



PROMOTING JUSTICE SINCE 1877

RULES GOVERNING THE FEE ARBITRATION PROGRAM
OF THE ALAMEDA COUNTY BAR ASSOCIATION
(Approved xxxx, 2007)

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~~[Approved September 2, 1997; Effective xxxx, 2007 (upon approval by the State Bar Board of Governors)]~~ Please note: The most current version of the Rules shall be the governing Rules, regardless of when the Request for Arbitration was filed. Date: xxxx, 2007 (upon approval by the State Bar Board of Governors)

**1. DEFINITIONS.** As used in this chapter:

1. ACBA: Alameda County Bar Association
2. ACTION: A civil judicial proceeding brought to enforce, redress or protect a right.
3. ADMINISTRATOR: The staff person responsible for administering the local bar association's Fee Arbitration Program.
4. ARBITRATION: A process by which parties to a dispute present the dispute to one or more individuals called arbitrators who decide the merits of the dispute and issue an award which may or may not be binding.
  - (a) BINDING ARBITRATION: Arbitration in which the award of the arbitrator(s) is final and binding on the parties.
  - (b) NON-BINDING ARBITRATION: Arbitration in which the award of the arbitrator(s) is advisory, but becomes binding if a party does not file an action or other proceeding with the proper court within thirty (30) days after the arbitration award has been served.
5. ASSIGNEE: A person to whom a claim, right or property is transferred.
6. AWARD: The decision of the arbitrator or arbitrators in the fee arbitration proceeding.
7. 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.
8. COMMITTEE CHAIR: The person in the Fee Arbitration Program responsible for supervising the Program's fee arbitrators and for ruling on matters as set forth in these rules. The COMMITTEE CHAIR shall also be known as the PRESIDING ARBITRATOR. The PRESIDING ARBITRATOR may designate a member of the Fee Arbitration Committee to hear and rule upon issues in his or her absence.
9. DECLARATION: A declaration is a document in compliance with the requirements of Code of Civil Procedure section 2015.5, or an affidavit.
10. DISCOVERY: A formal legal process for allowing a party to require the other party to provide information to be used at arbitration.
11. FILE: Fee arbitration records and papers in a specific fee arbitration case.
12. HEARING PANEL: One or three arbitrators assigned to hear the fee dispute and to issue the award. Also called the PANEL.
13. JURISDICTION: Authority to hear the dispute.
14. PANEL CHAIR: Refers to either the Sole Arbitrator or Panel Chair of a three-member panel appointed 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. When a Hearing Panel consists of one arbitrator, the Panel Chair is also called the SOLE ARBITRATOR.
15. 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. The party who initiates arbitration is also called the PETITIONER, and the party who is named in the arbitration request is also called the RESPONDENT.
16. PRESIDING ARBITRATOR: See COMMITTEE CHAIR.
17. PROGRAM: Unless indicated otherwise, reference to the Program means the Fee Arbitration Program of the Alameda County Bar Association.

18. PROGRAM RULES: The Rules Governing the Fee Arbitration Program of the Alameda County Bar Association. Also called the RULES.
19. REMOVAL: Transfer.
20. REQUEST, REQUEST FOR FEE ARBITRATION, OR FEE ARBITRATION REQUEST: The party's application for fee arbitration. Unless indicated otherwise, the client or attorney application for fee arbitration known as the "Client's Request" or "Attorney's Request" shall be indicated by the capitalized term "Request."
21. STATE BAR: The State Bar of California. Unless indicated otherwise, reference to the State Bar means the State Bar's Office of Mandatory Fee Arbitration.
22. STIPULATION: An agreement between the parties as to the fact(s) in dispute.
23. WAIVER: Giving up a right or benefit.

END OF DEFINITIONS

## **2. FEE ARBITRATION GENERALLY**

### **(a) PURPOSE**

The purpose of the Alameda County Bar Association's Fee Arbitration Program (hereinafter referred to as the "Program") is to provide for the fair, speedy and impartial hearing and resolution of disputes between attorneys and clients arising from fees charged for professional legal services where jurisdiction is deemed appropriate.

These Rules are adopted pursuant to the provisions of Business and Professions Code sections 6200 et seq., the State Bar Model Rules of Procedure for Fee Arbitration, and the State Bar's Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs. In the event of any inconsistency between these Rules and such statutes or standards, the statutes or standards shall govern. These Rules may be referred to as the "Program Rules" or "Rules."

### **(b) MANDATORY OR VOLUNTARY ARBITRATION**

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 properly initiated by a client.

#### **(1) Valid Arbitration Clauses**

If an attorney fee agreement contains a provision providing for Mandatory Fee Arbitration concerning disputes over attorney's fees and costs and does not require that such arbitration be binding, such provision is consistent with California law and enforceable by the attorney. Under such provision, the client may be compelled to participate in Mandatory Fee Arbitration if requested by the attorney.

#### **(2) Invalid Arbitration Clauses**

A client cannot be required to submit to binding Mandatory Fee Arbitration to resolve a fee dispute before the dispute arises. If an attorney fee agreement contains such a provision, the client is under no obligation to submit to binding Mandatory Fee Arbitration. In such cases, the client may, however, voluntarily request or consent to Mandatory Fee Arbitration and may choose that it be either binding or non-binding.

#### **(3) Client May Not be Compelled to Arbitrate**

Unless the client has previously agreed in writing to Mandatory Fee Arbitration, the client may not be compelled to submit any dispute over attorney's fees and costs to Mandatory Fee Arbitration. If an attorney requests Mandatory Fee Arbitration with a client, the Program has jurisdiction only if the client has previously agreed in writing pursuant to Rule 2(b)(1) or if the client consents to fee arbitration by executing the Client's Consent form provided by the Program.

#### **(4) Arbitration Mandatory for Clients**

Arbitration of a fee dispute is mandatory for clients if the client has previously agreed in writing to Mandatory Fee Arbitration pursuant to Rule 2(b)(1).

(c) PARTY'S FAILURE TO RESPOND OR REFUSAL TO 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.

(d) NOTICE OF CLIENT'S RIGHT TO ARBITRATION BEFORE SUIT

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

(e) OBTAINING STAY OF LAWSUIT

If an attorney, or the attorney's assignee, commences an action to collect fees or costs in any court, or other proceeding, with limited exceptions including provisional remedies, the court action or other proceeding is automatically stayed upon filing a request for fee arbitration with a State Bar approved fee arbitration program. The party who requested fee arbitration has a duty to notify the court of the stay and attach a copy of the arbitration request form. If the person who requested or caused the stay has not appeared, or is not subject to the jurisdiction of the court, the plaintiff must immediately file a notice of stay and attach a copy of the arbitration request form showing that the proceeding is stayed. Upon request, the program may provide a copy of a notice of automatic stay to the party. 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 Business and Professions Code sections 6200-6206.

(f) WAIVER OF RIGHT TO REQUEST OR MAINTAIN ARBITRATION

- (1) A client's right to request or maintain arbitration is waived if the client:
  - (i) 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);
  - (ii) 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;
  - (iii) 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(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.
- (2) If the client waives the right to request or maintain arbitration, the parties may stipulate to set aside the waiver and to proceed with arbitration.

**3. DISPUTES COVERED BY MANDATORY FEE ARBITRATION**

(a) FEES AND COSTS FOR PROFESSIONAL SERVICES

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

- (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 were rendered in the State of California;
- (2) claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct; or

- (3) disputes where the fee or costs to be paid by the client or on the client's behalf have been determined or are determinable pursuant to statute or court order; or
- (4) disputes where the request for arbitration is made by a person who is not liable for or entitled to a refund or attorney's fees or costs; or
- (5) disputes where the claim has been assigned by the client.

**(b) DISPUTES CONCERNING NON-CLIENTS**

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 form.

**4. JURISDICTION**

**(a) DETERMINATION OF JURISDICTION**

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

**(b) JURISDICTION BY PROGRAM**

The Program shall have jurisdiction over a fee dispute if at least one of the attorneys involved in the dispute has an office in Alameda County or if substantial legal services were performed in Alameda County.

**(c) REMOVAL TO THE STATE BAR OF CALIFORNIA**

If a request for arbitration has been filed with the Program and a party to the arbitration requests removal to the State Bar Program:

- (1) The party seeking removal from the Program must submit a declaration signed under penalty of perjury asserting the factual basis for the removal. That party need not submit an additional filing fee to the State Bar until there has been a final ruling by the State Bar's Presiding Arbitrator granting removal to the State Bar.
- (2) The State Bar will serve the request for removal and supporting declaration on the other parties and the Program. Any written responses must be received by the State Bar within fifteen (15) days of service of the request for removal and declaration for consideration by the State Bar's Presiding Arbitrator.
- (3) The party seeking removal must provide all additional information requested by the State Bar within the time limits set by the State Bar.

- (4) A request for removal to the State Bar will be decided by the State Bar's Presiding Arbitrator under the applicable rules of procedure of the State Bar.
- (5) The State Bar's Presiding Arbitrator shall deny a request for removal if he or she determines that:
  - (i) the other parties to the local bar program's arbitration or the program itself would be prejudiced by removal and such prejudice outweighs the allegations by the party seeking removal that the party believes that a fair hearing through the local bar's program cannot be obtained; or
  - (ii) 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
  - (iii) the party seeking removal has waived any claim that the party cannot obtain a fair hearing before the local bar's arbitration program.
- (6) The local bar Program shall release jurisdiction of any arbitration to the State Bar of California upon notification from the State Bar of its acceptance of said matter for arbitration. Any refund of the filing fee paid to the local bar program shall be in accordance with Rule 14(f).

(d) REFERRAL TO STATE BAR

If the matter raised during the hearing, in the opinion of the Arbitrator(s) or in the opinion of the Chair, constitutes substantial evidence of a violation of the Rules of Professional Conduct, the Chair may in his or her discretion refer such matters to the attention of the State Bar of California for disposition as the State Bar deems appropriate.

(e) EFFECT OF FAILURE TO ADHERE TO TIME REQUIREMENTS

The Program shall not 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.

**5. GENERAL RULES GOVERNING FEE ARBITRATION**

(a) SERVICE

- (1) Unless otherwise specifically stated in these rules, service on the client shall be by personal delivery, by deposit in the United States mail, or by deposit in a business facility used for collection and processing of correspondence for mailing with the United States Postal Service pursuant to Code of Civil Procedure section 1013(a)(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 Program advised of his or her current address.
- (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 5(a)(1) above.
- (3) If either party is represented by counsel, service shall be on the party as indicated in subsections 5(a)(1) and 5(a)(2) of this rule, and on the counsel at the latest address shown on the official membership records of the State Bar.
- (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.
- (5) Where a facsimile or email transmission is used to communicate with the Program or to file any document, it will not be considered received unless the Program also receives within five days of the date of the transmission, the original of the faxed or emailed document in accordance with subsection 5(a)(1).
- (6) It is the responsibility of all parties to notify the Program, in writing, of any address or telephone number change which may occur prior to the serving of the Award and post-arbitration notice. In the event that the client fails to keep the Program advised of his or her current address, the Program may close the arbitration Request, if initiated by the client, after thirty (30) days from the date that the Program learns of the invalid address.

(b) IMMUNITY

In any arbitration proceeding conducted by the Program, the arbitrators, as well as the Alameda County Bar Association, its directors, officers and employees, have the same immunity which attaches in judicial proceedings.

(c) CONFIDENTIALITY

- (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.
- (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.
- (3) The arbitration award is public; the arbitration case file, including the request, reply, exhibits and transcripts, remains confidential.

(d) DEATH OR INCOMPETENCE OF A PARTY

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

**6. INITIATION OF ARBITRATION PROCEEDING**

(a) REQUEST FOR ARBITRATION:

- (1) Arbitration is initiated by filing a written Request for Fee Arbitration with the program on the approved program form and upon 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.
- (2) 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.
- (3) At the time of service of a Request on the respondent, the Program will serve with it a copy of the State Bar required Attorney Responsibility form and a blank respondent reply form. If the respondent is the attorney, the proper form for the reply is the Attorney's Reply form. If the respondent is the client, the proper form for the reply is the Client's Consent form (See Rule 6[a][7]).
- (4) In cases where the attorney has filed a request for arbitration and the client did not previously agree in writing to arbitration, arbitration shall proceed only if the client consents in writing to participate in the arbitration within thirty (30) days of service of the Request on the client.
- (5) The party requesting arbitration may amend the Request up to fifteen (15) days after mailing it to the Program, unless a request for clarification is made by the Program. Thereafter, it may be amended only with the approval of the Committee Chair or by the Panel Chair, if a notice of appointment of the hearing panel has been served on the parties.
- (6) Parties filing or responding to a Request for Arbitration shall file one original and the required number of copies of all forms with copies of supporting documentation as indicated on the forms with the Program. The Program will serve copies of materials filed with the Program to the other party and the Hearing Panel assigned to hear the matter.
- (7) If the client has requested arbitration, the Attorney's Reply to the Client's Request must be filed within thirty (30) days of the service of the initial Request. If the attorney has requested arbitration, the Client's Consent to the Attorney's Request must be filed within thirty (30) days of service of the initial Request. (See Rule 6[a][3] above and Rules 6[d] and 6[e] below.)

(b) BINDING ARBITRATION

- (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 thirty (30) days after the arbitration award has been served. If a trial after arbitration is not requested, the award automatically becomes binding thirty (30) days after the award is served, except that if any party willfully fails to appear at the hearing as provided for under these rules, that party shall not be entitled to a trial after arbitration. The decision as to whether the non-appearance was willful is made by the court. The party who failed to appear at the hearing shall have the burden of proving that the failure to appear was not willful.
- (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.

(c) WITHDRAWAL OF BINDING ARBITRATION ELECTION

- (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.
- (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.
- (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 (10) days of that party's receipt of the Reply or Consent to arbitration.
- (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.

(d) RESPONSE TO REQUEST FOR FEE ARBITRATION; Reply or Consent To Fee Arbitration

- (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 thirty (30) days of the service of the initial Request, unless an extension of time to reply is obtained from the Program.
- (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 thirty (30) days of service of the Request, unless the attorney is seeking removal from a local bar program under Rule 4(c) of a matter in which the client has already requested arbitration or has consented to an attorney's request for arbitration.

(e) 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 copies of 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.

(f) RESOLUTION OF DISPUTE PRIOR TO HEARING

(1) **Settlement**

Upon confirmation by the parties or the hearing panel that a dispute has been settled, the matter shall be dismissed by the Program in the absence of an appointed hearing panel, or by the panel chair if a notice of appointment of hearing panel has been served on the parties. The parties must provide written notification of settlement to the hearing panel, if one has been appointed, and the Program.

(2) **Withdrawal**

If a party wishes to withdraw from a binding arbitration and the matter has not been settled, all other parties must agree to the matter being withdrawn. If there is a written agreement between the parties requiring arbitration of the fee dispute through the Mandatory Fee Arbitration Program, all other parties must consent to a request for withdrawal before the proceeding is dismissed. If arbitration has been requested by the attorney, the matter may only be dismissed with the agreement of the other parties. 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.

(3) **Stipulated Settlement**

If the parties settle the fee dispute and wish to obtain a stipulated award incorporating the terms of a written settlement agreement, the Committee Chair, if no hearing panel has been appointed, or the Panel Chair, if the hearing panel has been appointed, 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.

(g) 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 fifteen (15) days of service of the request for consolidation. The Committee Chair shall rule on all written requests to consolidate. The order of the Committee Chair shall be final. Consolidation will not result in a refund of filing fees paid or reduction of filing fees owed to the Program.

**7. THE ARBITRATION PANEL**

(a) COMPOSITION AND APPOINTMENT OF PANEL

- (1) For each dispute, the Program shall appoint a Hearing Panel from the Program's roster of volunteer fee arbitrators. An attorney arbitrator shall be designated as Panel Chair by the Program. In cases where three arbitrators are appointed to a panel, the Panel Chair shall have an equal vote with the other members of the Panel but shall be responsible for the conduct of the arbitration and writing of the arbitration Award.
  - (i) A panel shall consist of one (1) attorney arbitrator for any dispute involving less than \$10,000.
  - (ii) In disputes of \$10,000 or more, a panel shall consist of three (3) arbitrators, one of whom shall be a lay arbitrator.
  - (iii) If a fee dispute involves \$10,000 or more, the parties may agree in writing to have the matter heard by a single attorney arbitrator.
  - (iv) If a fee dispute involves \$1,000 or less, the arbitration shall be decided by the Committee Chair or designee. Each party shall submit all supporting documents and a complete written statement of the reasons for the dispute, a response, or both, under penalty of perjury. The parties have thirty (30) days from the service by the program of the reply to the arbitration request, which will be reflected in a proof of service. The record shall thereafter be forwarded to the Committee Chair or designee for action, who may require either or both parties to submit additional information within

thirty (30) days. However, if the amount in controversy is less than \$1,000 but greater than \$500, the parties upon the request of any party, may appear at a hearing, either in person or telephonically, before the Committee Chair or designee assigned to the matter, in addition to providing the written information required by this section. The program shall keep a permanent record of the number of fee disputes in which the amount in controversy is between \$500 and \$1,000 and of that number, the number of fee disputes in which any party requested a hearing. The parties shall be informed of this rule at the time of the program's service of a completed arbitration request form.

- (v) Any vacancy of arbitrator, by way of disqualification or inability to serve, shall be filled by the Program, but in no event shall the arbitration proceed with only two arbitrators.
- (vi) No attorney shall be appointed arbitrator who has not been admitted to the California State Bar for a minimum of five (5) years.

(2) Upon the client's request, the Program shall appoint 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 (e) must be submitted by the client in writing, at the time the written "Request for Fee Arbitration" on the approved Program form is submitted to the program, or the right to make such election shall be deemed waived.

#### (b) NOTICE OF APPOINTMENT OF PANEL

It is the goal of these Rules that the Program shall appoint a panel and serve a "Notice of Appointment of Panel" identifying the Panel by first class mail on the parties within sixty (60) calendar days of receipt of the Attorney's Reply or Client's Consent to arbitration.

Pursuant to Rule 6, the Attorney's Reply must be filed within thirty (30) days of the initial Request for arbitration. If no such Reply is received within thirty (30) days of the initial Request, the Notice of Appointment of Panel will be served within ninety (90) days of the filing of the initial Request, or as soon as possible after the expiration of the thirty (30) day deadline.

#### (c) CHALLENGE - DISQUALIFICATION OF ARBITRATORS

Each party may disqualify one arbitrator without cause and shall have unlimited challenges for cause. Any disqualification or challenge of any arbitrator shall be ineffective unless made in writing and served on the Program as hereinafter specified and the other party within fifteen (15) calendar days of the service of the Notice of Appointment of Panel or Notice of Appointment of Substitute Arbitrator(s). 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 Committee Chair.

The Program shall appoint a substitute arbitrator for any arbitrator removed by disqualification or challenge and shall serve a Notice of Appointment of Substitute Arbitrator(s) on the parties and all Panel members.

#### (d) DISCHARGE OF ARBITRATOR OR PANEL

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

#### (e) CONTACT 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:

1. At a scheduled hearing; or
2. In writing with a copy to all other parties, and their respective counsel, if any, and the Program; or

3. For the sole purpose of scheduling a hearing date or other administrative procedures with notice of same to the other parties; or
4. For the purpose of obtaining the issuance of a subpoena as set forth in these rules; or
5. In an emergency.

## **8. THE HEARING**

### (a) NOTICE OF HEARING

- (1) It is the policy of the Program that hearings shall be set so as to commence within forty-five (45) calendar days after service of the latest Notice of Appointment of Panel or Notice of Appointment of Substitute Arbitrator(s). A disqualification or allowed challenge of an appointed arbitrator will result in a fifteen (15) day extension from the date of the appointment of replacement member(s).
- (2) The Chair of the Panel shall serve written notice of hearing on each party at least fifteen (15) calendar days prior to the hearing date, unless good cause exists to shorten time. 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 and a decision shall be made on the basis of evidence submitted.
- (3) It is the duty of the Panel Chair or Sole Arbitrator to arrange a time and place for the arbitration hearing and to notify the parties, other arbitrators and the Program of the hearing. The hearing shall be held in Alameda County unless all parties and Arbitrators agree otherwise. The Panel Chair or Sole Arbitrator may communicate informally with the parties to the dispute and with the other arbitrators to arrive at a mutually agreeable time and place for the hearing. It is advisable to schedule a hearing for a date within twenty (20) days of appointment of panel to allow for the possibility of a continuance, postponement, more than one hearing or submissions of pre-hearing briefs or arguments, if such are permitted by the arbitrators. A party who does not provide a current address to the Program or arbitrators' staff, or otherwise fails to be available for a hearing, shall have no ground to object to the ACBA Fee Arbitration Program regarding any hearing and award.
- (4) Once the hearing date has been set and the Notice of Hearing mailed, continuances are not favored and should not be granted, in the absence of good cause. It is the policy of the Program that no hearing should be postponed or continued more than once.

Application for a continuance must be made as soon as possible, in writing to the Panel Chair and the Program. In the event that the Chair of the Panel grants a continuance, it should be reset for hearing no later than thirty (30) days from the original hearing date. In the discretion of the Panel Chair, it shall be the responsibility of the party requesting the continuance to arrange for a mutually acceptable new hearing date among all parties and the arbitrator(s). The Panel Chair shall make the final decision of granting or denying a continuance, and whether the new date chosen for the hearing is acceptable.

In the instance where the continuance is for thirty (30) days or more, the continuance must be approved by the Committee Chair.

### (b) ATTENDANCE

- (1) 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.
- (2) 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.
- (3) 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.

- (4) If all parties so stipulate, the Sole Arbitrator or Hearing Panel may decide all matters without a hearing based upon the Request, 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.

(c) WAIVER OF PERSONAL APPEARANCE

- (i) A request for waiver of appearance, or designation of a representative, or the submission of testimony by written declaration, or request for telephonic appearance pursuant to this rule shall be filed with the Panel Chair and served on all parties at least ten (10) days prior to the hearing.
- (ii) Any party may request to appear by telephone, subject to the advance approval of the Panel Chair.
- (iii) 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.
- (iv) Any party unable to attend a hearing may designate a lawyer or non-lawyer representative.
- (v) Any party has the right to have a support person present at the hearing.

(d) RIGHT TO COUNSEL

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

(e) 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. The Hearing Panel may decline to determine any issues not set forth in documents submitted prior to the hearing as required by the Rules.

(f) STIPULATIONS ENCOURAGED

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

(g) EVIDENCE

- (1) Any relevant evidence shall be admitted if it is the sort of evidence on 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.
- (2) The arbitrators shall receive evidence relating to claims of malpractice and professional misconduct, only to the extent that those claims bear upon the value of fees, costs, or both that the attorney is entitled. The arbitrators shall not award affirmative relief in the form of damages or offset or otherwise for any injuries caused to the client by malpractice or professional misconduct.
- (3) Nothing in this section shall be construed to prevent the arbitrators from awarding a refund of unearned fees, costs, or both, previously paid to the attorney by the client.

(h) DISCOVERY

- (1) No discovery is allowable except as specifically set forth in these Rules. The Panel Chair may in his or her discretion require an exchange of documents and/or information before the hearing, if good cause exists. The Panel Chair may, in his or her discretion, decline to admit into evidence documents that were required to be exchanged but were not. Failure to provide documents will be considered by the arbitrator(s) at the hearing.
- (2) In accordance with the Rules of Professional Conduct, Rule 3-700, upon written request of the client, the attorney shall provide the client with a complete copy of the file, at no cost to the client. This does not require an order by the arbitrator, and the attorney must comply within twenty (20) days of the written request of the client to the attorney.

(i) SUBMISSION OF DOCUMENTS

If no required exchange is ordered by the Panel Chair, and if either party intends to submit documents, copies must be mailed directly by 1st class mail, postage prepaid to each arbitrator and to the opposing party at least

ten (10) days prior to the scheduled hearing date. In the arbitrator's discretion, a party shall not be precluded from submitting documents not provided in advance of the hearing.

(j) SUBPOENA

The Committee Chair, Sole Arbitrator or Panel Chair may issue subpoenas and/or subpoenas duces tecum at the request of a party. The Committee Chair or Panel Chair 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 costs.

(k) OATHS

The Panel Chair or Sole Arbitrator is empowered to administer oaths. All testimony may be given under oath or affirmation administered by the Sole Arbitrator or Panel Chair.

(l) ORDER OF PROOF

The parties shall present their proof in the manner determined by the Sole Arbitrator or Panel Chair and upon such issues as the Hearing Panel may determine to be material.

(m) TRANSCRIPTS OR RECORDINGS

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

The Program, arbitrator(s) and other parties must be notified in writing of the intent to transcribe at least five (5) days prior to the hearing.

(n) INTERPRETER

Any party may provide and pay for the attendance of a person to interpret at that party's sole expense. In the discretion of the Sole Arbitrator or Panel Chair, the interpreter shall be administered an oath to accurately and completely translate the party's or witness's testimony.

(o) ADJOURNMENT

The Hearing Panel may adjourn from time to time as is necessary in its discretion or for good cause shown at the request of either party or the arbitrator(s).

(p) TIME LIMITATIONS

The arbitrator may make whatever reasonable time limitations consistent with the orderly and proper presentation of the case.

**9. COMPENSATION OF ARBITRATORS; ADMINISTRATIVE CHARGES**

(a) All arbitrators appointed by the Program are volunteers who provide their services free of charge.

(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.

**10. AWARD**

(a) SERVICE, TIMING AND CONTENTS OF THE AWARD

(1) The award shall be signed by all arbitrator(s) and submitted to the Program within twenty-five (25) days of the close of the hearing or submission of the matter. No award is final or is to be issued until approved for procedural compliance and as to the form of the award by the Committee Chair or such person as the Chair may designate for this purpose. After approval of the award, the Program will serve a copy of the award by mail on each party together with a copy of the Notice of Rights After Arbitration form approved by the State Bar Board of Governors. Failure to comply with the twenty-five (25) day timeframe shall not constitute grounds for vacating or dismissing the award.



the deadline for seeking a civil trial after a non-binding award is rendered, and a non-binding award will automatically become binding thirty (30) days after it is served on the parties.

- (i) 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 (10) 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.
- (ii) 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 for correction or amendment of the award is deemed denied under Code of Civil Procedure 1284, whichever date is earlier.
- (iii) 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.

### **11. ENFORCEMENT OF AWARD**

In any matter in which the award of the arbitrator includes a refund of fees and/or costs to the client and the award is/or has become binding and the attorney has not complied with that award, the client has the right to pursue enforcement of the award through the State Bar of California, Mandatory Fee Arbitration Program in San Francisco, California.

The State Bar of California  
Mandatory Fee Arbitration Program  
180 Howard Street, 6<sup>th</sup> Floor  
San Francisco, CA 94105  
(415) 538-2020

### **12. PROGRAM FILING FEES**

(a) The required filing fee for Fee Arbitration is based upon the amount in dispute, pursuant to the following schedule:

<u>Amount in Dispute</u>	<u>Filing Fee</u>
less than \$10,000	5% (\$50 minimum)
\$10,000 or greater	7% of dispute (\$7,000 maximum)

#### **(b) Calculation of the Amount in Dispute; Additional Fees**

The amount in dispute is the difference between the fees charged or claimed by the attorney, and the amount, if any, which the client has indicated to be the reasonable value of the legal services received, as set forth in the Request for Fee Arbitration and Reply or Consent to Fee Arbitration. If the arbitrator(s) find that the amount in dispute is greater than originally stated in the Request and Reply, the Award may direct the parties to pay to the Alameda County Bar Association (ACBA) the additional filing fee due. Any such award of filing fees to the ACBA is binding on the parties regardless of the nature of the Award.

#### **(c) Payment of the Filing Fee to the ACBA**

The filing fee shall be paid by check or money order payable to the Alameda County Bar Association (ACBA) by the party initiating arbitration, whether client or attorney, at the time of the filing of the Request for Fee Arbitration.

#### **(d) Award of Filing Fee**

At the discretion of the arbitrator(s), either party may be directed as part of the award, to reimburse the other side, in whole or in part, for filing fees paid to the ACBA.

#### **(e) Failure to Pay Filing Fee**

No matter may be referred to a Panel of arbitrators or a Sole Arbitrator without payment of the filing fee by the Petitioner, except as in Rule 13 (Fee Waiver). Failure of the Petitioner to pay such fee at the time of submission of the initial Request for arbitration, shall be deemed an abandonment of the petition and a waiver of the right to arbitrate, and the file shall be closed.

### **13. REQUEST FOR FEE WAIVER**

- (a) A party seeking arbitration may file with the Program an application with supporting documents for filing a 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 6, may be required to submit supporting documents regarding his or her own financial status to the Program to support the client's application for a filing fee waiver. If the non-client party replies to the Program that he or she no longer has an interest in the outcome of the arbitration, the application will proceed based on the client's supporting documents alone.
- (b) For good cause shown, the Committee Chair or designated Program staff may grant or deny the filing fee waiver or order a reduced fee. The order of the Committee Chair shall be final.
- (c) The financial statement filed in support of a request for a fee waiver shall not be disclosed by the Program to the other party.
- (d) If a fee waiver is granted, the arbitrator(s) may nevertheless determine and allocate the appropriate filing fee between the parties and order it to be paid to the ACBA.

### **14. REFUND SCHEDULE**

#### **(a) Settlement or Withdrawal before Notice to Attorney**

If the dispute is settled or withdrawn before the request for arbitration is served on the attorney by the program, the program shall retain one half (1/2) of the filing fee paid, up to a maximum of \$100.

#### **(b) Settlement or Withdrawal Before Appointment of Panel**

If the dispute is withdrawn, or if the parties settle the dispute and so advise the Program in writing after the request for arbitration has been served on the respondent party by the program but before appointment of a panel, the program shall retain one half (1/2) of the filing fee paid, up to a maximum of \$100.

#### **(c) Settlement or Withdrawal After Appointment of Panel**

If the dispute is withdrawn, or if the parties settle the dispute and so advise the Program in writing after the panel has been appointed and at least (10) days prior to the hearing, the program shall retain one half (1/2) of the filing fee paid, up to a maximum of \$2,500. The remaining fee shall be refunded to the party who paid it.

#### **(d) Settlement or Withdrawal Less than Ten (10) Days Before Hearing**

After the hearing panel has been appointed, and less than ten (10) days before the hearing, there shall be no refund of filing fee. The parties shall nonetheless notify the Program in writing of settlement of the dispute.

#### **(e) Client Does Not Consent to Attorney's Request for Fee Arbitration**

If the attorney files a Request and the client fails to reply or does not consent to arbitration, the program shall retain one half (1/2) of the filing fee paid, up to a maximum of \$100.

#### **(f) Jurisdiction Reviewed and Declined**

If jurisdiction over the fee dispute is declined, the program will retain a minimum fee of \$50 and a maximum of one half (1/2) the original filing fee, the fee to be determined in accordance with the time spent in reviewing jurisdiction.

### **15. ALAMEDA COUNTY BAR ASSOCIATION**

Whenever these Rules indicate that a form, copy or other matter must be sent to the Program or to the ACBA, the item should be addressed as follows:

Alameda County Bar Association  
Fee Arbitration Program  
70 Washington Street, Suite 200  
Oakland, CA 94607