

Rules of the State Bar of California

Title 3. Programs and Services

Division 4. Consumers

Chapter 2. Fee arbitration

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ARTICLE 1. GENERAL PROVISIONS

Rule 3.500 Scope

- (A) As required by statute, the Board of Trustees of the State Bar has adopted these rules for arbitration of disputes regarding attorney fees.¹
- (B) In these rules, unless otherwise indicated
- (1) “award” means the decision of the arbitrator or arbitrators in a fee arbitration hearing;²
 - (2) “client” means the person who directly or through an authorized representative obtains an attorney’s legal services;³
 - (3) “non-client” means a person who is not the client of an attorney but who may be liable for, or entitled to a refund of, the attorney’s fees; references to “client” also apply to “non-client”;
 - (4) “declaration” means a document that is based on personal knowledge and signed under penalty of perjury and otherwise complies with the requirements of Code of Civil Procedure section 2015.5;⁴
 - (5) “fees” means attorney fees, costs, or both;
 - (6) “hearing” means a fee arbitration hearing conducted by the State Bar;
 - (7) “lay arbitrator” means a non-attorney who has not been admitted to practice law in any jurisdiction; who has never worked regularly for a court or a law practice of any kind as a paralegal, law clerk, or in any other capacity; or who has never attended law school;⁵
 - (8) “presiding arbitrator” is the arbitrator to supervise the arbitrators in the State Bar Fee Arbitration program and to decide the matters indicated by these rules or the designee of the presiding arbitrator;⁶
 - (9) “State Bar” means the Mandatory State Bar Fee Arbitration program;
 - (10) “trial” after non-binding arbitration means either an action in the court having jurisdiction over the amount in controversy or arbitration pursuant to the parties’ pre-existing arbitration agreement.
- (C) Unless otherwise provided by rule or law, the presiding arbitrator may delegate his or her duties.

Rule 3.501 Right to arbitration of fee disputes

- (A) California law entitles a client to arbitration of a dispute regarding an attorney's fees for legal services. If initiated by a client, fee arbitration is mandatory for an attorney.⁷ Fee arbitration is voluntary for a client unless the parties have agreed in writing to submit their fee disputes to mandatory fee arbitration.⁸
- (B) An attorney must provide the mandatory State Bar Notice of Client's Right to Arbitration form before or at the time of
 - (1) service of summons in a lawsuit against the client for fees; or
 - (2) commencing any other proceeding against the client for fees under a contract that provides for an alternative to mandatory fee arbitration.⁹
- (C) Failure to provide the notice is grounds for dismissal of the lawsuit or other proceeding.¹⁰
- (D) Where the existence of an attorney-client relationship is in dispute, the parties may stipulate to submit the issue for determination by the State Bar.¹¹

Rule 3.502 Waiver of right to arbitration

- (A) A client's right to request or maintain fee arbitration is waived¹² if
 - (1) a complete State Bar Request for Arbitration has not been postmarked or received by the State Bar within thirty days of the client's receipt of the State Bar Notice of Right to Arbitration;¹³
 - (2) the client commences a legal action or files a pleading seeking either of the following:
 - (a) judicial resolution of a fee dispute subject to arbitration; or
 - (b) affirmative relief against an attorney for alleged malpractice or professional misconduct; or
 - (3) the client receives a State Bar Notice of Right to Arbitration but does either of the following before submitting a State Bar Request for Arbitration:
 - (a) answers or otherwise responds to a complaint filed in court by the attorney; or
 - (b) files a response in another proceeding regarding fees initiated by the attorney.
- (B) If the fee dispute is transferred to a different fee arbitration program after the Request for Arbitration is filed, the date that determines whether the request was made by the thirty-day deadline is one of the following:
 - (1) the date of the postmark of the Request for Arbitration;

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

Rule 3.503 Exclusions

These rules do not apply to¹⁴

- (A) claims for fees that are determinable by statute or court order;
- (B) claims made by a party requesting arbitration who is not liable for the fees or entitled to a refund;
- (C) claims for damages or other affirmative relief based on alleged malpractice or professional misconduct;
- (D) claims for fees where services were not rendered in California in any material part by an attorney who maintains no office in California, whether the attorney is admitted in California or only in another jurisdiction;¹⁵
- (E) claims for fees where the client has assigned the claim; or
- (F) claims between attorneys for division of fees.

Rule 3. 504 Representation

A party to arbitration may be represented by an attorney at his or her expense.¹⁶

Rule 3. 505 Original jurisdiction¹⁷

- (A) Fee arbitration is conducted by a bar association in the county where the legal services giving rise to the fees in dispute were substantially performed¹⁸ or in the county where at least one attorney involved in the dispute had an office at the time the services were rendered.
- (B) Fee arbitration may be initiated and conducted by the State Bar if
 - (1) no local bar association program has jurisdiction;
 - (2) a party submits a State Bar Request for Arbitration that explains in a declaration why the party cannot obtain a fair hearing before the local bar association; or

- (3) the local bar association that would normally arbitrate the matter demonstrates to the satisfaction of the State Bar that it has no jurisdiction or is otherwise unable to arbitrate the matter.
- (C) The State Bar will waive original jurisdiction if a local bar association is willing to accept it and the parties consent in writing to jurisdiction of the local bar association.¹⁹

Rule 3.506 Removal jurisdiction²⁰

- (A) Arbitration within the jurisdiction of a local program may be removed to the State Bar when a party seeking removal establishes in a declaration under penalty of perjury a factual basis for removal and the presiding arbitrator determines there is good cause for the State Bar to arbitrate the dispute.
- (B) The State Bar serves notice of a request for State Bar jurisdiction on any other party identified in the request and on the local bar association that has jurisdiction. A written reply to the notice may be submitted to the State Bar. The reply must be received at the State Bar within fifteen days of service of the request.
- (C) The presiding arbitrator must deny a request for removal of a fee dispute within the jurisdiction of a local program if
 - (1) another party or the local program would be prejudiced by removal and such prejudice outweighs an allegation of inability to obtain a fair hearing;
 - (2) during the local arbitration proceedings the party requesting removal has acted in a manner inconsistent with the allegation of inability to obtain a fair hearing; or
 - (3) the party requesting removal has waived any claim of inability to obtain a fair hearing.²¹
- (D) A party requesting removal of jurisdiction must provide any additional information the State Bar requires by the deadline it specifies.
- (E) The presiding arbitrator's decision regarding a request for removal is final.

Rule 3.507 Venue²²

- (A) State Bar arbitration of a fee dispute is heard in the county where the legal services giving rise to the fees in dispute were substantially performed or in the county where at least one attorney involved in the dispute had an office at the time the services were rendered. For good cause, a request for change of venue from the county of original jurisdiction²³ may be submitted by

- (1) a client no later than fifteen days after filing a Request for State Bar Arbitration; or
 - (2) an attorney no later than fifteen days after being served with a copy of a Request for Arbitration.
- (B) A party requesting a change of venue must provide any additional information the State Bar requires by the deadline it specifies.
- (C) The presiding arbitrator may for good cause grant or deny the request. The decision is final.

Rule 3.508 Non-binding and binding arbitration

- (A) Fee arbitration is non-binding unless every party agrees in writing to binding arbitration. The written agreement must be made after the dispute arises and before the taking of evidence at the arbitration hearing.²⁴
- (B) A non-binding fee arbitration award becomes final and binding unless within thirty days of service of the award a party requests a trial.²⁵
- (C) A party who initiates a request for binding arbitration may submit a written election for non-binding arbitration instead if the respondent
- (1) has not replied;
 - (2) has not agreed to binding arbitration in the reply;²⁶ or
 - (3) has replied and agreed to binding arbitration, but sought to materially increase the amount in dispute, provided the election is sent to the State Bar within ten days of receipt of the reply.²⁷
- (D) Parties who have agreed in writing to binding arbitration may change their election to non-binding arbitration, provided they all agree in writing before the taking of evidence.²⁸

Rule 3.509 Consolidation²⁹

- (A) A party may request consolidation of two or more arbitration matters for hearing. The request must be in writing. The State Bar will serve a copy of the request on the other parties. A written reply to the request must be submitted to the State Bar within fifteen days of service. The decision of the presiding arbitrator regarding a request for consolidation is final.

- (B) If an attorney is in arbitration with a non-client and the client then files a Request for Arbitration of the same dispute, the client is automatically joined to the arbitration and the matters are consolidated absent a showing of good cause.
- (C) Consolidation does not entitle a party to a refund or reduction of filing fees.

Rule 3.510 Withdrawal; dismissal

- (A) A client who has requested arbitration may withdraw from arbitration
 - (1) with the written consent of all parties if they have contractually agreed in writing to State Bar arbitration;³⁰
 - (2) with the written consent of all parties if the arbitration is binding and the matter has not been settled; or
 - (3) in all other cases, without the consent of other parties if withdrawal occurs before the taking of evidence.³¹
- (B) Arbitration requested by an attorney may be dismissed only upon written agreement of each party.³²
- (C) The State Bar or sole arbitrator or panel chair appointed by the State Bar must dismiss an arbitration without prejudice when the parties confirm that the dispute has been settled.³³

Rule 3.511 Stay of proceeding³⁴

- (A) If an attorney or an attorney's assignee initiates a legal proceeding in a court or other forum to collect fees that are otherwise subject to arbitration, the proceeding is automatically stayed by filing a State Bar Request for Arbitration. The court or other forum must immediately be notified of the request, on an appropriate form if applicable, and be provided with a copy of the request by
 - (1) the party requesting arbitration; or
 - (2) the plaintiff in a legal proceeding in which the party requesting arbitration has not appeared or is not subject to jurisdiction of the court or other forum.³⁵
- (B) Upon request, the State Bar may file the Judicial Council Notice of Stay of Proceedings form or provide a copy of the form to a party so that party may complete and file the form.

Rule 3.512 Confidentiality³⁶

- (A) A request for arbitration, a reply, a State Bar file, an exhibit, an award, and any other record of an arbitration proceeding are confidential and may not be disclosed by the State Bar unless disclosure is required by court order.
- (B) The award is confidential except in a judicial challenge to, confirmation of, or enforcement of an award.
- (C) Referral of an attorney for possible disciplinary investigation because of conduct disclosed in an arbitration proceeding does not violate the confidentiality required by these rules.³⁷
- (D) Arbitration between an attorney and non-client does not abrogate an attorney's responsibility to exercise independent professional judgment on behalf of a client or to protect the client's confidential information,³⁸ unless the law requires it or the client consents to allow the disclosure of confidential information for the purposes of the proceeding.³⁹
- (E) A party's statement of financial status is confidential and is not provided to an opposing party.

Rule 3.513 Service; receipt; dates⁴⁰

- (A) Unless these rules provide otherwise, service is by personal delivery or by mail pursuant to Code of Civil Procedure section 1013(a).⁴¹ If a party is represented by counsel, service is required only upon that party's counsel, except for service of an award, which is served on the party as well as on counsel.
- (B) Service by mail is complete at the time of deposit in the United States mail or in a business facility used to collect and process correspondence for mailing with the United States Postal Service. The time for performing any act commences on the date service is complete and shall not be extended by reason of service by mail.
- (C) A client who is a party to an arbitration is served at the latest address provided to the State Bar. If a client fails to advise the State Bar of his or her current address, the State Bar may close a client request for arbitration or enforcement thirty days after learning that the address is not current.⁴²
- (D) An attorney who is a party to an arbitration or who represents a party in an arbitration is served at the attorney's address of record with the State Bar.⁴³
- (E) A filing or other communication submitted to the State Bar electronically or by facsimile is deemed to be received on the date of receipt of the transmission only when the State Bar receives the original within five days of the electronic or facsimile submission.⁴⁴

Rule 3.514 Effect of time requirements

The failure of the State Bar or a sole arbitrator or panel appointed by the State Bar to comply with a time requirement of these rules does not by itself deprive the State Bar of jurisdiction, warrant dismissal of an arbitration, or provide grounds for invalidation or modification of an award.⁴⁵

ARTICLE 2. STATE BAR FEE ARBITRATION PROCEEDINGS AND AWARD

Rule 3.530 Request for Arbitration

- (A) When the State Bar has jurisdiction or accepts it in accordance with these rules, a Request for Arbitration may be filed by
 - (1) a client; or
 - (2) an attorney claiming entitlement to fees from a client or a non-client.
- (B) If an attorney requests arbitration, the arbitration may proceed only if the client consents in writing on the approved form within thirty days of service of the request. Client consent is not required if the client has previously consented in writing to mandatory fee arbitration, or the request is for removal of arbitration initiated by the client.⁴⁶
- (C) A client is entitled to appointment of an attorney arbitrator whose area of practice is civil law if the fee dispute relates to civil law, or criminal law if the dispute relates to criminal law.⁴⁷ A client must make the election in the Request for Arbitration or a reply to a request.⁴⁸
- (D) The State Bar must serve a notice of a Request for Arbitration and any supporting documentation on
 - (1) any attorney identified in the Request for Arbitration as a respondent, together with the Notice of Attorney Responsibility;
 - (2) a client if a request submitted by a non-client has not been signed by the client; and
 - (3) a client if an attorney has requested fee arbitration and the client has consented.
- (E) A client's Request for Arbitration must be postmarked or received no later than thirty days from the date the client received the Notice of Client's Right to Arbitration.
- (F) A Request for Arbitration may be amended up to fifteen days after its receipt by the State Bar. The State Bar may subsequently request clarification that requires amendment of the request. Later amendment by a party may be made only with the permission of the presiding arbitrator, or the sole arbitrator or panel chair if assigned.⁴⁹ If an amendment

increases the amount in dispute, the State Bar may request a corresponding increase in the filing fee from the requesting party.

Rule 3.531 Reply to Request for Arbitration

A respondent party may submit a reply to a Request for Arbitration to the State Bar within thirty days of service of the request.⁵⁰

Rule 3.532 Disputes below threshold minimum⁵¹

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

Rule 3.533 Denial of Request for Arbitration; reconsideration

If the State Bar believes that a Request for Arbitration is time barred or does not otherwise meet statutory requirements,⁵² it must notify the parties and provide them an opportunity to submit additional written evidence in support of State Bar jurisdiction, or provide the initiating party an opportunity to submit new evidence in a written request for reconsideration. A request for reconsideration must be submitted within fifteen days of service of the notice. The request is decided by the presiding arbitrator, whose decision is final.

Rule 3.534 Fees; refund

- (A) The party requesting arbitration must submit the filing fee set forth in the Schedule of Charges and Deadlines with the Request for Arbitration or when the State Bar accepts removal of jurisdiction in accordance with these rules.⁵³
- (B) Joining a party does not increase the filing fee.⁵⁴
- (C) If arbitration is settled or dismissed before the Request for Arbitration is served, the entire filing fee is refunded. If the arbitration is settled or dismissed after the request has been served, the State Bar retains some or all of the fee as set forth in the Schedule of Charges and Deadlines.⁵⁵
- (D) An award may include an allocation of all or part of a filing fee among the parties.⁵⁶

- (E) The filing fee is the only administrative fee that may be charged for arbitration. The hearing room must be provided without charge.⁵⁷
- (F) Each party is responsible for its own costs, such as those for interpreters and expert witnesses.⁵⁸

Rule 3.535 Waiver of filing fee⁵⁹

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

Rule 3.536 Arbitrators⁶⁰

- (A) Except for disputes below a threshold minimum,⁶¹ arbitration must be conducted by a sole attorney arbitrator or by a panel of three arbitrators appointed by the State Bar. A panel of three arbitrators must be chaired by an attorney arbitrator and include a lay arbitrator. A retired judge serving as an arbitrator must be an active member of the State Bar.
- (B) Whether the State Bar assigns a sole arbitrator or a panel of three arbitrators is determined by the amount in dispute that is set forth in the Schedule of Charges and Deadlines. If a three-member panel is assigned, the parties may stipulate to proceed with a sole attorney arbitrator conducting the arbitration. If the amount in dispute is less than the threshold minimum amount set forth in the schedule, the presiding arbitrator decides the arbitration in accordance with these rules.⁶²
- (C) An attorney arbitrator must be a civil or criminal practitioner if a client has elected such an appointment in the request and the dispute involves the same area of law.⁶³
- (D) A Notice of Appointment of Arbitrator must be served
 - (1) within sixty days of receipt of a reply to the Request for Arbitration;
 - (2) within sixty days of the passage of the reply deadline if no reply was received; or
 - (3) in either case as soon as reasonably possible after the receipt of the reply or the reply deadline.⁶⁴
- (E) No compensation will be paid to arbitrators for services other than for formal hearings extending beyond four hours. Compensation is hourly at the rate set forth in the Schedule

of Charges and Deadlines and is paid equally by the parties. Any dispute regarding compensation is decided by the presiding arbitrator, whose decision is final.⁶⁵

Rule 3.537 Disqualification or discharge of arbitrators

- (A) A party may disqualify one arbitrator without cause. A party is entitled to unlimited challenges of an arbitrator for cause.⁶⁶ The State Bar must be notified of the disqualification within fifteen days of serving the Notice of Arbitrator Assignment.
- (B) An arbitrator who believes he or she cannot render a fair and impartial decision or who believes there is an appearance that he or she cannot render a fair and impartial decision must disqualify himself or herself or accede to a party's challenge for cause. If the arbitrator believes there are insufficient grounds to accede to a challenge for cause, the presiding arbitrator decides the challenge.⁶⁷ The decision is final.
- (C) The presiding arbitrator, assistant presiding arbitrator, or a member of the Committee on Mandatory Fee Arbitration may not represent a party in a State Bar fee arbitration.⁶⁸
- (D) An arbitrator vacancy due to disqualification or inability to serve must be filled by the State Bar. If a panel member fails to appear at a hearing, the parties may stipulate in writing that the hearing may proceed with a single attorney arbitrator. In no event may arbitration proceed with only two arbitrators or a single non-attorney arbitrator.⁶⁹
- (E) The presiding arbitrator may discharge an arbitrator or panel of arbitrators for unreasonable delay or for other good cause.⁷⁰

Rule 3.538 Contact with arbitrator⁷¹

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

- (A) in writing with a copy submitted to the State Bar and all other parties or their counsel;⁷²
- (B) to schedule a hearing;
- (C) at a hearing; or
- (D) in an emergency.

Rule 3.539 Scheduling hearing

- (A) After service of the Notice of Assignment, the hearing will be scheduled
 - (1) within forty-five days if a sole arbitrator has been assigned; or

- (2) within ninety days if a panel has been assigned.⁷³
- (B) Within fifteen days of assignment and at least fifteen days before the hearing, the sole arbitrator or panel chair will serve a Notice of Hearing on each party and the State Bar. Appearance at the hearing waives any claim of defective service of the notice.⁷⁴
- (C) The date of a scheduled hearing will be extended by fifteen days from the date a new arbitrator is assigned to replace an arbitrator who has been removed because of disqualification or challenge.⁷⁵
- (D) Upon stipulation or application to the assigned sole arbitrator or panel chair, the sole arbitrator or panel chair may continue a matter for good cause shown. A continuance of more than thirty days must be approved by the presiding arbitrator.⁷⁶

Rule 3.540 Preparation for hearing

- (A) Discovery is not permitted except as provided by this rule.
- (B) Nothing in these rules deprives a client of the right to inspect and obtain the client's file kept by the attorney. This provision does not apply to a non-client.
- (C) Before a hearing the parties
 - (1) are encouraged to agree to issues not in dispute and to voluntarily exchange documents;⁷⁷
 - (2) may be required by the sole arbitrator or panel chair to clarify issues, submit additional documentation, or exchange documents, and the sole arbitrator or panel may decline to admit into evidence any document a party was required to exchange but did not;⁷⁸ and
 - (3) may request issuance of a subpoena in accordance with these rules.⁷⁹
- (D) A party seeking to have a subpoena issued must submit to the State Bar a completed but unsigned subpoena form approved by the State Bar, with proof of service on all parties. Upon a showing of good cause, the presiding arbitrator, or panel chair if appointed, may issue a signed subpoena. The requesting party is responsible for service of the subpoena and any witness fees.
- (E) At least ten days before the hearing a party may submit a written request that the sole arbitrator or panel chair permit the party to
 - (1) waive personal appearance and submit testimony and exhibits by declaration under penalty of perjury;

- (2) appear by telephone; or
 - (3) designate an attorney or non-attorney representative because of inability to attend the hearing.⁸⁰
- (F) The personal representative of a deceased party or the guardian or conservator of an incompetent party may represent the party.⁸¹

Rule 3.541 Hearing

- (A) Any relevant evidence is admissible at a hearing if it is of the sort responsible persons customarily rely on in the conduct of serious affairs, regardless of any common law or statutory rule to the contrary.⁸²
- (B) Evidence relating to claims of malpractice or professional misconduct is admissible only to the extent it affects the fees to which the attorney is entitled.⁸³
- (C) Testimony may be given under oath or affirmation administered by the assigned sole arbitrator or panel chair.⁸⁴
- (D) The order of proof is determined by the sole arbitrator or panel chair.⁸⁵
- (E) Upon a party's request, the sole arbitrator or panel chair may permit
 - (1) a client to be accompanied by another person;
 - (2) a client to be assisted by an interpreter at the client's expense;
 - (3) the attendance of other persons;⁸⁶ and
 - (4) the attendance of witnesses during the hearing, absent the objection of a party.⁸⁷
- (F) A hearing is closed to the public; recording of any kind is prohibited;⁸⁸ and any participant or attendee is bound by the confidentiality requirements of these rules.⁸⁹

Rule 3.542 Arbitration without a hearing

The parties may stipulate that the sole arbitrator or panel decide all matters without a hearing and base the decision on the request, the reply, and any other written material submitted by a party, which must be filed with the sole arbitrator or the panel and served on all other parties by the date ordered.⁹⁰

Rule 3.543 Failure to respond or participate

- (A) If a party required to participate in arbitration fails to do so, the arbitration may proceed as scheduled and an award will be made based on the evidence presented. The award may include findings regarding the willfulness of a party's failure to appear at the hearing.⁹¹
- (B) A party who willfully fails to appear at a hearing is not entitled to request a trial after non-binding arbitration.⁹² That party has the burden of proving the non-appearance was not willful. The determination of willfulness is made by the court.⁹³

Rule 3.544 Award form and content; approval⁹⁴

- (A) Following the hearing, the original of the signed award will be submitted to the State Bar by
 - (1) a sole arbitrator within fifteen days; or
 - (2) a panel chair within twenty-five days.⁹⁵
- (B) The award must be in writing on the State Bar Arbitration Award form and
 - (1) be signed by the sole arbitrator or at least two concurring panel members and include a dissent, if any, signed by the dissenting panel member;
 - (2) determine all questions submitted to the panel that are necessary to resolve the controversy;
 - (3) indicate whether it is binding or non-binding; and
 - (4) identify all responsible attorneys.
- (C) The award may
 - (1) include relevant findings of fact;
 - (2) state the circumstances regarding the willfulness of any party's non-appearance ;⁹⁶
 - (3) be a stipulated award that incorporates by reference a written settlement agreement reached by the parties before or after assignment of a sole arbitrator or panel;⁹⁷
 - (4) include a refund of unearned fees paid to an attorney; and
 - (5) allocate the filing fee.
- (D) The award may not

- (1) include any other fees, such as attorney fees for the arbitration, notwithstanding an agreement between the parties; or
 - (2) include damages, offset, or any other affirmative relief for malpractice or professional misconduct.
- (E) An award may be made in favor of a party who fails to appear at a hearing if the evidence so warrants, but may not be made against the absent party solely because of the absence. If only one party appears at the hearing, an award may be made; the party who is present must submit any evidence the sole arbitrator or panel chair requires to support the award. If no party appears or waiver of personal appearance has not been approved, the sole arbitrator or panel may issue an award based on the evidence submitted.⁹⁸
- (F) An award is not final until the State Bar approves it for procedural compliance. The State Bar serves each party with an approved award and the Notice of Rights After Arbitration.
- (G) When an award is issued in a binding arbitration, there can be no trial on the issue of fees, but for reasons set forth in statute⁹⁹ a trial court may correct,¹⁰⁰ vacate,¹⁰¹ or confirm¹⁰² a binding award.

Rule 3.545 Correction or amendment of award¹⁰³

- (A) An award may be corrected or amended by the sole arbitrator or at least two concurring members of a panel. Correction is permitted only for an evident mistake in calculation or a description of a person, thing, or property, or for a defect of form not affecting the merits of the dispute.¹⁰⁴ Amendment is permitted when an award is inadvertently incomplete and amendment does not substantially prejudice the legitimate interests of a party.¹⁰⁵ Unless requested by the arbitrator, no additional testimony or documentary evidence may be submitted.
- (1) Any party may submit a written request that the State Bar correct an award. The requesting party must submit the request to the State Bar with proof of service and serve a copy on each party within ten days after service of the award. The State Bar must serve a copy of the request on each party. Any correction will be made by the sole arbitrator or panel chair within thirty days of service of the award.¹⁰⁶
 - (2) A written request to correct an award does not extend the thirty-day deadline to request a trial or arbitration after a non-binding award has been issued.
 - (3) Any party may submit a written request that the State Bar amend an award. The requesting party must submit the request with proof of service and serve a copy on any other party at any time prior to judicial confirmation of the award.
- (B) Any party may submit to the State Bar a written objection to a request for correction or amendment.

- (C) The State Bar must serve all parties with a corrected or amended award or denial of a request for correction or amendment.

Rule 3.546 Referral to Office of Chief Trial Counsel¹⁰⁷

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

ARTICLE 3. ENFORCEMENT

Rule 3.560 Enforcement authority

Upon request, the State Bar may assist in enforcing a final and binding arbitration award, judgment, stipulated award, or mediation settlement requiring the attorney to refund fees previously paid to the attorney if the attorney has not timely complied with the terms of the final and binding arbitration award, judgment, stipulated award, or mediation settlement.¹⁰⁸

Rule 3.561 Request for State Bar Enforcement¹⁰⁹

- (A) A client may submit a written request for enforcement no earlier than 100 days and no later than four years from the date of service of a final and binding arbitration award, judgment, stipulated award, or mediation settlement.¹¹⁰ The request must be in writing on the State Bar Request for Enforcement form.¹¹¹ The request may include any other party who was awarded or who is liable for a refund of attorney fees. An arbitration award is not enforceable by the State Bar if it refunds the client only some or all of the arbitration filing fee and does not include a refund of attorney's fees or costs.¹¹²
- (B) Before submitting a Request for State Bar Enforcement, a client must make a reasonable effort to obtain payment, including at a minimum a written request to the attorney for payment. The State Bar may require proof of such an effort before accepting the request.
- (C) The State Bar must serve the Request for State Bar Enforcement on the attorney.
- (D) If a client has filed a petition in a civil court to confirm the arbitration award, the State Bar may proceed with enforcement proceedings or, with approval of the client, abate enforcement until the court enters a judgment confirming the award.

Rule 3.562 Attorney response to Request for State Bar Enforcement¹¹³

- (A) Within thirty days of service of a Request for State Bar Enforcement, an attorney must¹¹⁴
- (1) provide the State Bar satisfactory proof of compliance;
 - (2) agree to a payment plan accepted by the State Bar or the client; or
 - (3) establish inability to pay or lack of personal responsibility for payment in accordance with statutory requirements¹¹⁵ and the provisions of this rule.
- (B) To establish inability to pay, an attorney must support a response to a Request for Enforcement with an Attorney's Statement of Financial Status. Any party may challenge the response, and the presiding arbitrator may then hold a hearing or require the parties to submit additional information.¹¹⁶
- (C) To establish lack of personal responsibility for payment because of changed circumstances subsequent to arbitration, an attorney must state reasons for this belief in the response to the client request for State Bar enforcement. The response may name another attorney or other attorneys as responsible for payment. The State Bar must serve each attorney named in the response with the Request for Enforcement and a copy of the attorney's response. Any counter-response must be submitted within twenty days of service.
- (D) After considering the request, the response, and supporting documentation, the presiding arbitrator must issue a final order. The final order may
- (1) require compliance;
 - (2) terminate or abate enforcement because the attorney is unable to comply; or
 - (3) find that another attorney is responsible for payment.¹¹⁷

Rule 3.563 Payment plans¹¹⁸

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

- (C) The State Bar monitors an approved payment plan for compliance. If the client informs the State Bar that the attorney has failed to comply with the plan, the presiding arbitrator must request that the State Bar Court place the attorney on involuntary inactive status,¹¹⁹ unless the attorney provides proof that he or she
- (1) is unable to pay;
 - (2) has fully refunded the fees; or
 - (3) has received approval of a revised payment plan from the client or the State Bar.

Rule 3.564 Administrative penalties; rescission or modification of penalties

- (A) Prior to the filing a motion in State Bar Court to enroll an attorney as involuntarily inactive the presiding arbitrator may impose administrative penalties¹²⁰ on an attorney who fails to
- (1) comply with a final and binding arbitration award, judgment, stipulated award, or mediation settlement that includes a refund of fees paid to the attorney;
 - (2) submit a written response to a Client Request for Enforcement of an Arbitration Award; or
 - (3) cooperate with the State Bar after an initial response to a Request for Enforcement.
- (B) An order for administrative penalties may not exceed twenty percent of the amount awarded or \$1,000, whichever is greater. Such an order is final. Unpaid penalties are added to the annual membership fees for the next calendar year.¹²¹
- (C) In response to the attorney's written request, the presiding arbitrator may modify or rescind an order for administrative penalties if all of the following conditions are met:¹²²
- (1) the attorney agrees to comply with the award;
 - (2) the attorney was not served the order for administrative penalties; and
 - (3) the attorney satisfactorily establishes in a declaration under penalty of perjury that he or she promptly submitted a request that warranted modification or rescission of the penalties.
- (D) Before deciding an attorney's request to modify or rescind an order for administrative penalties, the presiding arbitrator may require the attorney to submit additional information or declarations under penalty of perjury within a specified time. Failure to comply is grounds for dismissal of the request.

- (E) The presiding arbitrator may rescind or modify an order imposing administrative penalties, but not if a request was made more than thirty days after service of the order because the attorney failed to maintain a current membership address with the State Bar.
- (F) The presiding arbitrator's decision to rescind or modify an order imposing penalties is final.

Rule 3.565 Inactive enrollment for noncompliance

The presiding arbitrator may move the State Bar Court to enroll an attorney involuntarily inactive¹²³ for failure to

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

Rule 3.566 Termination of enforcement

State Bar enforcement concludes upon submission of satisfactory proof of compliance with the arbitration award, judgment, stipulated award, or mediation settlement. The State Bar will notify the parties that its enforcement efforts have ended.¹²⁴

¹ Business & Professions Code §§ 6010, 6200-6206.

² Cf. current 1.3.

³ Cf. current 1.4

⁴ Cf. current 1.6: "A declaration is a document in compliance with the requirements of Code of Civil Procedure section 2015.5, or an affidavit."

⁵ Cf. current 1.10: "NON-LAWYER ARBITRATOR: A lay arbitrator is a person who has not been admitted to practice law in any jurisdiction and has not worked regularly for a public or private law office or practice, court of law or attended law school for any period of time. Paralegal assistants, law firm staff, and law clerks may not serve as lay arbitrators."

⁶ Cf. current 1.13.

⁷ Business & Professions Code § 6201.

⁸ Business & Professions Code § 6200(c).

⁹ Business & Professions Code § 6201(a).

¹⁰ Business & Professions Code § 6201(a). *Cf. current 2.1. Also 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 12.4 of a matter in which the client has already requested arbitration or has consented to an attorney’s request for arbitration.”*

¹¹ *Cf. current 11.1.*

¹² Business & Professions Code § 6201. *Cf. current 8.0.*

¹³ Business & Professions Code § 6201(a). *See current Rule 8 and 8.3, “A client’s right to request or maintain arbitration is waived if the client . . . [8.3] fails to deliver to the Program a request for arbitration on the approved Program form that is postmarked or received on or before the 30th day from the date of the client’s receipt of the form entitled “Notice of Client’s Right to Arbitration” given pursuant to Business and Professions Code section 6201, subdivision (a). Should the fee dispute transfer to a different fee arbitration program after the request for arbitration is filed, the original date of postmark or receipt of the arbitration request will be preserved for purposes of determining whether the request for arbitration was made within the 30-day time period.*

¹⁴ Business & Professions Code § 6200(b). *Cf. current rule 4.0.*

¹⁵ Business & Professions Code § 6200(b)(1).

¹⁶ *Cf. current 7.0.*

¹⁷ *Cf. current 12.1.*

¹⁸ *Cf. current 13.0.*

¹⁹ *Cf. current 12.3.*

²⁰ *Cf. current 12.*

²¹ *Cf. current 12.5.*

²² *Cf. current 13 0: “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.”*

²³ Rule 3.505(A).

²⁴ Business & Professions Code § 6204(a). *Cf. current 5.0. See also current 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.”*

²⁵ Business & Professions Code § 6203(b). Cf. current 5.1.

²⁶ Cf. current 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.”

²⁷ Cf. current 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.”

²⁸ See current 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” and 6.4: “Except as provided above, if the parties have already agreed to binding arbitration, the binding election may be changed to non-binding arbitration only by written agreement signed by all parties before the taking of evidence.” See also current 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.”

²⁹ Cf. current 21.1: “A party may request, in writing, that two or more arbitration matters be consolidated for hearing. The Program will serve the other party with a copy of the request. A written reply may be filed with the Program within 15 days of service of the request for consolidation. The 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; and current 21.2: “If a client requests fee arbitration against an attorney who is already a party in a non-client fee arbitration relating to the client’s matter or joins a fee arbitration as a party in a fee dispute between the client’s attorney and a non-client, consolidation of the arbitration matters is automatic absent a showing of good cause.”

³⁰ Cf. current 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.” See also current 20.2(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.”

³¹ Cf. rule 20.2(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.”

³² Cf. current 20.2(c): “If arbitration has been requested by the attorney, the matter may only be dismissed with the agreement of the other parties.”

³³ Cf. current 20.1: “Upon confirmation by the parties or the hearing panel if one has been assigned that the dispute has been settled, the matter shall be dismissed without prejudice by the 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.”

³⁴ Business and Professions Code § 6201(b)-(d). See current 9.0: “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; provided, however, that if the person who requested or caused the stay has not appeared in the action or other proceeding, or is not subject to the jurisdiction of the court, the plaintiff must immediately file a notice of stay and attach a copy of the arbitration request 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 stay of

proceedings Judicial Council Form to the party.” This rule is based on Business & Professions Code § 6201(b)-(d):

(b) *If an attorney, or the attorney's assignee, commences an action in any court or any other proceeding and the client is entitled to maintain arbitration under this article, and the dispute is not one to which subdivision (b) of Section 6200 applies, the client may stay the action or other proceeding by serving and filing a request for arbitration in accordance with the rules established by the board of governors pursuant to subdivision (a) of Section 6200. The request for arbitration shall be served and filed prior to the filing of an answer in the action or equivalent response in the other proceeding; failure to so request arbitration prior to the filing of an answer or equivalent response shall be deemed a waiver of the client's right to arbitration under the provisions of this article if notice of the client's right to arbitration was given pursuant to subdivision (a).*

(c) *Upon filing and service of the request for arbitration, the action or other proceeding shall be automatically stayed until the award of the arbitrators is issued or the arbitration is otherwise terminated. The stay may be vacated in whole or in part, after a hearing duly noticed by any party or the court, if and to the extent the court finds that the matter is not appropriate for arbitration under the provisions of this article. The action or other proceeding may thereafter proceed subject to the provisions of Section 6204.*

(d) *A client's right to request or maintain arbitration under the provisions of this article is waived by the client commencing an action or filing any pleading seeking either of the following:*

(1) *Judicial resolution of a fee dispute to which this article applies.*

(2) *Affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct.*

³⁵ Rule of Court 3.650. Duty to notify court and others of stay.

³⁶ *Cf. current 27.3: “The arbitration case file, including the request, reply, exhibits and transcripts, as well as the award itself are to remain confidential. ¶Absent a court order compelling disclosure of the award, the program may not disclose the award to any individual or entity that was not a party to the arbitration proceeding. ¶An award shall remain confidential except as may be necessary in connection with a judicial challenge to, confirmation or enforcement of, the award, or as otherwise required by law or judicial decision.”*

³⁷ Rule 3.546 Referral to Office of Chief Trial Counsel.

³⁸ Business & Professions Code § 6068(e); Rule of Professional Conduct 3-100.

³⁹ *Cf. current 15.4.*

⁴⁰ *The language proposed for “receipt by the State Bar” makes unnecessary a separate provision for receipt of a fax filing (now covered by current 51.5), receipt of an e-mail, or the like.*

⁴¹ *Cf. current 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.” See also current 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), 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.”*

⁴² *Cf. current 51.1: “The client shall keep the State Bar advised of his or her current address” and current 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.”*

⁴³ State Bar Rule 2.3, Duty to update member record. *Cf. current 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 51.1 above” and current 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.”

⁴⁴ *Cf. current 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.”*

⁴⁵ *Cf. current 14.0.*

⁴⁶ *Rule 3.506, Removal jurisdiction. Cf. current 18.2.*

⁴⁷ *Business & Professions Code § 6200(e).*

⁴⁸ *Cf. current 22.2.*

⁴⁹ *Cf. current 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.”*

⁵⁰ *Cf. current 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.” Cf. also current 18.2: “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 12.4 of a matter in which the client has already requested arbitration or has consented to an attorney's request for arbitration.”*

⁵¹ *Cf. current 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 parties shall be informed of this rule at the time of the State Bar's service of a completed arbitration request form.”*

⁵² *Business & Professions Code § 6200-6206.*

⁵³ *Rule 3.506, Removal jurisdiction. Cf. current 12.4 (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.*

⁵⁴ *Cf. current 16.1.*

⁵⁵ *Cf. current 20.3, which provides for a partial refund after service but before assignment of a panel only when the dispute has been settled; the current rule does not provide for a partial refund upon dismissal. The language proposed here would permit a partial refund upon dismissal as well as settlement.*

⁵⁶ Cf. current 16.0: “The hearing panel shall, at its discretion, allocate the entire amount of the filing fee, or a portion thereof, to one or more of the parties. Such allocation shall be clearly stated in the Award.”

⁵⁷ Cf. current 40.0 b): “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.’

⁵⁸ Cf. current 40 c): “All parties will bear their own costs, including the costs of interpreters, reporters, and expert witnesses.”

⁵⁹ Cf. current 17.0 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.”

⁶⁰ Cf. current 22.1.

⁶¹ Rule 3.532, Disputes below threshold minimum.

⁶² Rule 3.532, Disputes below threshold minimum.

⁶³ Rule 3.530(C).

⁶⁴ Cf. current 23.0: “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.”

⁶⁵ Cf. current 40.0 a): “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 his or her determination shall be binding on the parties, including the arbitrators.”

⁶⁶ Cf. current 24.0 Challenge to arbitrator(s): “Each party may disqualify one arbitrator without cause and shall have unlimited challenges for cause.”

⁶⁷ Cf. current 24.0: “An arbitrator who believes that he or she cannot render a fair and impartial decision or who believes that there is an appearance that he or she cannot render a fair and impartial decision, shall disqualify himself or herself or shall accede to a party’s challenge for cause. If an arbitrator does not agree to be disqualified, the challenge shall be decided by the Presiding Arbitrator.”

⁶⁸ Cf. current 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.”

⁶⁹ Cf. current 32.5: “If one of the panel members fails to appear, upon written stipulation of the parties, the hearing may proceed with either of the attorney arbitrators acting as the sole arbitrator. Under no circumstances will the hearing proceed with two arbitrators or with one lay arbitrator.”

⁷⁰ Cf. current 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.”

⁷¹ Cf. current 26.0.

⁷² Note: this language is narrower than that in current 26.0(b), which allows communications “In writing with a copy to all other parties, or their respective counsel, if any, and the State Bar.” This provision isn’t at all restrictive, though the other subparts of 26.0 are.

⁷³ Cf. current 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.”

⁷⁴ Cf. current 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.

⁷⁵ Rule 3.536, Arbitrators. Cf. current 32.1: “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).”

⁷⁶ Cf. rule 32.1: “Upon stipulation or application to the assigned sole arbitrator or panel chair, the sole arbitrator or panel chair may extend the date of a scheduled hearing up to thirty days. The presiding arbitrator must approve an extension of more than thirty days.”

⁷⁷ Cf. rule 33.0: “Agreements between the parties as to issues not in dispute and the voluntary exchange of documents prior to the hearing is encouraged.”

⁷⁸ Cf. current 36.0: “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.”

⁷⁹ Cf. rule 31.0: “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.” Cf. also current 30.0: “No discovery is allowable except as specifically set forth in these rules. Nothing in these rules deprives the client of the right to inspect and obtain the client’s file kept by the attorney.”

⁸⁰ Cf. current 28.0.

⁸¹ Cf. current 29.0: “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.”

⁸² Cf. current 35.0: “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.” See also CSF rule 3.441(H): “The applicant and respondent must supply relevant evidence under oath to support allegations or objections based on fact. Proceedings on such evidence need not be conducted according to technical rules applicable to evidence and witnesses. Any relevant evidence is admissible if of the sort that responsible persons customarily rely on in the conduct of serious affairs, even if such evidence might be inadmissible in a civil action.”

⁸³ Cf. current 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 or otherwise, for injuries underlying any such claim.”

⁸⁴ Cf. current 34.0: “All testimony may be given under oath or affirmation administered by the sole arbitrator or Panel Chair.”

⁸⁵ Cf. current 37.0: “The parties shall present their proof in a manner determined by the sole arbitrator or Panel Chair.” Note: the rule proposed here says that the order of proof is determined by this person.

⁸⁶ Cf. current 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.” Cf. also current 38.0: “Any party may provide and pay for the attendance of a person to interpret at that party's expense.”

⁸⁷ Cf. current 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.”

⁸⁸ Cf. current 39.0: “No stenographic, audio or video recording is permissible.”

⁸⁹ Rule 3.512, Confidentiality. Cf. current 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.”

⁹⁰ Cf. current 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.”

⁹¹ Cf. current 3.0.

⁹² See current 3.0: “In a mandatory fee arbitration, if a party fails to respond to a request for arbitration or refuses to participate, the arbitration will proceed as scheduled and an award will be made on the basis of the evidence presented to the hearing panel. The award may include findings on the subject of a party's failure to appear at the arbitration. A party who is found to have willfully failed to appear at the arbitration is not entitled to a trial after non-binding arbitration.”

⁹³ Business & Professions Code § 6204(a). Cf. current 5.0.

⁹⁴ Cf. current 41.0. Note that in a memo of June 21, 2010, staff requested that State Bar rule 41.2 include the possibility of amendment as well as correction of an award: “as confirmed in *Karton v. Segreto* (2009) 176 Cal. App.4th 1, parties are entitled to seek correction or amendment from the arbitration panel, and after 30 days from service of the award, from the court via a petition as provided by statute.”

⁹⁵ Cf. current 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.”

⁹⁶ Cf. current 41.2.

⁹⁷ Cf. current 20.4:” If the parties settle the fee dispute and wish to obtain a stipulated award incorporating the terms of a written settlement agreement, the Presiding Arbitrator, if no hearing panel has been assigned, or the Panel Chair, if the hearing panel has been assigned, may issue a stipulated award incorporating by reference the parties’ written settlement agreement. The Program will serve the stipulated award in the same manner as it would serve an arbitration award as prescribed elsewhere in these rules. A stipulated award can be enforced by the State Bar on behalf of a client in the same manner as an award after arbitration as provided by Business and Professions Code section 6203(d).”

⁹⁸ Cf. current 32.2: “Notwithstanding the failure of either party to attend, the hearing shall proceed as scheduled and a decision made on the basis of evidence submitted” and current 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.”

⁹⁹ Code of Civil Procedure §§ 1285-1287.6.

¹⁰⁰ Code of Civil Procedure § 1286.8.

¹⁰¹ Code of Civil Procedure § 1286.2.

¹⁰² Code of Civil Procedure § 1286.

¹⁰³ Cf. current 42.0.

¹⁰⁴ Code of Civil Procedure § 1286.6. [NOTE: This statute prescribes what a court must do. It doesn’t apply to the State Bar.]

¹⁰⁵ See *Arbitration Advisory 03-02, The Amendment of Supplementation of Arbitration Awards*, March 27, 2003.

¹⁰⁶ Cf. current 42.2: “Any correction of the award by the Hearing Panel must be made within 30 days after service of the award.”

¹⁰⁷ Cf. current 53.0: “The Hearing Panel or the Program may in its discretion refer an attorney’s conduct disclosed in the arbitration proceeding to the State Bar for possible disciplinary investigation without violating the confidentiality surrounding these proceedings.”

¹⁰⁸ Cf. current 43.0: “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 pursuant to an arbitration award, a stipulation or mediation settlement under this Article or a judgment, the client may request State Bar assistance in enforcing the award, stipulation, mediation settlement or judgment if the attorney has not timely complied with that award, as set forth below.” The “final and binding” language appears in current 44.1 and 48.0.

¹⁰⁹ Cf. current 44.1.

¹¹⁰ Business & Professions Code § 6203(d)(5).

¹¹¹ Rule 1.24, Forms.

¹¹² Cf. current 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 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.”

¹¹³ Cf. current 44.5.

¹¹⁴ Business & Professions Code § 6203(d)(2). Cf. current 45.1 and 45.7.

¹¹⁵ Business & Professions Code § 6203(d)(2).

¹¹⁶ Cf. current 47.3, which provides that “The Presiding Arbitrator or designee may hold a hearing or may require the parties to submit additional information.” Note the use of “or,” which presumably does not present exclusive alternatives.

¹¹⁷ Cf. current 46.2 and 47.3-47.5.

¹¹⁸ Cf. current 46.0, Payment plans.

¹¹⁹ Rule 3.565, Inactive enrollment for noncompliance.

¹²⁰ See also Rule 3.565, Inactive enrollment for noncompliance. Three current rules are relevant: 45.2, 45.3, and 48.0. The first requires the administrative penalty, but the second two make it optional. Here is the text of 48.0: “In any matter in which the attorney has failed to comply with a final, binding award or judgment, 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 informal enforcement efforts, 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.”

¹²¹ Business & Professions Code § 6203(d)(3). That statute provides that “An attorney who has failed to comply with a binding award, judgment, or agreement shall pay administrative penalties or reasonable costs, or both, as directed by the State Bar. Penalties imposed shall not exceed 20 percent of the amount to be refunded to the client or one thousand dollars (\$1,000), whichever is greater. Any penalties or costs, or both, that are not paid shall be added to the membership fee of the attorney for the next calendar year.”

¹²² Cf. current 49.0.

¹²³ Business & Professions Code §§ 6203(d)(1), 6006, and 6125 et seq. Cf. current 43.0, 44.0, and 50.0. Business & Professions Code § 6203(d)(1) provides that “In any matter arbitrated under this article in which the award is binding or has become binding by operation of law or has become a judgment either after confirmation under

subdivision (c) or after a trial after arbitration under Section 6204, or in any matter mediated under this article, if: (A) the award, judgment, or agreement reached after mediation includes a refund of fees or costs, or both, to the client and (B) the attorney has not complied with that award, judgment, or agreement the State Bar shall enforce the award, judgment, or agreement by placing the attorney on involuntary inactive status until the refund has been paid.”

¹²⁴ *Cf. current 46.4: “Upon the submission of satisfactory proof that the payment plan has been completed and the award, judgment or agreement has been fully complied with, the State Bar shall close its file on the client’s enforcement request and notify the parties of same.”*