisdiction.

In any fee arbitration or fee mediation conducted by the State Bar or by an approved mandatory fee arbitration program in which the client is awarded or owed a refund of previously paid fees or costs, the client may request State Bar assistance in enforcing the award or agreement if the attorney has not timely complied with that award or agreement as set forth below. This article shall apply to any fee arbitration or fee mediation in which a written request for enforcement of the award was received by the State Bar on or after January 1, 1994.

RULE 44.0 Request for Enforcement.

- 44.1 No less than 100 days or more than four years after the service of a signed copy of the award in any arbitration conducted by the State Bar or State Bar approved mandatory fee arbitration program, or from the date of a final judgment, or the date of a signed agreement reached after mediation conducted under the mandatory fee arbitration program, the client may request that the State Bar enforce a final, binding award or judgment that includes an award of previously paid fees and/or costs to that client. The request for enforcement shall be made on the approved State Bar form and may include all parties to the arbitration who were included in the original arbitration proceeding and who were awarded or liable for a refund of fees or costs. An arbitration award that awards only a full or partial reimbursement of the program filing fee to the client, but no refund of attorney's fees or costs, is not enforceable by the State Bar.
- 44.2 Prior to making a request for enforcement, the client shall make reasonable efforts to contact the attorney to arrange for payment of the award, including, at a minimum, a written request to the attorney for payment. Proof of such request may be required before the State Bar files an enforcement proceeding in the State Bar Court against the attorney.
- 44.3 The client's request for enforcement of the arbitration award shall be served on the attorney by the State Bar.
- 44.4 In the event that the client files a petition in a civil court to confirm an arbitration award, the State Bar may proceed with enforcement proceedings, or with the client's approval, abate enforcement proceedings until a judgment confirming the award has been

entered by the court.

RULE 45.0 Attorney's Response to Request for Enforcement.

45.1 Within 30 days from the date of service on the attorney by the State Bar of the client's request for enforcement of the award, the attorney shall:

- a) provide satisfactory proof to the State Bar that the award has been complied with; or
- b) agree to a payment plan that is satisfactory to the client or the State Bar; or
- c) provide reasons why, under Business and Professions Code section 6203, subdivision (d)(2), the attorney should not comply with the award.

45.2 If no response is received, or the attorney has not provided a reason under Rule 45.1 why the award should not be enforced, the Presiding Arbitrator shall file an Order re Administrative Penalties as provided for by Business and Professions Code section 6203, subdivision (d)(5) and a motion with the State Bar Court to place the attorney on temporary inactive status.

45.3 If no response from the attorney is received, or if the attorney initially responds but fails thereafter to cooperate with the State Bar's request for additional information, the Presiding Arbitrator may file an Order re Administrative Penalties prior to the filing of a motion seeking the attorney's involuntary inactive enrollment. Such order shall be final.

RULE 46.0 Payment Plans.

46.1 If the attorney has made a proposal for a payment plan to comply with the arbitration award, the State Bar shall immediately transmit the proposed plan to the client who may accept the proposal.

46.2 If the payment plan is not accepted by the client, the attorney is required to file a Financial Statement form with the State Bar in order that the Presiding Arbitrator may

- a) determine that the plan is reasonable and approve the plan; or
- b) order that the plan be rejected.

The Financial Statement Form is confidential and will not be copied by the State Bar to the client absent a showing of good cause. Good cause shall be determined by the Presiding Arbitrator.

46.3 If the payment plan is approved by the client or the State Bar, through the Presiding Arbitrator, the State Bar shall monitor the plan for compliance. If at any

time the client advises the State Bar that the attorney has ceased to comply with the payment plan and the attorney has not provided proof:

- a) of inability to pay the award under rule 47.3 below; or
- b) that the payment plan has been complied with, the Presiding Arbitrator or designee shall file a motion with the State Bar Court to place the attorney on involuntary inactive status.

46.4 Upon the submission of satisfactory proof that the payment plan has been completed and the award has been fully complied with, the State Bar shall close its file on the client's enforcement request and notify the parties of same.

RULE 47.0 Determination of Attorney Responsibility/Inability to Pay.

47.1 If the attorney believes that he or she is no longer personally responsible for payment of the award due to a change in circumstances following the arbitration hearing, the attorney shall provide reasons for this belief in the response to the client's request for assistance.

47.2 If the attorney provides the name of the other attorney he or she believes is now responsible for the award, the State Bar shall serve on that attorney copies of the client's request for assistance and the first attorney's response. The other attorney(s) shall have 20 days from the date of service to respond.

47.3 An attorney who asserts that he or she is unable to pay the award must submit a Financial Statement Form to the State Bar. Any challenge by a party to the attorney's responsibility or claim of inability to pay the award shall be considered by the Presiding Arbitrator or designee. The Presiding Arbitrator or designee may hold a hearing or may require the parties to submit additional information. The Financial Statement Form is confidential and will not be copied by the State Bar to the client absent a showing of good cause.

47.4 The Presiding Arbitrator, or designee, shall order either:

- a) that due to the attorney's inability to pay the award, the file shall be abated or closed; or
- b) that one or more of the attorneys in the proceeding is responsible for the award; or
- c) that the attorney can afford to comply with the award; or
- d) that the matter cannot be resolved under this article.

47.5 An order of the Presiding Arbitrator closing the file shall be final.

RULE 48.0 Administrative Penalties/Costs.

In any matter in which the attorney has failed to comply with a final, binding award, and has failed to submit a response to the Client's Request for Enforcement of an Arbitration Award, or if the attorney initially responds but fails thereafter to cooperate with the State Bar's request for additional information, the Presiding Arbitrator may require the attorney to pay administrative penalties prior to the filing of a motion seeking the attorney's involuntary inactive enrollment. Penalties imposed shall not exceed 20 percent of the amount awarded to the client or \$1,000, whichever is greater. Such order shall be final.

In the event that the attorney does not pay the administrative penalties, that amount shall be added to the State Bar membership dues of the attorney for the following calendar year.

RULE 49.0 Rescission of Order Imposing Administrative Penalties.

- a) Upon written request by the attorney, the Presiding Arbitrator may rescind or modify an order imposing administrative penalties under the following circumstances:
- 1) the order was not received by the attorney when it was served;
 - 2) the attorney is willing to comply with the award; and
 - 3) the attorney sought rescission or modification of the order promptly upon first learning of the imposition of the administrative penalties.

The foregoing facts must be set forth in one or more declarations, signed under penalty of perjury, and submitted with the written request for rescission or modification.

- b) The Presiding Arbitrator shall not rescind or modify an order imposing administrative penalties based on a request made more than 30 days following service of the order when the request is based on the attorney's failure to maintain a current official membership address with the State Bar.
- c) In making the determination of the attorney's request for rescission or modification, the Presiding Arbitrator may require the attorney to furnish, within time limits set by the Presiding Arbitrator, additional information or declarations before ruling on the request. Such additional information or declarations shall be provided within the time limits set by the Presiding Arbitrator, and the failure to do so shall be grounds for the denial of the request.

- d) The decision of the Presiding Arbitrator whether to rescind or modify an order imposing administrative penalties is final.

RULE 50.0 Motion to The State Bar Court to Place Attorney on Inactive Status.

In any matter in which the Presiding Arbitrator determines that the attorney has not:

- a) agreed to a payment plan; or
- b) proven an inability to pay the award; or
- c) proven that he or she is not personally responsible for the award; or
- d) proven that he or she has complied with the payment plan, the Presiding Arbitrator or designee may petition the State Bar Court to place the attorney on involuntary inactive status. Such proceedings shall be governed by "The Rules of Procedure of the State Bar of California."

**ARTICLE IX.
SERVICE; ADDRESS**

RULE 51.0 Service.

- 51.1** 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, subdivision (a)(3), postage paid, addressed to the person on whom it is to be served, at his or her address as last given, on any document which has been filed in the arbitration. The client shall keep the State Bar advised of his or her current address.
- 51.2** 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 46.1 above.
- 51.3** If either party is represented by counsel, service shall be on the party as indicated in subsections 51.1 and 51.2 of this rule, and on the counsel at the latest address shown on the official membership records of the State Bar.
- 51.4** 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.

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

51.6 In the event that the client fails to keep the State Bar advised of his or her current address, the State Bar may close the arbitration request, if it is made by the client, or enforcement request, after 30 days from the date that the State Bar learns of the invalid address.

RULE 52.0 State Bar.

Whenever these rules indicate that a copy of any form or other matter be sent to the State Bar, the item should be addressed as follows:

**State Bar of California
Mandatory Fee Arbitration Program
180 Howard Street, 6th Floor
San Francisco, CA 94105-1639**