

**SANTA MONICA BAR ASSOCIATION
RULES OF PROCEDURE FOR THE RESOLUTION
OF FEE DISPUTES (ARBITRATION AND MEDIATION)**

Revised April 16, 2007; rev. October 15, 2007 [DRAFT]

**ARTICLE I.
DEFINITIONS**

RULE 1.0. Definitions.

As used in this chapter:

- 1.1 AGREEMENT TO MEDIATE:** A document signed by all parties to a controversy in which they agree to mediate their dispute per the rules of the Santa Monica Bar Association fee arbitration and mediation program.
- 1.2 ACTION:** A civil judicial proceeding brought to enforce, redress or protect a right.
- 1.3 ADMINISTRATOR:** The staff person responsible for administering the local bar association's Mandatory Fee Arbitration Program.
- 1.4 ARBITRATION:** A process in which a neutral third party makes a decision as to the appropriate amount of attorney's fees after considering testimony and/or documents from the parties.
- 1.5 ARBITRATION PACKET:** Packet of documents and forms, including instructions and information to request fee arbitration.
- 1.3 ASSIGNEE:** A person to whom a claim, right or property is transferred.
- 1.4 AWARD:** The decision of the arbitrator or arbitrators in the fee arbitration proceeding.
- 1.6 CLIENT:** A person who directly or through an authorized representative consults, retains or secures legal services or advice from an attorney in the attorney's professional capacity.
- 1.7 DECLARATION:** A declaration is a document in compliance with the requirements of Code of Civil Procedure § 2015.5, or an affidavit.
- 1.8 FILE:** Fee arbitration records and papers in a specific fee arbitration case.
- 1.9.1 HEARING PANEL:** One or three arbitrators assigned to hear the fee dispute and to issue the award.
- 1.9.2 MEDIATION:** A process in which a lawyer and client negotiate a mutually agreeable solution to their dispute with the assistance of a trained neutral mediator.

- 1.9.3 MEDIATED AGREEMENT:** The agreement reached by the parties to the mediation which resolves their fee dispute.
- 1.10 PANEL CHAIR:** Refers to either the sole arbitrator or Panel Chair of a three-member panel assigned to hear a matter. The Panel Chair is responsible for ruling on matters pertaining to the individual case assigned as set forth in these rules.
- 1.11.1 PARTY:** A person who initiates or is named in an arbitration proceeding under these rules, including an attorney, a client or other person who may be liable for payment of, or entitled to a refund of attorney's fees.
- 1.11.2 PRESIDING ARBITRATOR:** The person on the Mandatory Fee Arbitration program responsible for supervising the program's fee arbitrators and for ruling on matters as set forth in these rules.
- 1.12.1 PROGRAM:** Unless indicated otherwise, reference to the program means the Mandatory Fee Arbitration Program of the Santa Monica Bar Association.
- 1.13 STATE BAR:** The State Bar of California. Unless indicated otherwise, reference to the State Bar means the State Bar's Office of Mandatory Fee Arbitration.

ARTICLE II. ARBITRATION GENERALLY

RULE 2.0 Arbitration Mandatory For Attorneys.

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

RULE 3.0 Party's Failure To Respond Or Participate.

In a mandatory fee arbitration, if a party fails to respond to a request for arbitration or [fails to participate](#), the arbitration will proceed as scheduled and an award will be made on the basis of the evidence presented to the hearing panel. The award may include findings on the subject of a party's failure to appear at the arbitration.

RULE 4.0 Disputes Covered.

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

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

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

RULE 5.0 Binding Arbitration.

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

RULE 6.0 Withdrawal of Binding Arbitration Election

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

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

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

RULE 7.0 Right To Counsel.

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

RULE 8.0 Waiver Of Right To Request Or Maintain Arbitration.

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

- 8.1** answers a complaint in a civil action or other equivalent response to the civil action before filing a request for arbitration, after the required form entitled "Notice of Client's Right to Arbitration" was given pursuant to Business & Professions Code § 6201 (a);
- 8.2** commences an action or files any pleading seeking judicial resolution of a fee or cost dispute or seeking affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct;
- 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 & Professions Code § 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.

RULE 9.0 Stay Of Proceedings.

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

ARTICLE III
SANTA MONICA BAR ASSOCIATION PROGRAM

RULE 10.0 Presiding Arbitrator And Assistant Presiding Arbitrator; Representation Of Parties; Qualifications Of Arbitrators

(a) The Presiding Arbitrator supervises the arbitrators and mediators of the Santa Monica Bar Association Fee Arbitration Program. He/she is responsible for ruling on matters as set forth in these rules and shall be a member of the Santa Monica Bar Association. The Presiding Arbitrator may designate one or more Assistant Presiding Arbitrators from members of the Fee Arbitration Committee who shall act in place of the Presiding Arbitrator if he/she is absent or is unable to act.

(b) Neither the Presiding Arbitrator, the Assistant Presiding Arbitrator(s), nor any member of the Fee Arbitration Committee shall represent any party in a matter arbitrated by the Santa Monica Bar Association.

(c) All lawyer arbitrators shall be active members of the State Bar of California who have no record of public discipline. All non-lawyer arbitrators shall be persons who are not employed in the legal profession; for example, they shall not be paralegals, legal secretaries or lawyers admitted in another jurisdiction but not licensed to practice in California.

RULE 11 Determination Of Jurisdiction.

(a) The Program shall have jurisdiction over a fee dispute if at least one of the attorneys involved in the dispute has an office in Los Angeles County or maintained an office in Los Angeles County at the times the services were rendered.

(b) The program shall reject any request for arbitration when it is clear from the face of the request that the provisions of Business & Professions Code § 6200 have not been met or the matter is time barred under Business & Professions Code § 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.

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

(d) Within 15 days from service of notice of a ruling on a challenge to jurisdiction or claim that the matter is time barred, a party may file a written request for reconsideration based on new evidence. The Presiding Arbitrator shall rule on the request for reconsideration.

(e) There is no appeal of the Presiding Arbitrator's decision following reconsideration. Any ruling on reconsideration by the local bar program is final.

(f) 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.

(g) The program shall have discretion to decline to accept jurisdiction or to dismiss a proceeding without prejudice if (a) the fee arbitration program administered by the State Bar is a more convenient forum, or (b) the dispute can be more appropriately handled by another committee of the Association, or (c) arbitrable issues are excessively intertwined with non-arbitrable issues, or (d) other good cause appears.

RULE 12.0 Removal to the State Bar of California

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

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

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

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

d) A request for removal to the State Bar will be decided by the State Bar's Presiding Arbitrator under the applicable rules of procedure of the State Bar.

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

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

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

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

RULE 13.0 Effect Of Failure to Adhere to Time Requirements.

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

**ARTICLE IV.
INITIATION OF ARBITRATION PROCEEDING**

RULE 14.0 Request For Arbitration.

14.1 Arbitration is initiated by filing a written "Request For Arbitration" with the program on the approved program form and paying the appropriate filing fee as established by the program. Service of the request on the other party with whom there is a fee dispute named on the request form shall be made by the program.

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

14.3 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 program. 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.

14.4 The request for arbitration form may be made by (i) a person who is not the client but who may be liable for or entitled to a refund of attorney's fees or costs ("non-client"), or (ii) the attorney claiming entitlement to fees against a non-client. A fee arbitration between an attorney and a non-client is not intended to abrogate the requirement that the attorney exercise independence of professional judgment on behalf of the client or the protection of client confidences and secrets. Absent the client's written consent to disclosure of confidential information, a fee arbitration with a non-client is not intended to abrogate the attorney's duty to maintain client confidences and secrets, unless such disclosure is otherwise permitted by law. Absent the client's signature on the request for

arbitration, when an arbitration with a non-client is initiated, the program will give notice of the request to the client by first class mail at the client's last known address.

14.5 The client may be given the opportunity to request mediation of the fee dispute by checking the appropriate box on the request for arbitration form. Upon request by the client for mediation, rules 41.0 through 50 shall govern until the dispute is resolved through mediation or any party and/or the mediator determine that mediation will be unsuccessful. If the decision is made that mediation will not succeed, the matter will be returned to arbitration and an arbitrator(s) appointed under rule 21.

15.0 Filing Fee

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

15.1 Filing Fee Schedule

The minimum filing fee is \$100, which is non-refundable. The total filing fee is based upon the amount in dispute as follows:

- (a) Five percent (5%) of the amount in dispute when the total amount in dispute is less than \$10,000, with a minimum of \$100;
- (b) Six percent (6%) of the amount in dispute when the total amount in dispute is \$10,000 or more, but less than \$25,000;
- (c) Seven percent (7%) of the amount in dispute when the total amount in dispute is \$25,000 or more, with a maximum filing fee of \$5,000.

RULE 16.0 Request For Filing Fee Waiver.

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

- 16.2** For good cause shown, the Presiding Arbitrator may grant or deny the filing fee waiver or order a reduced fee. The order of the Presiding Arbitrator shall be final.
- 16.3** The financial statement filed in support of a request for a fee waiver shall not be disclosed by the program to the other party.

RULE 17.0 Response To Request For Arbitration.

- 17.1** The respondent party's reply to a Request for Arbitration, together with any response, if the respondent party is an attorney, to the issue of the attorney's responsibility for any award that refunds fees or costs or both to the client, shall be submitted to the program on its approved form within 30 days of the service of the request, unless an extension of time to reply is obtained from the program.
- 17.2** If the attorney seeks arbitration, and there is no written agreement between the parties that fee disputes be submitted to fee arbitration, arbitration shall proceed only if the client consents in writing on the approved form within 30 days of service of the request, unless the attorney is seeking removal from a local bar program under rule 11 of a matter in which the client has already requested arbitration or has consented to an attorney's request for arbitration.

RULE 18.0 Requests and Responses to Requests for Arbitration.

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

RULE 19.0 Settlement Of Disputes; Withdrawal From Arbitration; Refund Schedule.

- 19.1** Upon confirmation by the parties or the hearing panel if one has been assigned that a dispute has been settled, the matter shall be dismissed by the program in the absence of an assigned hearing panel, or by the panel chair if a notice of assignment of the hearing panel has been served on the parties.
- 19.2** (a) If a party wishes to withdraw from a binding arbitration and the matter has not been settled, all other parties must agree to the matter being withdrawn.
- (b) If there is a written agreement between the parties requiring arbitration of the fee dispute through the Mandatory Fee Arbitration Program, all other parties must consent to a request for withdrawal before the proceeding is dismissed.
- (c) If arbitration has been requested by the attorney, the matter may only be dismissed with the agreement of the other parties.

(d) In all other cases, the party who requested arbitration may withdraw from the arbitration proceeding without the consent of other parties at any time before evidence is taken.

19.3 Refund of the filing fee: If the matter is settled or dismissed based on withdrawal before [the request for arbitration is served on the responding party](#) by the program, the filing fee shall be refunded to the party who paid it, less the non-refundable minimum filing fee of \$100. If the matter is settled after the request for arbitration has been served on the respondent party by the program but before assignment of a panel, the program shall retain 25 percent of the filing fee paid up to a maximum of \$500.00. After assignment of a hearing panel, if written notice of the settlement is received by the program at least 10 days prior to the date of the scheduled hearing, the program shall retain 50 percent of the filing fee up to a maximum of \$1,000. The remaining fee shall be refunded to the party who paid it. After hearing panel assignment and less than 10 days before the hearing, there shall be no refund of filing fees. The return of fees does not apply where mediation has occurred under the mediation rules following; once mediation has occurred, there will be no refund of filing fees.

19.4 If the parties settle the fee dispute and wish to obtain a stipulated award incorporating the terms of a written settlement agreement, the 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.

RULE 20.0 Consolidations.

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

**ARTICLE V.
PANELS**

RULE 21.0 Appointment Of Panel.

21.1 For each dispute, the Program shall assign a hearing panel from the program's roster of fee arbitrators. A hearing panel shall consist of one attorney arbitrator if the amount in dispute is \$10,000 or less and three arbitrators if the amount in dispute is more than \$10,000, one of which shall be a non-lawyer. An attorney arbitrator shall be designated as Panel Chair. If the amount in dispute is more than \$10,000, the parties may agree, in writing, to have the matter heard by a single attorney arbitrator.

- 21.2** Upon the client's request, the program shall assign a sole arbitrator, or in the case of a three person panel, one of the attorney arbitrators, whose area of practice is civil or criminal law. Any such designation made by the client shall be of an arbitrator who practices in the same area of law as was involved in the matter for which the attorney was retained by the client. Any such request made pursuant to Business and Professions Code section 6200, subdivision (e) must be submitted by the client at the time the written "Request for Arbitration" on the approved program form is submitted to the program.
- 21.3** If a fee dispute involves \$1,000 or less, the arbitration shall be decided by the Presiding Arbitrator or designee. Each party shall submit all supporting documents and a complete written statement of the reasons for the dispute, a response, or both, under penalty of perjury. The parties have 30 days from the service by the program of the reply to the arbitration request, which will be reflected in a proof of service. The record shall thereafter be forwarded to the Presiding Arbitrator or designee for action, who may require either or both parties to submit additional information within 30 days. However, if the amount in controversy is less than \$1,000 but greater than \$500, the parties upon the request of any party, may appear at a hearing, either in person or telephonically, before the Presiding Arbitrator 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.
- 21.4** Any vacancy of an arbitrator, by way of disqualification or inability to serve, may be filled by the program, but in no event shall the arbitration proceed with only two arbitrators.
- 21.3** No person shall serve as an arbitrator who previously served as a mediator in the same or related case.

RULE 22.0 Notice Of Appointment Of Panel.

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

RULE 23.0 Challenge Disqualification Of Arbitrator(s).

Each party may disqualify one arbitrator without cause and shall have unlimited challenges for cause. Any disqualification without cause of an arbitrator shall be ineffective unless made in writing and served on the program within 15 days of the service of a notice of assignment of

panel or substitute arbitrator(s) if there is a disqualification or successful challenge. An arbitrator who believes that he or she cannot render a fair and impartial decision or who believes that there is an appearance that he or she cannot render a fair and impartial decision, shall disqualify themselves or shall accede to a party's challenge for cause. If an arbitrator does not agree to be disqualified, the challenge shall be decided by the Presiding Arbitrator.

RULE 24.0 Discharge Of Arbitrator Or Panel.

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

RULE 25.0 Prohibited Contacts With Arbitrators.

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

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

**ARTICLE VI.
THE HEARING**

RULE 26.0 Confidentiality.

26.1 All hearings shall be closed to the public. However, in the discretion of the hearing panel and in the absence of any objections by the parties, witnesses may be present during the hearing.

26.2 The hearing panel, upon request of the client, shall permit the client to be accompanied by another person and may also permit additional persons to attend. Any such person shall be subject to the confidentiality of the arbitration proceedings.

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

RULE 27.0 Waiver Of Personal Appearance.

27.1 Upon advance approval of the Panel Chair, any party may waive personal appearance and submit to the hearing panel testimony and exhibits by written declaration under penalty of perjury.

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

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

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

27.5 If all parties agree in writing, and upon approval by the panel chair, the hearing may be held by conference call.

RULE 28.0 Death Or Incompetence Of a Party.

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

RULE 29.0 Discovery.

29.1 A client who is a party to the arbitration is entitled to inspect and copy, during normal business hours, the following documents and records in the possession of the attorney:

- (a) The file relating to the matter in which the fee dispute arose;
- (b) All time records, statements or billings, client ledger cards, payment records or hard copies of computer data containing time charges or billing records and evidence of costs charged to the client relating to the matter in which the fee dispute arose. All time records, statements, billings and evidence of costs charged to the client relating to the matter in which the fee dispute arose and a billing and payment history of the client

29.2 A request by the client to inspect and/or copy any of the items referred to in rule 28.1 must be in writing and must be received by the attorney not later than twenty days before the arbitration hearing. The attorney shall allow the client to inspect and/or copy the

requested documents not later than ten days from receipt of the request. In lieu of such inspection and/or copying, the attorney shall provide copies of such documents not later than ten days from receipt of the request. If the attorney does not comply with the client's request, the panel chair may preclude the attorney from producing such documents at the hearing.

- 29.3** Nothing in these rules shall prohibit the arbitrators from requiring the parties to exchange or submit additional information or documents prior to the hearing.

RULE 30.0 Subpoenas.

The Presiding Arbitrator may issue subpoenas and/or subpoenas *duces tecum* at the request of a party. The Presiding Arbitrator 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 any costs of service of the subpoenas.

RULE 31.0 Commencement of Hearing; Notice; Attendance.

- 31.1** 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.

- 31.2** The panel shall serve written notice of hearing on each party at the address in the "Notice of Assignment of Panel" and the program within 15 days of its assignment and at least 15 days prior to the hearing date. Appearance by a party at a scheduled hearing shall constitute waiver by said party of any deficiency with respect to the giving of "Notice of Hearing." Notwithstanding the failure of either party to attend, the hearing shall proceed as scheduled and a decision made on the basis of evidence submitted.

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

- 31.4** An award may be made in favor of a party who is absent if the evidence so warrants. If neither party appears and the panel chair has not approved waiver of personal appearance, the panel will issue an award based on the evidence submitted.

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

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

RULE 32.0 Stipulations Encouraged.

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

RULE 33.0 Oaths.

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

RULE 34.0 Evidence.

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

RULE 34.5 Clarification Of Issues And Exchange Of Documents

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

RULE 35.0 Order Of Proof.

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

RULE 36.0 Interpreter.

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

RULE 37.0 Transcripts or Recordings.

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

RULE 38.0 Compensation of Arbitrators; Administrative Charges

- 38.1** No arbitrator shall be entitled to compensation for services unless the hearings extend beyond four hours. Unless waived in writing, each arbitrator will be compensated at the rate of \$150 for each additional hour after (a) a four hour hearing for matters where the dispute is less than \$25,000, or (b) an eight hour hearing for matters where the dispute is greater than \$25,000. The compensation shall be paid equally by each party to the program for each day of hearing on which compensation is payable. No compensation will be paid to arbitrators for services other than during formal hearing sessions extending beyond four hours. Any disputes concerning compensation of the arbitrators will be determined by the **Presiding Arbitrator**, and its determination shall be binding on the parties, including the arbitrators.
- 38.2** Except for the prescribed filing fees, no charges will be made by the program, nor by any arbitrator, for administrative or clerical services. A hearing room will be provided by an arbitrator or by the program without charge to the parties.
- 38.3** All parties will bear their own costs, including the costs of interpreters, reporters, and expert witnesses.

**ARTICLE VII.
AWARD**

RULE 39.0 Award.

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

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

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

Subtotal \$ _____

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

[] is awarded in the amount of \$ _____
In addition, the fee arbitration
filing fee of \$ _____ as paid by _____ shall be allocated:

Client: \$ _____
Attorney: \$ _____

For a net amount of: \$ _____

Accordingly, the following award is made:

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

OR

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

OR

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

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

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

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

39.7 The award shall be signed by all arbitrators concurring with it.

39.8 The award may include an allocation of the filing fee; however, it shall not include an award for any other costs of the arbitration, including attorneys' fees resulting from the arbitration proceeding.

39.9 The panel shall forward the original of the signed award to the Program, which shall serve a copy of the award by mail on each party together with a Notice of Rights After Arbitration form approved by the State Bar Board of Governors. No award is final or is to be issued until approved for procedural compliance and as to the form of the award by the Presiding Arbitrator or such person as the Chair may designate for this purpose. After approval of the award as to the procedural compliance and approval as to the form of the

award, the Program shall serve a copy of the award by mail on each party together with a Notice of Rights After Arbitration form approved by the State Bar Board of Governors. Any party who has submitted exhibits or documents to the panel shall, upon service of the award, make arrangements to retrieve them.

RULE 40.0. Correction Of Award By Hearing Panel.

- 40.1** The Hearing Panel may correct a binding or non-binding award only on the grounds set forth in Code of Civil Procedure § 1286.6 (a) [evident miscalculation of figures or evident mistake in the description of a person, thing or property referred to in the award] and subdivision(c) [the award is imperfect in a matter of form, not affecting the merits of the controversy] under the procedures set forth in Code of Civil Procedure § 1284. An application for such a correction does not extend the deadline for seeking a civil trial after a non-binding award is rendered, and a non-binding award will automatically become binding 30 days after it is served on the parties.
- 40.2** A party requesting correction or amendment under this rule must file a request in writing to the Program and serve a copy on the other party within ten days after service of the award. Any party to the arbitration may make a written objection to such request. Such request does not toll the time period for filing a civil action to challenge the award.
- 40.3** Any corrected or amended award will be served by the Program. The time for filing a petition to confirm, vacate or correct the award begins from the date of service of the amended or corrected award, the date of denial of the request for correction or amendment of the award, or the date that a request that a request for correction of amendment of the award is deemed denied under Code of Civil Procedure § 1284, whichever date is earlier.
- 40.4** The Hearing Panel shall either deny the application or correct the award in writing signed by the arbitrator(s) concurring therein. Any jurisdiction on the part of the Hearing Panel to amend or supplement an award expires upon entry of judgment.

**ARTICLE VIII
MEDIATION OF FEE DISPUTES**

RULE 41.0 PURPOSE

Mediation of fee disputes is a voluntary, consensual process where the attorney and client, with the assistance of a trained, neutral mediator, may reach an agreement about how to resolve the dispute. Mediation is an alternative to arbitration under these rules, and is encouraged by the

Santa Monica Bar Association. Any dispute not resolved through mediation will be assigned to a sole arbitrator or a hearing panel for arbitration under these rules.

RULE 42.0 JURISDICTION

- 42.1** Participation in mediation is voluntary. No party to the dispute shall be required to mediate and any party may terminate the mediation at any time.
- 42.2** The Santa Monica Bar Association shall have jurisdiction to mediate any dispute in which a request for arbitration has been accepted for filing by the Bar Association, the appropriate filing fee has been paid or an order of the Presiding Arbitrator granting a waiver of that fee has been filed, and all parties have agreed in writing to mediate.
- 42.3** The mediator and each party to the mediation shall sign an agreement to mediate in the form provided by the Santa Monica Bar Association and approved by the California State Bar prior to the commencement of the first mediation session.

43.0 APPOINTMENT/QUALIFICATIONS OF MEDIATORS

- 43.1** Mediators shall be appointed by the Santa Monica Bar Association Board of Trustees.
- 43.2** Both lawyers and non-lawyers shall be qualified to mediate under these rules if they fulfill the requirements of rule 43.3.
- 43.3** Prior to serving as a mediator, each mediator must: (a) complete at least forty hours of mediation training acceptable to the Santa Monica Bar Association and per any State Bar guidelines; and (b) act as a mediator in at least three mediations, or, in the discretion of the Santa Monica Bar Association, act as an observer in at least three mediations; and (c) attend any required orientation concerning the mediation of fee disputes.

RULE 44.0 INITIATION OF MEDIATION

- 44.1** When both parties request mediation on the form for request for arbitration and the reply form, and after any jurisdictional, venue or other issues have been decided, the matter will proceed to mediation. If both of the parties do not wish to mediate, the matter will proceed to arbitration.
- 44.2** The filing fee paid to initiate fee arbitration through the Santa Monica Bar Association shall include one mediation session of up to four hours in length. Once all parties have agreed to mediate, there shall be no refund of the filing fee paid except as set forth in rule [44.3](#).
- 44.3** If the matter is settled after the parties agree to mediation, but before assignment of a mediator, the Santa Monica Bar Association shall retain 25 percent of the filing fee paid up to a maximum of \$500.00. After assignment of a mediator, if written notice of the

settlement is received by the Santa Monica Bar Association at least 24 hours prior to the scheduled mediation, the Bar Association will retain 50% of the filing fee up to a maximum of \$1,000. The remaining fee shall be refunded to the party who paid it.

RULE 45.0 ASSIGNMENT OF A MEDIATOR

Within 15 days after receipt of the signed Agreement to Mediate from all parties, the Director shall assign one mediator and shall notify the parties of the assignment. The notice shall include the name, address and telephone number of the mediator assigned.

RULE 46.0 DISQUALIFICATION OF MEDIATOR

46.1 A mediator who has any personal bias regarding a party or the subject matter of the dispute, a financial interest in the subject matter of the dispute, or a financial or significant personal or social relationship with a party to the dispute shall not serve as a mediator in that dispute.

46.2 A mediator shall disclose any information providing a basis for recusal of a judge under Code of Civil Procedure section 170.1.

46.3 Any party may disqualify one mediator without cause and shall have unlimited challenges for cause. Any disqualification or challenge of a mediator must be made in writing no later than 10 days after receipt of the notice of assignment of the mediator, addressed to the Santa Monica Bar Association with a copy to the mediator and the other party. The challenge shall be resolved by the Presiding Arbitrator or his or her designee.

46.4 Upon the withdrawal or removal of the mediator, the Santa Monica Bar Association shall reassign the matter and notify the parties of the new mediator within 15 days of notice of withdrawal or removal.

RULE 47.0 MEDIATION SESSION

47.1 Within 10 days after the mailing of the notice of mediator assignment, the mediator shall contact the parties and arrange for a date for the mediation. The mediation shall be held no later than 30 days from the date the notice of assignment of mediator was served. The mediator shall immediately mail notice of the mediation to the parties and the Santa Monica Bar Association which includes the location, date and time of the session.

47.2 Mediation shall be scheduled for a session of up to four hours with no compensation for the mediator. Upon agreement of the parties and concurrence of the mediator, the session

may be extended or additional or longer sessions may be scheduled. After the initial four hours, mediator compensation for additional or longer sessions shall be at an amount to be agreed upon by the parties and the mediator but shall be no more than \$150.00 per hour. Mediator compensation shall be paid directly to the mediator by the parties.

- 47.3** Only the parties to the mediation, their attorneys or other advisors, if any, and the mediator shall be present during the mediation. However, the parties may agree to have others present during the process.
- 47.4** Nothing in these rules shall prevent the mediator from meeting with the parties and/or their counsel or advisors separately during the course of the mediation or from otherwise communicating separately with them. At the discretion of the mediator, any mediation session may be conducted by telephone.
- 47.5** If a party fails to appear, the mediator shall have the option of rescheduling or terminating the mediation. The mediator shall report any such action to the Santa Monica Bar Association.
- 47.6** If the dispute is resolved by the parties, the mediator shall reduce to writing the points of agreement pursuant to rule 49 and the Minimum Standards established by the California State Bar. A copy of this writing reflecting the resolution of the dispute shall be sent by the mediator, or on her or his behalf, to the Santa Monica Bar Association per the rules established for this procedure by the Santa Monica Bar.

RULE 48.0 DOCUMENTS

Prior to the first mediation session, the attorney will provide copies of the relevant detailed billing records to the mediator and the other party. The party may agree to exchange other documents containing information relevant to the dispute. All parties may provide the mediator with a brief, written statement outlining any pertinent information not contained in the Request for Arbitration. Any party submitting such a statement shall also provide copies to all other parties.

RULE 49.0 RESOLUTION

49.1 If the dispute is resolved by the parties, the points of agreement shall be immediately reduced to writing at the session. The agreement must be signed by all parties. The agreement shall specify the name of the attorney who must make a refund of moneys to the client, if a refund is agreed upon. The agreement shall include, at a minimum, the following:

The parties agree that the total amount of fees and/or costs which should have been charged in this matter are: \$ _____

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

In addition, the fee arbitration filing fee shall be allocated:

Client: \$ _____

Attorney: \$ _____

For a net amount of: \$ _____

Accordingly, it is agreed that:

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

OR

(b) Attorney, _____, shall refund to client, _____ : \$ _____

OR

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

49.2 The agreement shall be signed by all parties and duplicate originals distributed to each party who signed it and the Santa Monica Bar Association.

49.3 With the consent of all parties, the parties may prepare a more formal agreement which shall become effective upon signature of all parties.

49.4 The mediator shall not draft any release, or provide legal advice to any party concerning the terms of the agreement.

49.5 If the parties are unable to reach a resolution of the fee dispute through mediation, the mediator shall immediately notify the Santa Monica Bar Association and the matter shall proceed to arbitration under these rules.

49.6 The agreement must specify the name of the attorney required to make a refund to the client, if a refund is agreed upon.

49.7 A "Notice of Rights after Mediation" booklet must be delivered to the parties to the mediation upon conclusion of the proceeding.

RULE 50.0 CONFIDENTIALITY

Except as otherwise set forth in these rules, all communications, negotiations or settlement discussions by and between participants and/or mediators shall remain confidential and shall not be used in any subsequent arbitration or other proceeding. All or part of a communication or

document which may be otherwise privileged or confidential may be disclosed if all parties to the mediation so consent. By signing the Agreement to Mediate, the parties have agreed that the mediated agreement may be disclosed to enforce that agreement.

ARTICLE IX SERVICE; ADDRESS

RULE 51.0 Service.

- 51.1** Unless otherwise specifically stated in these rules, service on the client shall be by personal delivery, by deposit in the United States mail, or by deposit in a business facility used for collection and processing of correspondence for mailing with the United States Postal Service pursuant to Code of Civil Procedure § 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.
- 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.
- 51.3** If either party is represented by counsel, service shall be on the party as indicated in subsections 51.1 and 51.2 of this rule, and on the counsel at the latest address shown on the official membership records of the State Bar.
- 51.4** The service is complete at the time of deposit. The time for performing any act shall commence on the date service is complete and shall not be extended by reason of service by mail.
- 51.5** Where a facsimile or email transmission is used to communicate with the program or to file any document, it will not be considered received unless the program also receives within five days of the date of the transmission, the original of the faxed document.
- 51.6** In the event that the client fails to keep the program advised of his or her current address, the program may close the arbitration request, if it is made by the client, after 30 days from the date that the program learns of the invalid address.