

**LOS ANGELES COUNTY BAR ASSOCIATION
DISPUTE RESOLUTION SERVICES**

**RULES FOR CONDUCT OF
ARBITRATION OF FEE DISPUTES AND OTHER RELATED MATTERS**

(Approved by the Board of Governors July 20, 2007.)

1. INTENT AND GOAL

The intent and goal of these Rules is to provide for a fair, speedy, **economical**, and impartial hearing and award.

2. GOVERNING LAW

These Rules, along with the petition and response (if any), constitute the "written agreement" referred to in Chapters 1,2 and 3 of Title 9 of Part 3 of the Code of Civil Procedure (Code Civ. Proc., Section 1280 et seq.). Except as these Rules may otherwise provide, Article 13 of Chapter 4 of Division 3 of the Business and Professions Code and Code of Civil Procedure Section 1280 et seq. shall govern arbitration under these Rules.

3. ORGANIZATION AND ADMINISTRATION

(a) The Arbitration Committee shall consist of all ~~arbitrators~~ **persons appointed thereto by the Arbitration Committee staff.**

(b) A Committee member may be removed by the Committee Chairperson for good cause.

(c) The arbitration program shall be administered by the Arbitration Executive Committee, consisting of the Chairperson and one or more Vice Chairpersons, all appointed by the President of the Los Angeles County Bar Association. The Arbitration Executive Committee shall set policy and procedure, supervise the Arbitration Committee staff, recommend rule changes to the Trustees, set fees, and otherwise administer and supervise the program established by these Rules.

4. MANDATORY ARBITRATION

(a) Arbitration is mandatory when a client commences arbitration of a dispute between the client and an attorney concerning fees charged by the attorney for professional services rendered or reimbursable costs, or both (Bus. & Prof. Code, Sections 6200 (b), 6205). Disputes which are subject to mandatory arbitration are those disputes between attorneys and clients regarding fees or reimbursable costs, ~~including fees or reimbursable costs~~, including but not limited to:

(i) The amount or balance of fees or reimbursable costs claimed by the attorney to be owing by the client.

(ii) The amount of retainers or deposits or payments by the client which are claimed by the client to have been overpaid to the attorney and which are claimed to be subject to refund to the client.

(b) Arbitration is mandatory when a client has signed a fee agreement, which provides for arbitration through the Business & Professions Code Section 6200 program to arbitrate.

5. VOLUNTARY ARBITRATION

Voluntary arbitration requires written consent of both parties. Disputes which are subject to voluntary arbitration include:

(a) Disputes between the attorney and client concerning ownership of or the client's right to use working papers prepared by the attorney or by others for the attorney; and

(b) ~~Disputes between attorneys concerning:~~

(i) ~~Allocation of fees between two or more attorneys when allocation does not involve the client;~~

(b) Disputes between attorneys concerning allocation of fees between two or more attorneys when allocation does not involve the client;

(c) Fees in Cumis Cases (Civil Code Section 2860 (c)); and

(d) When an attorney commences arbitration of charges by the attorney for professional services rendered or reimbursed costs, or both.

6. LIMITS ON ARBITRATION

(a) The following disputes are not subject to voluntary or mandatory arbitration:

(i) Disputes where the attorney is also admitted to practice in another state, 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 (Bus. & Prof. Code, Section 6200 ~~(a)~~ (b)(1));

(ii) Disputes where client seeks affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct (Bus. & Prof. Code, Section 6200 ~~(a)~~(b)(2));

(iii) Disputes where the fee to be paid by the client or on his or her behalf has been determined pursuant to statute or Court order (Bus. & Prof. Code, Section 6200 ~~(a)~~ (b)(3)); and

~~(iv) Disputes where the request for arbitration is made by a person who is not the client of the attorney.~~

(b) The Arbitration Executive Committee reserves the right to decline to accept any arbitration.

7. APPLICABILITY OF RULES

The Rules shall be equally applicable to both mandatory and voluntary arbitration except as specifically provided otherwise.

8. RULES APPLICABLE ONLY TO MANDATORY ARBITRATION

(a) NOTICE REQUIREMENT BY ATTORNEY TO CLIENT

An attorney must serve, either personally or by first class mail to the client, the State Bar's "Notice of Client's Right to Arbitrate" form prior to or at the time of serving the Summons or Claim in an action or other proceeding against the client for recovery of fees which are subject to mandatory arbitration. Forms of the "Notice of Client's Right to Arbitrate" are available upon request from the Arbitration Committee **staff**. Failure to give the notice shall be a ground for dismissal of the action (Bus. & Prof. Code Section 6201(a)).

(b) STAY OF COURT PROCEEDINGS

If an attorney (or the attorney's assignee) commences a fee collection action in any court, and that dispute is subject to mandatory arbitration, then the client may seek to stay the court action by initiating mandatory arbitration under these Rules and by filing a copy of the Petition for Arbitration on the approved Los Angeles County Bar Association form with the court, together with the original form entitled "Notice that Action has Been Stayed," and by complying with any such additional requirements as the Court may direct (Bus. & Prof. Code Section 6201(c)).

(c) WAIVER OF RIGHT BY CLIENT TO REQUEST OR MAINTAIN ARBITRATION

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

(i) Before initiating arbitration, the client answers a complaint in a civil action if adequate notice of the right to arbitration has been given (Bus. & Prof. Code, Section 6201(d));

(ii) The client commences an action or files any pleading seeking judicial resolution of the fee dispute or seeking affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct (Bus. & Prof. Code, Section 6201 (d));

(iii) The client fails to *submit a request for arbitration in writing that is either postmarked or actually received by the Los Angeles County Bar Association 30 days or less after the client's receipt* of the "Notice of Client's Right to Arbitrate" (Bus. & Prof. Code, Section 6201(a)); or

(iv) The time for filing a civil action requesting the same relief would be barred by the applicable statute of limitation, but that limitation shall not apply if the client requests arbitration after the attorney has filed a civil action covering a dispute that is subject to mandatory arbitration (Bus. & Prof. Code, Section 6206).

(d) REQUESTING HEARING THROUGH THE STATE BAR

A client or an attorney who believes that he or she cannot obtain a fair or impartial hearing under the Committee's Rules for Conduct of Arbitration of Fee Disputes and Other Related Matters shall be entitled to a hearing through the State Bar of California ~~upon protest~~ **in compliance with the State Bar rules**. In a matter already pending before the Committee, a written ~~protest~~ **request** must be received by the Arbitration Committee Office. ~~The Arbitration Committee~~ **DRS shall release jurisdiction** of the matter upon written notification of the State Bar's acceptance of said matter for arbitration.

9. ASSIGNMENT OF ARBITRATORS

(a) Disputes will be assigned to a sole arbitrator if the amount in dispute does not involve more than \$7,500 ~~\$25,000 in a binding arbitration or \$20,000 in a non-binding arbitration~~. ~~The Arbitration Executive Committee may, in its discretion, increase or decrease these limits as it sees fit.~~ All other disputes will be assigned to a panel of three arbitrators (panel) unless the parties to the arbitration agree in writing to a ~~panel of less than three members~~ **sole arbitrator**, before or during the proceeding.

(b) All arbitrators will be appointed by the Arbitration Committee staff. ~~In mandatory cases, three member panels will include one person who is not a member of the State Bar of California, but such person may not serve as chairperson; otherwise~~ Three member panels will include one layperson, but such person may not serve as chairperson; otherwise all arbitrators shall be active members of the State Bar of California, in good standing.

(c) For mandatory arbitration, at the option of the client, exercised at the time the petition for arbitration is filed with the Arbitration Committee (Rule 12);

(i) If the dispute is assigned to a panel of three arbitrators, the panel shall include one attorney whose area of practice is either civil law or criminal law, as requested by the client; or

(ii) If the dispute is assigned to a sole arbitrator, such sole arbitrator shall be an attorney whose area of practice is either civil law or criminal law, as requested by the client; and

~~— (iii) 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. In cases in which this is not practicable, the Arbitration Committee Staff will assign a volunteer with general practice experience.~~

The Arbitration Committee shall request its members who are members of the State Bar of California to designate such members' area or areas of practice and such designation shall be used for assignment of arbitrators pursuant to the Rule. A member may designate both civil and criminal areas of practice.

(d) A Vice Chairperson shall be designated to supervise all arbitrations. The supervising Vice Chairperson shall be available to the arbitrator(s) for information, guidance and advice, but the power of decision shall rest with the arbitrator(s). The supervising Vice Chairperson shall also be available to the parties and their counsel for information but shall take care to preserve his or her neutrality at all times. Whenever these Rules provide for reference of a matter to a Vice Chairperson, it shall be referred to the supervising Vice Chairperson designated for that arbitration.

~~(e) When a respondent's reply and agreement to binding arbitration is received after a sole arbitrator has been assigned, it is the responsibility of the parties to request the assignment of a panel within 15 days from assignment if the dispute is more than \$7,500.~~

10. NOTICE OF APPOINTMENT OF ARBITRATOR(S)

A notice identifying the arbitrator(s) who have been appointed to hear the particular dispute shall be served on the parties at least 15 days prior to the date of the hearing.

11. DETERMINATION OF JURISDICTION

(a) Unless the sole arbitrator or panel has already been appointed, the Chairperson, in his or her discretion, may refer to the Arbitration Executive Committee for decision any question concerning classification of a dispute as voluntary or mandatory, or whether a dispute shall be accepted for voluntary arbitration, or any other jurisdictional or related issue which the Chairperson considers to be of substantial importance or controversy. Otherwise, all such questions arising before the appointment of the arbitrator or panel shall be referred to a Vice Chairperson, who shall decide the matter in writing.

(b) Once a sole arbitrator or panel has been appointed, all issues not already referred to the Arbitration Executive Committee or a Vice Chairperson shall be decided by the sole arbitrator or panel.

(c) Each sole arbitrator or panel shall have the authority to determine jurisdiction and shall decline to act if it determines that it lacks jurisdiction.

(d) The arbitrator or panel (or if none has been appointed, the Vice Chairperson) may dismiss any arbitration if the attorney does not maintain an office in Los Angeles County or if no substantial legal services were performed in Los Angeles County.

12. INITIATION OF MANDATORY ARBITRATION PROCEEDINGS

(a) PETITION FOR MANDATORY ARBITRATION BY CLIENT

Mandatory arbitration is initiated when the client files a written "Petition for Arbitration" on the approved form with the Arbitration Committee, and pays the appropriate filing fee, or applies for waiver of the filing fee under Rule 13. Service of the Petition for Arbitration on the attorney shall be made by the Arbitration Committee **staff**. At the time of service of the Petition for Arbitration on the attorney, the Arbitration Committee **staff** shall also serve upon the Attorney a copy of the approved State Bar "Notice of Attorney Responsibility" form.

(b) RESPONSE BY ATTORNEY

Any response by the attorney to a Petition for Arbitration, together with any response to the issue of the attorney's responsibility for any award that refunds fees and/or costs to the client, shall be filed within 15 days of the service of the Petition. In the event the attorney or client who has previously agreed in writing to arbitration fails to respond to a Petition for Arbitration or refuses to participate in the arbitration, the hearing will proceed as scheduled, and a decision made on the basis of the evidence.

13. FEES AND REQUESTS FOR WAIVER OF FILING FEES IN CASES SUBJECT TO MANDATORY ARBITRATION

(a) The Board of Trustees of the Los Angeles County Bar Association establishes the filing fee schedules. The schedules may be obtained by contacting the fee arbitration program staff.

(b) The filing fee schedule for arbitration is based on the amount in dispute as follows:

(i) *Fifty dollars plus five percent (5%) of the amount in dispute when the total amount in dispute is less than \$10,000.*

(ii) *Six percent (6%) of the amount in dispute when the total amount in dispute is \$10,000 or more but less than \$20,000.*

(iii) *Seven percent (7%) of the amount in dispute when the total amount in dispute is \$20,000 or more, with a \$5,000 maximum filing fee.*

- (c) Any party requesting mandatory arbitration that is financially unable to pay the filing fee may apply for a waiver of the filing fee. An application for waiver of the filing fee shall be made in writing on the Arbitration Committee's form. Program staff will apply fee waiver criteria to grant or deny the application or reduce the filing fee, and may allow the petitioner additional time in which to pay the filing fee, but that period of time shall not exceed 90 days without consent of all other parties subject to the approval of the Executive Director of Dispute Resolution Services or his/her designee. The program staff shall communicate the decision in writing to all parties. A fee waiver decision made by the Executive Director or his/her designee may be appealed to ~~a panel of no more than 2 program Vice Chairs~~ **the Arbitration Executive Committee** designated by the ~~Chair~~ on an annual basis. The decision of the Vice Chair shall be final.
- (d) An application for waiver of the filing fee shall accompany a completed and executed petition for mandatory arbitration. No party shall be required to respond until the application for waiver of the fees has been decided.
- (e) If petitioner is required to pay all or part of the fee and fails to pay the sum in full within the time provided in the Vice Chairperson's decision (or if no time is provided, within 30 days after service of the Vice Chairperson's decision), then the petition shall be dismissed without prejudice.
- (f) If the petitioner's request for a fee waiver is granted or the fee is reduced, the petitioner agrees to pay the amount waived or reduced to the extent of any refund awarded.

14. INITIATION OF VOLUNTARY ARBITRATION PROCEEDINGS

(a) Parties to an existing dispute may commence a voluntary arbitration under these Rules by filing with the Arbitration Committee copies of a Petition for Arbitration and response thereto signed by the parties or by demanding arbitration in writing after having agreed by written contract, in advance of any dispute, to submit disputes under the contract to arbitration pursuant to these Rules. The Petition and Response or the written demand and cross demand shall contain a statement of the matter in dispute, the amount of money involved, if any, the issues to be resolved, and the remedy sought. If the arbitration commences by reason of a written demand pursuant to a prior written agreement to arbitrate under these Rules, the demand shall be accompanied by a copy of the written contract which includes the agreement to arbitrate pursuant to these Rules.

(b) The Petition or demand shall be accompanied by the appropriate filing fee, which shall not be waived or reduced.

15. FILING FEE REFUND POLICY

(a) The ~~Arbitration Committee~~ **program** will retain a \$50 non-refundable fee on all cases filed. No refund is available for filing fees of \$50 or less.

(b) If a case closes prior to the assignment of a mediator or arbitrator, the ~~Arbitration Committee~~ **program** will retain 50% of the total filing fee with a \$50 minimum.

(c) In cases closed after the assignment of a mediator, sole arbitrator or arbitrator panel, the ~~Arbitration Committee~~ **program** will retain 75% of the total filing fee with a \$50 minimum.

(d) No refund will be made on a case where an arbitration hearing date has been scheduled by the sole arbitrator or arbitrator panel, or a mediation session date has been scheduled by the mediator, unless DRS receives written notice of settlement or withdrawal of the arbitration or mediation no later than 10:00 a.m. on the business day preceding the date set for the arbitration hearing or mediation session.

(e) *If a mediation session or arbitration hearing has commenced, no refund will be made.*

(f) In cases closed where the petitioner is a lawyer or law firm and the respondent attorney declines arbitration, or the Arbitration Committee determines it does not have jurisdiction, the Arbitration Committee will retain 10% of the filing fee with a minimum of \$50 dollars.

16. ENUMERATION OF ISSUES

If the issues to be arbitrated are not clearly set forth in the Petition and Response or demand and cross demand, or in the correspondence or other submitted documents, the sole arbitrator or panel (or Vice Chairperson if the sole arbitrator or panel has not yet been appointed) may request the parties to clarify the issues. The sole arbitrator or panel may decline to determine any issues not set forth in the Petition and Response or demand and cross demand, or not clarified in compliance with this Rule.

17. TIME SCHEDULE FOR ARBITRATION

The arbitrator(s) shall endeavor to adhere to the following time schedule, except where emergencies or circumstances beyond the control of the arbitrator(s), or the parties require short extensions. The "At-Issue Date" is the date on which the Petition and Response, signed by all parties, or the demand for arbitration under a prior agreement to arbitrate and any applicable filing fee, have all been received by the Arbitration Committee; provided, that if a Petition has been filed but no Response is filed, then the "At-Issue Date" is the date on which the time for filing the Response expires.

(a) TIME SCHEDULE FOR SOLE ARBITRATOR PROCEEDINGS

(i) The sole arbitrator should be appointed within six weeks of the At-Issue Date.

(ii) The Notice of Hearing should be served on the parties within two weeks after appointment of the sole arbitrator.

(iii) The hearing should be held within four weeks of service of the Notice of Hearing.

(iv) The preparation of the award and transmittal thereof to the Arbitration Committee Office should be completed within two weeks of completion of the hearing.

(v) The award should be served on the parties by the Arbitration Committee Office within two weeks from receipt of the award from the arbitrator.

(b) TIME SCHEDULE FOR THREE MEMBER PANEL ARBITRATIONS

(i) Appointment of the panel of arbitrators should be completed within five weeks of the At-Issue Date.

(ii) The Notice of Hearing should be served on the parties by the panel chairperson within three weeks after appointment of the panel.

(iii) The hearing should be held within six weeks of service of the Notice of Hearing.

(iv) The preparation of the award by the panel and transmittal thereof to the Arbitration Committee Office should be completed within four weeks of completion of the hearing.

(v) The award should be served on the parties by the Arbitration Committee Office within two weeks from receipt of the award from the panel.

18. FAILURE TO ADHERE TO TIME SCHEDULE FOR ARBITRATION

The failure of any person or party to adhere to the time schedules for arbitration set forth in the foregoing Rule shall not invalidate any award rendered in arbitration. However, the Chairperson may discharge an arbitrator or panel from further proceedings whenever the Chairperson, in his or her sole discretion, determines that there has been unreasonable delay by the arbitrator or panel in performing their duties under these Rules.

19. NOTICE OF HEARING

The sole arbitrator, or the panel chairperson in consultation with the other members of the panel, shall select a time and place for the hearing and cause notice thereof to be served personally or by first-

class mail on the parties to the arbitration and on the other members of the panel at least 15 days before the hearing. Appearance at the hearing waives the right to notice (Code Civ. Proc. Section 1282.2 (a)(1)). The notice shall advise the parties of their right to present witnesses and documentary evidence in support of their position, to be represented by counsel, and, at their own expense, to have a stenographic record of the proceedings made if proper arrangements are made with the sole arbitrator or panel chairperson.

20. AWARD WITHOUT HEARING

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

21. REPRESENTATION BY COUNSEL

Any party may be represented by counsel (Code Civ. Proc., Section 1282.4). A party intending to be so represented shall notify the sole arbitrator or panel chairperson and the Arbitration Committee **staff** in writing of the name, address and telephone number of counsel, and thereafter all notices to which such party may be entitled hereunder shall be sent to counsel. In the absence of such written notification, all notices will be sent to the parties.

22. STENOGRAPHIC OR OTHER RECORD

(a) Any party requesting a stenographic record of the arbitration proceedings shall make the necessary arrangements for the taking of that record. The requesting party or parties shall pay the cost of such record. Every party to the arbitration shall be entitled to a copy of the report's transcript upon written request and payment of the expense to the reporter.

(b) ~~The sole arbitrator or panel may arrange for the taking of a stenographic record or for the making of any other type of record upon determining that such a record is needed. The sole arbitrator or panel shall allocate the cost of such record to a party or among the parties (Code Civ. Proc., Section 1284.2).~~

23. INTERPRETER

Any party requesting an interpreter shall make the necessary arrangements for the services of the interpreter. The requesting party or parties shall pay the cost of such services. ~~The sole arbitrator or panel may arrange for the services of an interpreter whether or not such services are requested by either party, upon determining that such services are needed. The sole arbitrator or panel shall allocate the cost of such services to a party or among the parties (Code Civ. Proc., Section 1282.6).~~

24. ISSUANCE OF SUBPOENAS

The Arbitration Committee will issue in blank subpoenas and subpoenas duces tecum, signed but otherwise in blank. Subpoenas and subpoenas duces tecum shall be served and enforced in accordance with Code of Civil Procedure Sections 1985-1997 (Code Civ. Proc., Section 1282.6).

25. NOTICE TO APPEAR AND PRODUCE

Use of a notice to appear and produce with respect to a party, as provided in Code of Civil Procedure Section 1987, is authorized, and that section together with any other applicable sections of Chapter 2 of Title 3 of Part 4 of the Code of Civil Procedure (Code Civ. Proc., Section 1985 et seq.) shall govern such notices, except that a notice requiring production of books, documents or other things (Code Civ. Proc., Section 1987 (b)) need only be served at least ten days before the hearing.

26. **ORDER FOR PRODUCTION**

The sole arbitrator or panel may within a reasonable time in advance of the hearing date or any adjourned hearing date, order any party to produce any books, documents or other things in the party's possession or under his or her control, which the sole arbitrator or panel determines are not privileged and are relevant to the subject matter of the arbitration (Code Civ. Proc., Section 1282.6).

27. **POSTPONEMENTS; ADJOURNMENTS**

Upon request of a party to the arbitration and for good cause, or upon their own determination, the sole arbitrator or panel may postpone or adjourn the hearing from time-to-time (Code Civ. Proc., Section 1282.2(b)).

28. **HEARING PROCEDURE; RULES OF EVIDENCE**

(a) The sole arbitrator or panel chairperson shall preside at the hearing. The sole arbitrator, or the panel by majority vote, shall rule on the admission and exclusion of evidence and on questions of procedure, and shall exercise all powers relating to the conduct of the hearing (Code Civ. Proc., Section 1282.2(c)).

(b) The parties to the arbitration are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at the hearing, but the rules of evidence and rules of judicial procedure applicable in the courts of California need not be observed. Upon request of any party to the arbitration or upon request of any arbitrator, the testimony of witnesses shall be given under oath (Code Civ. Proc., Section 1282.2(d)). The sole arbitrator or panel chairperson may administer oaths to witnesses appearing or testifying at the hearing (Code Civ. Proc., Section 1282.8). The sole arbitrator or panel shall have the power to limit and regulate the number, timing, form and length of the parties' written presentation.

(c) Any relevant attorney-client communications or attorney work product may be disclosed in connection with an arbitration hearing, a trial after arbitration, or judicial confirmation, correction, or vacation of an arbitration award, but in no event shall the disclosure be deemed a waiver of the confidential character of such matters for any other purpose (Bus. and Prof. Code, Section 6202).

(d) The sole arbitrator or panel has the power to preserve and enforce order in the proceedings before them and to provide for the orderly conduct of proceedings before them. When confronted with a discourteous, unruly or uncooperative party or witness, the sole arbitrator or panel may, among other things, adjourn the proceedings, take only written evidence and testimony, serve the party or witness with a subpoena or subpoena duces tecum, requiring his or her attendance at an adjourned hearing under penalty of contempt, exclude the witness, or if the offending party is the petitioner, and in an extreme case only, dismiss the proceedings with prejudice.

(e) If the arbitrator or panel intends to base an award upon information not obtained at the hearing, such information shall be disclosed to all parties to the arbitration and the parties given an opportunity to meet it (Code Civ. Proc., Section 1282.2(g)).

(f) The sole arbitrator or arbitrators shall receive evidence relating to claims of malpractice and professional misconduct, but only to the extent that those claims bear upon the fees to which the attorney is entitled. The sole arbitrator or arbitrators shall not award affirmative relief, in the form of damages or offset or otherwise, for injuries underlying such claim. Nothing herein shall be construed to prevent the sole arbitrator or arbitrators from awarding a refund of unearned fees previously paid by the client (Business and Professions Code Section 6203(a)).

29. **ARBITRATION IN THE ABSENCE OF A PARTY**

The arbitration may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made against a party solely because of the party's

absence. The arbitrator or panel shall require the party who is present to submit such evidence as may be required to support the making of an award. An award may be made in favor of a party who is absent if the evidence so warrants.

30. ARBITRATION BY PANEL IN THE ABSENCE OF ONE OF THE MEMBERS

(A) If a member one of the panel members who has been duly notified, for any reason fails to participate in the arbitration appear, upon written stipulation of the parties, the arbitration hearing may proceed with a sole attorney arbitrator. shall continue if the parties agree in writing but only the remaining arbitrator(s) may make the award (Code Civ. Proc., Section 1282.2(f)). Under no circumstances will the hearing proceed with two (2) arbitrators.

(B) In the event there is no written stipulation of the parties to have an attorney hear the arbitration as sole arbitrator, the hearing date: 1) shall be adjourned and continued, to permit attendance of the absent arbitrator or assignment of a new arbitrator to the panel; or, 2) vacated, and the matter returned to the Arbitration committee staff for reassignment.

31. WITNESSES; FEES AND MILEAGE

Except for the parties to the arbitration and their agents, officers and employees, all witnesses appearing pursuant to subpoena or subpoena duces tecum are entitled to receive fees and mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in the Superior Court. The fee and mileage of a witness subpoenaed upon the application of a party to the arbitration shall be paid to the witness in advance by such party, and, if demanded and not so paid, the witness shall not be required to attend (Code Civ. Proc., Section 1283.2).

32. INSPECTION:

(a) **Notwithstanding Rule 33(a)**, a client petitioning for arbitration is entitled to inspect, during normal business hours, the following documents and records in the possession of the respondent:

(i) The file relating to the matter in which the dispute arose.

(ii) All statements or billings, and client ledger cards of similar records kept, relating to the matter in which the fee dispute arose.

(b) A request by the client to inspect any of the items referred to in (a) must be in writing and must be given to the respondent not later than 20 days prior to the arbitration hearing. The respondent shall either allow inspection and copying or shall provide copies of the requested documents without charge to the client no later than five days from receipt of the request. If the respondent does not comply with the client's request, the panel chair may, at his/her discretion disallow the production of those documents at the hearing.

(c) Nothing in these rules shall prohibit the arbitrators from requiring the parties to submit additional information or documents **prior to or** at the hearing.

(d) Any material protected by applicable Law or Rule protected from disclosure to the client is exempt from inspection.

33. DISCOVERY LIMITED: GOOD CAUSE

(a) Neither depositions for use as evidence nor any discovery whatsoever is permitted under any circumstances when all parties have not agreed in writing to be bound.

(b) When the parties have agreed in writing to be bound, discovery and depositions for use as evidence are permitted only upon good cause shown by written application to and upon order of the sole arbitrator or panel. Discovery under Code of Civil Procedure Section 1282.2, subd. (a)(2), is not permitted as a matter of right, but may only be obtained upon application and for good cause shown.

(c) Discovery or depositions for use as evidence shall be permitted only when, in light of the amount of the claim and the issues presented:

(i) The information sought appears not privileged, and relevant and material to an issue of fact or law, to the credibility of a witness or to the genuineness of a document;

(ii) It will not unreasonably prolong the time necessary to hold and complete the hearing and make the award;

(iii) It will not unreasonably increase the cost or expense of arbitration;

(iv) It is not undertaken to harass any party or witness; and

(v) It appears (A) that a party may be precluded from or frustrated in obtaining relevant and material evidence without the discovery; or (B) that relevant and material evidence will not be presented at the hearing in an orderly or efficient manner without the discovery; or (C) that a party's right to be heard, to present evidence, or to cross-examine witnesses (Code Civ. Proc., Section 1282.2(d)) will be materially and adversely affected without the discovery.

(d) A deposition for use as evidence and not for discovery may be taken where the showing required under paragraph (c) of this rule is made, and where:

(i) The witness to be deposed resides beyond that area within which witnesses may be compelled to attend the hearing by subpoena;

(ii) The witness to be deposed is expected to be ill or infirm or otherwise, for good cause, unable to attend the hearing despite service of a subpoena within the attendance area;

(iii) A custodian is in possession of documents or other physical evidence located beyond the area within which the custodian may be compelled by subpoena duces tecum to attend the hearing and produce the documents; or

(iv) There are other exceptional circumstances making it desirable to take the deposition for use as evidence in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the hearing.

34. APPLICATION FOR DISCOVERY AND ORDER

(a) An application for discovery shall be made in writing and shall set forth the discovery sought and the good cause for allowing the discovery. It shall be served on all parties and on the sole arbitrator or panel not later than seven days before the hearing. The sole arbitrator or panel may allow a late application for good cause shown.

(b) If good cause allowing discovery appears after consideration of any objections filed by any party, the sole arbitrator or panel shall issue an order stating what discovery is to be permitted, subject to such terms, conditions, obligations or limitations as may be appropriate.

(c) If the sole arbitrator or panel chairperson orders the taking of a deposition of a witness who resides outside the state, the party who applied for taking of the deposition shall obtain a commission thereof from the Superior Court in accordance with Sections 2024-2028, inclusive, of the Code of Civil Procedure;

(d) Discovery permitted under these Rules shall be conducted in the manner prescribed in the Code of Civil Procedure for the conduct of discovery on civil actions, and shall be further governed by Code of Civil Procedure Section 1283.05. The arbitrator or panel shall have, in connection with any discovery they may permit, all of the powers enumerated in Code of Civil Procedure Section 1283.05.

35. MAKING OF AWARD AND OTHER DECISIONS BY PANEL

In an arbitration before a panel, rulings on the admission of evidence and other such matters not otherwise specified by these rules shall be made by concurrence of at least two or more of its members (Code Civ. Proc., Section 1282(c)). Any arbitrator who disagrees with the majority of the panel is entitled to write a dissenting opinion.

36. FORM AND CONTENTS OF AWARD

(a) The award shall be in writing and signed by the sole arbitrator or, in the case of a panel, by the arbitrators concurring therein. It shall indicate whether the arbitration was binding or non-binding and shall include a determination of all questions submitted to the arbitrators, 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 file findings of fact with their awards. In the discretion of the arbitrators, the award may also include findings as to the willfulness of a party's non-attendance at the hearings.

(b) The award of the sole arbitrator or the panel need not be in any particular form, but it should consist of a preliminary statement reciting the jurisdictional facts (i.e., that a hearing was held either pursuant to Rule 4 of these rules for mandatory arbitration or Rule 5 of these rules for voluntary arbitration; that the parties were given due notice of the hearing and an opportunity to testify, cross-examine and otherwise participate in the proceedings); a brief statement of the dispute; a statement of decision explaining the factual and legal basis for the decision, brief in form, but with sufficient detail to provide a general understanding of the basis of the determination; and the award. Such document is referred to in these Rules as the "award." In the event a refund is determined to be owed to the client and where questions are raised as to who is the responsible attorney(s) in the arbitration, the arbitrator(s) shall make that determination and shall include in the award the name of the attorney(s) and, if appropriate, the law firm(s). The award shall also include substantially the following language, as appropriate:

The arbitrator finds 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, the following award is made

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

or

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

or

Nothing further shall be paid by either attorney or client.

(c) The arbitration award must specifically exclude any award to either party for attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding, notwithstanding any contract between the parties providing for such an award of attorneys fees.

(d) The award shall include an allocation of the costs (exclusive of attorney fees) as determined by the arbitrator. The absence of such allocation in the award will be deemed to mean each party is responsible for the fee arbitration filing fee and/or other costs incurred.

(e) In any event, whether the award makes any allocation of cost does not constitute a determination of prevailing party for purposes of Civil Code Section 1717.

37. **DELIVERY OF AWARD TO PARTIES**

The sole arbitrator or panel shall forward a signed original and two signed copies of the award, together with the entire file, to the Arbitration Committee Office. **Any award not in procedural compliance with these Rules shall be referred to the Arbitration Committee. The Arbitration Committee will then have the task of conforming the award to these Rules provided the only error is one of procedure. The Arbitration Committee Office shall then** ~~which shall~~ serve a signed copy of the award and a notice of the parties' post-arbitration rights on each party to the arbitration, together with an original declaration of service of the award, personally or by mail (Code Civ. Proc., Sections 1283.4, 1283.6). The date of service of the award is the date of personal service or the date of mailing, as the case may be.

38. **CORRECTION OF AWARD**

Applications for correction of awards must comply with and are governed by Code of Civil Procedure Section 1284, and must be addressed directly to the arbitrator(s) with a copy to the ~~Attorney-Client Relations program's~~ Office.

39. **BINDING ARBITRATION**

(a) If both parties agree in writing that arbitration shall be binding, no appeal from the award is allowed, except that provided for by Chapter 4 of Title 9 of Part 3 of the Code of Civil Procedure (Sections 1285 et seq.) is allowed.

(b) At any time prior to the actual taking of evidence at the hearing, the parties may agree in writing to be bound by the award.

(c) The parties may agree to be bound only after the dispute has arisen.

(d) Once both parties have agreed to be bound neither party can withdraw from the arbitration process without written consent from the other side.

40. **FINALITY OF NON-BINDING AWARDS**

When any dispute is submitted to mandatory arbitration under these Rules and all parties have not agreed in writing to be bound, the award shall nevertheless become final and binding on the parties, with the same effect as if the parties had originally agreed in writing to be bound, unless, within 30 days after service of the award, a party (i) commences an action in court to resolve the dispute adjudicated in the non-binding arbitration, or (ii) if there is an action pending, files a rejection of arbitration award and requests for trial after arbitration and otherwise complies with Business and Professions Code Section 6204(a). Provided, however, that if any party willfully fails to appear at the hearing for non-binding arbitration 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 will be 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.

41. **ENFORCEMENT OF THE AWARD**

Any award made pursuant to these Rules may be enforced in accordance with the provisions of Code of Civil Procedure Sections 1285-1288.8. If an action has previously been filed in any court, any petition to confirm, correct or vacate the award shall be made to the court in which the action is pending

and may be served by mail on any party who has appeared, as provided in Chapter 4 (commencing with Section 1285) Title 14 of Part 2 of the Code of Civil Procedure; otherwise it shall be served in the same manner as provided in Chapter 4 (commencing with Section 1285) Title 9 of Part 3 of the Code of Civil Procedure (Business and Professions Code Section 6203(b)).

42. SERVICE OF PROCESS

The Petition and other process to be served in connection with any action or special proceeding brought under any of the provisions of Code of Civil Procedure Sections 1285 et seq. may be served by registered or certified mail, with return receipt requested (Code Civ. Proc., Section 1290.4(b).)

43. QUALIFICATION OF ARBITRATORS

(a) No person appointed as an arbitrator shall arbitrate a dispute if he or she has any financial or personal interest in the result of the arbitration or if he or she determines that he or she is not qualified to act as to that dispute for any other reason. A person appointed as an arbitrator shall immediately disclose to the parties and the Arbitration Committee **staff** any circumstances which might be the basis for a claim of bias or any past or present relationship with the parties or their counsel which might disqualify the arbitrator. If disqualification is not claimed in writing by one or more of the parties within seven days after such disclosure, any claim of disqualification shall be considered waived, but such waiver shall have no effect upon any arbitrator's decision to disqualify himself or herself on his or her own motion.

(b) Any party may claim that one arbitrator is disqualified without cause by written notification to the Arbitration Committee **staff** and the sole arbitrator or panel served not later than seven days after service of notice of appointment of the arbitrator or panel. An unlimited number of claims of disqualification served or raised thereafter shall be considered only on a adequate showing of good cause, to be determined by the sole arbitrator or panel. The sole arbitrator or panel shall consider and rule upon the claim of disqualification.

(c) The party seeking disqualification may appeal the denial by the arbitrator or panel of a claim of disqualification. Any such appeal shall be served in writing on the Arbitration Committee **staff** within five days after service of the decision appealed from. The appeal shall be decided in writing by the Vice Chairperson with the concurrence of the Chairperson. If the Chairperson and the Vice Chairperson disagree, the Chairperson, in his or her discretion, shall either refer the matter to the Arbitration Executive Committee for decision or designate an additional Vice Chairperson to break the tie. All proceedings before the sole arbitrator or panel shall be stayed until the appeal is decided and until the resulting vacancy is filled.

44. VACANCIES

If any arbitrator should resign, die, withdraw, be disqualified or unable to perform the duties of his or her office as a sole arbitrator or member of a panel, the vacancy shall be filled in accordance with Rule 9 of these Rules, ~~provided, however, that a vacancy in a panel of arbitrators need not be filled if the parties agree in writing that the matter may be heard and an award made by the concurrence of the remaining two arbitrators, and provided further that the failure of an arbitrator on a panel to participate in the arbitration is governed by Rule 30 and by this Rule.~~

45. COMPENSATION OF ARBITRATORS; ADMINISTRATIVE CHARGES

(a) No arbitrator shall be entitled to compensation for services unless the hearings extend beyond two days. A hearing of three hours or less in one day will be considered as a one - half day hearing. A hearing of more than three hours in one day will be considered as a one-day hearing. Unless waived in writing, each arbitrator will be compensated at the rate of \$200 for each half day and \$400 for each day after the first two days of hearing. The compensation shall be paid equally by each party directly to each

arbitrator, in advance, 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, nor until such formal hearing sessions extend beyond two days. Any disputes concerning compensation of the arbitrators will be determined by the Arbitration Executive Committee, and its determination shall be binding on the parties, including the arbitrators.

(b) Except for the prescribed filing fees, no charges will be made by the Los Angeles County Bar Association Dispute Resolution Services, nor by the Arbitration Committee, nor by any arbitrator, for administrative or clerical services. A hearing room will be provided by an arbitrator or by the Arbitration Committee without charge to the parties.

(c) All parties will bear their own costs, including and limited to the costs of interpreters, reporters, expert witnesses, and the filing fees, unless the award specifies that the costs be borne by one of the parties or be apportioned between them.

46. **ARBITRATOR AS WITNESS**

No arbitrator appointed under these Rules shall be competent to testify in any subsequent civil proceeding, as to any statement or conduct occurring during the course of the arbitration proceeding, except as to a statement that could (a) give rise to civil or criminal contempt, (b) constitute a crime, (c) be the subject of investigation by the State Bar or Commission on Judicial Performance, or (d) give rise to disqualification proceedings under subd. (5) of Section 170 of the Code of Civil Procedure (Evid. Code, Section 703.5).

47. **CONFIDENTIALITY**

(a) In order to preserve confidentiality, all hearings shall be closed to the public. However, in the discretion of the arbitrator or panel ~~and in the absence of any objections by the parties~~, witnesses and other such persons as may be necessary to the conduct of the hearing may be present during the hearing.

(b) The panel, upon request of the client, shall permit the client to be accompanied by another person and may also permit additional persons to attend.

(c) All communications, negotiations, or settlement discussions by and between the participants and/or arbitrators in the arbitration shall remain confidential. Evidence of anything said or any admissions made in the course of the arbitration shall not be admissible in evidence or subject to discovery, and disclosure of that evidence cannot be compelled in any civil action or proceeding in which testimony can be compelled to be given.

(d) No document prepared for the purpose of, or in the course of, or pursuant to the arbitration (nor any copy of it), including but not limited to the case file, the request, reply, the award, all financial data pertaining to "consumers" as defined in Code of Civil Procedure Section 1985.3, exhibits, transcripts, and all correspondence, shall be admissible in evidence or available through discovery, and its disclosure shall not be compelled in any civil action or proceeding in which testimony can be compelled to be given; provided, however, that a communication or a document (or any part thereof) that would otherwise be privileged or confidential pursuant to this Rule may be disclosed if all parties to the arbitration give their consent.

48. **SERVICE**

(a) Unless expressly stated in these Rules to the contrary, service of any notice or other paper shall be by personal delivery or by deposit in the United States mail, first class postage pre-paid, addressed to the person on whom it is to be served, at his or her office address as last given, on any document which has been filed in the arbitration and served on the party making service by mail; otherwise at his or her place of residence. The service is complete at the time of deposit in the mail (Code

Civ. Proc., Section 1013(a)). The timing for performing any act shall commence on the date of service is complete and shall not be extended by reason of service by mail.

(b) All notices permitted or required to be given to a party by mail shall be deemed duly given if mailed to the party's address appearing in the party's Petition, demand for arbitration or Response or in other document lodged or filed with the arbitrator(s), or in a subsequent notice given to the arbitrator(s) and all other parties designating a new or different address. It is the responsibility of each party to keep the arbitrator(s), the Arbitration Committee **staff** and all parties informed of his or her current address.

(c) In the event the attorney does not file a Response, service on an individual attorney shall be at the latest address shown on the official membership records of the State Bar. If the fee dispute is with a law firm, service shall be on the address as shown in the request for arbitration form unless the law firm designates an attorney to be responsible for the arbitration, then service shall be on the designee's address shown on the official membership records of the State Bar.

49. **CERTIFICATION OF DOCUMENTS FOR JUDICIAL PROCEEDINGS**

The Arbitration Committee **staff** shall, upon written request of a party, furnish to such party, at his or her expense, certified copies of any papers in the possession of the Association that may be required in judicial proceedings relating to the arbitration.

50. **RETENTION OF FILES**

The Arbitration Committee **staff** may, without prior notice, destroy any file five years after service of the award or, if no award is rendered, five years after the last paper is received from any party.

51. **LIMITATION OF ACTIONS; JUDICIAL RESOLUTION OF ARBITRATION DISPUTE**

The time for filing a civil action seeking judicial resolution of a dispute subject to arbitration under this article shall be tolled from the time an arbitration is initiated in accordance with the rules adopted by the board of governors until: (a) 30 days after receipt of notice of the award of the arbitrators; or (b) receipt of notice that the arbitration is otherwise terminated, whichever comes first (Bus. & Prof. Code Section 6206).

52. **IMMUNITY**

(a) In any arbitration, whether voluntary or mandatory, the arbitrator(s), the Arbitration Committee, Arbitration Executive Committee, Dispute Resolution Services, Inc., the Los Angeles County Bar Association, and their officers, directors, and employees or agents shall have the same immunity which attaches in judicial proceedings (Bus. & Prof. Code Section 6200(e)).

(b) In any arbitration, whether voluntary or mandatory, neither the arbitrator(s), the Arbitration Committee, Dispute Resolution Services, Inc., the Los Angeles County Bar Association, nor their officers, directors, and employees or agents is a necessary party in judicial proceedings relating to the arbitration, nor shall any of them be liable to any party for any act or omission arising out of any proceeding initiated or conducted under these Rules.

53. **INTERPRETATION OF RULES**

The Arbitration Executive Committee has the authority to interpret these Rules, and to determine their application to specific situations and their interaction with related statutory and case law. When the Chairperson determines it is in the best interest of the arbitration program to do so, the Arbitration Executive Committee may issue written opinions expressing such interpretations. Such opinions shall be issued upon the approval of a majority of the Arbitration Executive Committee, and, upon issuance, shall

have the same force and effect as the Rules. Issued opinions shall be maintained in a permanent file at the Arbitration Committee's Office and shall be available to the public.

54. **CONTACTS WITH ARBITRATORS**

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

- (a) At the scheduled hearing;
- (b) In writing with a copy to all parties, or their respective counsel, if any, and the County Bar;
- (c) For purposes of scheduling a hearing date or other administrative procedure or matter;
- (d) In an emergency.

Nothing in this Rule shall be interpreted or construed to prohibit the arbitrator from contacting a party or attorney for the party to discuss an administrative or procedural matter.

Fee Arb Rules
Revision date 11/02
Revision date 6/2007