

**RULES OF PROCEDURE
FOR THE HEARING OF FEE ARBITRATIONS & MEDIATIONS
BY THE CONTRA COSTA COUNTY BAR ASSOCIATION**

(Effective ~~January 1, 1979, Revised December 1, 1986, June 1, 1987, July 1, 1990, December 1, 1990, July 16, 1993, November 1, 1994, April 4, 1996, July 1, 1997, October 1, 1998, March 19, 1999, May 8, 2000, October 30, 2002, August 2005.~~) Please note: The most current version of the Rules shall be the governing Rules, regardless of when the Request for Arbitration was filed.) **October 2007**

(Approved by the Board of Governors November 9, 2007.)

Definitions. As used in this chapter:

1. **ACTION:** A civil judicial proceeding brought to enforce, redress or protect a right.
2. **ADMINISTRATOR:** The staff person responsible for administering the local bar association's Mandatory Fee Arbitration Program.
3. **ARBITRATION:** A process by which parties to a dispute present the dispute to one or more individuals called arbitrators who decide the merits of the dispute and issue an award which may or may not be binding.
4. **ASSIGNEE:** A person to whom a claim, right or property is transferred.
5. **AWARD:** The decision of the arbitrator or arbitrators in the fee arbitration proceeding.
 - (a) **BINDING:** It is an arbitration in which the award of the arbitrator(s) is final and binding on the parties. See Arbitration above.
 - (b) **NON-BINDING:** It is an arbitration in which the award of the arbitrator is advisory. However, it will become binding if you do not file an action or other proceeding with the proper court within 30 days after the arbitration award has been served. See Arbitration above.
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.
7. **COMMITTEE CHAIR:** 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. In his or her absence, a member of the Fee Mediation/Arbitration Committee.
8. **DECLARATION:** A declaration is a document in compliance with the requirements of Code of Civil Procedure section 2015.5, or an affidavit.
9. **DISCOVERY:** A formal legal process for allowing a party to require the other party to provide information to be used at arbitration.
10. **FILE:** Fee arbitration records and papers in a specific fee arbitration case.

11. **HEARING PANEL:** One or three arbitrators assigned to hear the fee dispute and to issue the award.
12. **JURISDICTION:** Authority to hear dispute.
13. **MEDIATION:** It is a process in which an impartial person helps individuals and entities resolve conflicts by shaping a solution in a private, confidential and cooperative setting.
14. **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.
15. **PARTY:** A person who initiates or is named in an arbitration proceeding under these rules, including an attorney, a client or other person who may be liable for payment of, or entitled to a refund of attorney's fees.
16. **PROGRAM:** Unless indicated otherwise, reference to the Program means the Mandatory Fee Arbitration Program of the Contra Costa County Bar Association (CCCBA).
17. **REMOVALS:** Transfer.
18. **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.
19. **STIPULATION:** An agreement between the parties as to the fact(s) in dispute.
20. **WAIVER:** To give up a right or benefit.

End of Definitions – Rules begin on page 3

1. MANDATORY ARBITRATION ALTERNATIVES

(a) MANDATORY ARBITRATION FOR ATTORNEYS

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

(b) MEDIATION OF FEE DISPUTES

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. Any dispute not resolved through mediation will be assigned to a sole arbitrator or a Hearing Panel for arbitration under Rule 8.

(c) REFUSAL TO PARTICIPATE

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

(d) NOTICE BEFORE SUIT

The attorney must, prior to or at the time of service of summons in a lawsuit against the client for the recovery of fees, costs or both for professional services rendered or prior to or at the commencement of any other proceeding under a contract that provides for an alternative to arbitration under Business and Professions Code § 6200-6206, serve upon the client a written "NOTICE OF CLIENT'S RIGHT TO ARBITRATION", using the State Bar approved form. Failure to give notice shall be a ground for dismissal of the action or other proceeding [B&P Code § 6201(a)].

(e) 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. Upon request, the program may provide a copy of a **the** notice of automatic stay **Judicial Council form** to the party.

If the person who requested or caused the stay has not appeared, or is not subject to the jurisdiction of the court, the plaintiff must immediately file a notice of stay and attach a copy of the arbitration request for showing that the proceeding is stayed.

The stay may be vacated in whole or in part, after a noticed hearing, if the court finds that the matter is not arbitrable. [B&P Code § 6201(c)]

(f) WAIVER OF RIGHT TO REQUEST OR MAINTAIN ARBITRATION

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

(1) answers a complaint in a civil action or other equivalent response to the civil action before filing a request for arbitration, after the required form entitled "Notice of Client's Right to Arbitration" was given pursuant to Business and Professions Code section 6201(a);

(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;

(3) fails to deliver to the Program a request for arbitration on the approved Program form that is postmarked or received on or before the 30th day from the date of the client's receipt of the form entitled "Notice of Client's Right to Arbitration" given pursuant to Business and Professions Code section 6201, subdivision (a). Should the fee dispute transfer to a different fee arbitration program after the request for arbitration is filed, the original date of postmark or receipt of the arbitration request will be preserved for purposes of determining whether jurisdiction exists.

(4) if the client waives the right to request or maintain arbitration, the parties may stipulate to set aside the waiver and to proceed with arbitration.

2. DISPUTES SUBJECT TO ARBITRATION OR MEDIATION

(a) FEES AND COSTS FOR PROFESSIONAL SERVICES

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

(1) disputes where the attorney is admitted to practice in another jurisdiction or where the attorney is only admitted to practice in another jurisdiction, and he or she maintains no office in the State of California, and no material portion of the services were rendered in the State of California;

(2) claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct; or

(3) disputes where the fee or costs to be paid by the client or on the client's behalf have been determined or are determinable pursuant to statute or court order; or

(4) disputes where the request for arbitration is made by a person who is not liable for or entitled to a refund or attorney's fees or costs; or

(5) disputes where the claim has been assigned by the client.

(b) DISPUTES CONCERNING NON-CLIENTS

~~The request for arbitration form must be signed by the client. The client may include as a party to the arbitration any person who is not the client of the attorney but who may be liable for or entitled to a refund of the attorney's fees or costs or both so long as that person signs the request. If arbitration is requested by any other person who may be liable for or entitled to a refund of attorney's fees included by the client, that person must also sign the request.~~

The request for arbitration 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 send notice of the request ~~must be sent to the client by first class mail at the client's last known address. The programs shall adopt procedures to insure that such notice has been sent to the client.~~

(c) DETERMINATION OF JURISDICTION

(1) The Program shall reject any request for arbitration when it is clear from the face of the request that the provisions of Business & Professions Code section 6200 have not been met. 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.

(2) The CCCBA 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. For good cause, the Committee Chair may assign the matter to a Hearing Panel to take evidence and make a determination of whether jurisdiction should be accepted.

(3) Within 15 days from service of notice of a ruling on a challenge to jurisdiction, a party may file a written request for reconsideration based on new evidence. The Committee Chair shall rule on the request for reconsideration.

(4) There is no appeal of the Committee Chair's decision following reconsideration. Any ruling on reconsideration by the local bar Program is final.

(5) If there is an approved local bar association program that is willing to accept jurisdiction where the parties consent in writing to submit to such jurisdiction, a program may assume jurisdiction over a matter even if the program does not have original jurisdiction.

(d) JURISDICTION BY PROGRAM

(1) The Program shall have jurisdiction over a fee dispute if at least one of the attorneys involved in the dispute has an office in Contra Costa County or maintained an office in Contra Costa County at the times the services were rendered, or the majority of the legal services were provided in Contra Costa County, subject to any other disqualifying criteria as set forth in these rules.

(2) In the event of a dispute between the parties as to which program should hear the matter, the program where the arbitration request was first filed shall determine that the arbitration will be conducted in the county where most of the legal services were provided, and such ruling is final and not appealable to the State Bar. 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 arbitration request will be preserved for purposes of determining whether jurisdiction exists.

(e) REFUSAL TO ACCEPT DISPUTE

CCCBA, in its sole discretion, may refuse to accept any request for arbitration. Such decision shall be final. CCCBA shall refuse any request for arbitration in which the attorney is a current Fee Mediation/Arbitration Committee Member or CCCBA Board Member. In the event CCCBA refuses to accept an arbitration, the parties should contact the Fee Arbitration Program of the State Bar of California.

(f) REMOVALS TO THE STATE BAR OF CALIFORNIA

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

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

(2) The State Bar shall 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.

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

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

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

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

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

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

(g) EFFECT OF FAILURE TO ADHERE TO TIME GUIDELINES

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 guidelines as set forth in these rules.

3. INITIATION OF ARBITRATION

(a) REQUEST FOR ARBITRATION

Arbitration is initiated by filing with the Contra Costa County Bar Association a written "Request for Arbitration" on the approved CCCBA form and by paying the appropriate filing fee as established by the CCCBA. 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.

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.

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 Committee Chair or by the Panel Chair, if a notice of assignment of the Hearing Panel has been served on the parties.

(b) BINDING ARBITRATION

(1) Arbitration is not binding unless all parties agree in writing **after** the fee dispute arises. Such agreement shall be made prior to the taking of evidence at the hearing. If any party has not agreed in writing to binding arbitration, the arbitration is non-binding, and any party may request a trial after arbitration in a civil court pursuant to Business and Professions Code section 6204 within 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.

(2) If all parties agree in writing, **after** the fee dispute arises, that the arbitration is binding, the award is binding and there can be no trial after arbitration in a civil court on the issue of fees and costs. A binding award may be corrected, vacated or confirmed pursuant to Code of Civil Procedure section 1285 et seq.

(c) WITHDRAWAL OF BINDING ARBITRATION ELECTION

(1) If the parties agree in writing, after the fee dispute arises, to binding arbitration, the arbitration shall proceed as binding. The parties may request binding arbitration as provided on the Program forms. If there is no written agreement made after the fee dispute arises to submit to binding arbitration, the arbitration shall be non-binding.

(2) A party who has requested binding arbitration may withdraw that request and request a change to non-binding arbitration in writing to the Program and the other parties, so long as the Program has not received a written agreement to binding arbitration from the other parties.

(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.

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

(d) FILING FEES

Before any request for arbitration is processed by the Contra Costa County Bar Association, the appropriate filing fee must be paid as outlined below and in the request for arbitration of fee dispute forms.

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.

SCHEDULE OF FILING FEES if the amount of your dispute is: Your filing fee is:

Less than \$2,999.....	\$100.00
\$3,000 - \$4,999.....	\$200.00
\$5,000 - \$9,999.....	\$300.00
\$10,000 & over.....	\$400.00 plus 1% of amount over \$10,000.00

(e) SETTLEMENT OF DISPUTES; WITHDRAWAL FROM ARBITRATION; REFUND POLICY

(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 if a notice of assignment of the Hearing Panel has been served on the parties.

(2) If a party wishes to withdraw from a binding arbitration and the matter has not been settled, all parties must agree to the matter being withdrawn. If the arbitration is non-binding, or there is no prior written agreement between the parties requiring fee arbitration, a request for arbitration may be withdrawn by the party requesting arbitration and the matter shall be dismissed as set in 3 (e)(1) above.

(3) If the CCCBA is advised that the mediation/arbitration has been settled or dismissed based on withdrawal before the mailing of the initial Notice of Hearing, a refund for all the filing fees in excess of \$250.00 may be issued. No filing fees will be refunded after the mailing of the initial Notice of Hearing even if the mediation/arbitration has been settled or withdrawn prior to the commencement of the hearing.

(4) If jurisdiction is declined under Rule 2(c) and (d), in which event the entire filing fee will be refunded.

(f) REQUEST FOR FEE WAIVER

(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 our (2) (b), may be required to submit supporting documents regarding his or her own financial status to the Program to support the client's application for a filing fee waiver. If the non-client party replies to the Program that he or she no longer has an interest in the outcome of the arbitration, the application will proceed based on the client's supporting documents alone.

(2) For good cause shown, the CCCBA may grant or deny the filing fee waiver or order a reduced fee. The order of the CCCBA shall be final.

(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.

(g) REQUESTS AND RESPONSES TO REQUEST FOR ARBITRATION

(1) 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 as indicated on the forms with the Program. Copies of materials filed with the Program will be forwarded to the other party by the Program and the Hearing Panel assigned to hear the matter.

(h) RESPONSES TO REQUEST FOR ARBITRATION

(1) The respondent party's reply to a Request for Arbitration, together with any response, if the respondent party is an attorney, to the issue of the attorney's responsibility for any award that refunds fees or costs or both to the client, shall be submitted to the Program on its approved form within 30 days of the service of the request, unless an extension of time to reply is obtained from the Program.

(2) If the attorney seeks arbitration, and there is no written agreement between the parties that fee disputes be submitted to fee arbitration, arbitration shall proceed only if the client consents in writing on the approved form within 30 days of service of the request. **If the client does not consent to fee arbitration the filing fee will be refunded to the attorney, less a \$100.00 processing fee.** ~~unless the attorney is seeking removal from a local bar program under rule 2(f) of a matter in which the client has already requested arbitration or has consented to an attorney's request for arbitration.~~

(i) 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 CCCBA shall rule on all written requests to consolidate. The order of the CCCBA shall be final. Consolidation will not result in a refund of filing fees paid or reduction of filing fees owed to the Program.

(j) HEARING

(1) The hearing shall commence within 45 days for a single arbitrator panel and 90 days for a three member panel after the date of service of the "Notice of Assignment of Panel" unless there has been a disqualification or allowed challenge, in which case there shall be a fifteen (15) day extension. Upon stipulation or application to the Chair of the panel, the matter may be continued for good cause shown. The designated panel shall serve written notice of hearing on each party and the Program at least fifteen (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.

(2) Notwithstanding failure of either party to attend, the hearing shall proceed as scheduled and a decision made on basis of evidence, which the arbitrator shall take at the hearing.

(i) 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.

(ii) 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 may terminate the

arbitration by making an award that neither party is entitled to any relief.

(iii) 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.

(iv) 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 at least ten (10) days before the hearing.

4. PANELS

(a) APPOINTMENT OF PANEL

(1) For each dispute, the Program shall assign a Hearing Panel from the Program's roster of *volunteer* fee arbitrators.

(i) A panel shall consist of one (1) attorney arbitrator for any dispute involving less than \$10,000.

(ii) In disputes of \$10,000 or more, a panel shall consist of three (3) arbitrators, one of whom shall be a public (non-lawyer) member, if the attorney and client agree to binding arbitration before the panel is appointed. If they do not agree in advance to binding arbitration only one (1) attorney arbitrator shall be appointed. An attorney arbitrator shall be designated as Panel Chair by the CCCBA.

(iii) If a fee dispute involves \$10,000 or more, the parties may agree, in writing, to have the matter heard by a single attorney arbitrator. Any vacancy, by way of disqualification or inability to serve, shall be filled by the CCCBA, but in no event shall the arbitration proceed with only two arbitrators. The duties of appointment of a panel may be delegated by the Committee Chair or the Executive Director of the Bar Association.

(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.

(b) 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

was 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.

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

Upon assignment each arbitrator will complete an "Arbitrator Statement of Disclosure" that will be served on the parties along with the "Notice of Appointment of Panel." An arbitrator who for any reason may not be impartial shall disqualify him/herself. Each party may challenge an arbitrator one time without cause and shall have unlimited challenges for cause. Any disqualification or challenge of an arbitrator, or substitute arbitrator(s) if there is a disqualification or allowed challenge, shall be ineffective unless made in writing and served on the CCCBA and the other party within fifteen (15) days of the service of the "Notice of Appointment of Panel". The challenge or disqualification shall be heard and decided by the CCCBA.

No attorney shall be appointed as an arbitrator until s/he has been admitted to the practice of law for a minimum of three (3) years.

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

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

(e) **CONTACTS WITH ARBITRATORS**

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

- (1) At scheduled hearings; or
- (2) In writing with a copy to all other parties, and their respective counsel, if any, and the CCCBA; or
- (3) For the sole purpose of scheduling a hearing date or other administrative procedures with notice of same to the other parties; or
- (4) For the purpose of obtaining the issuance of a subpoena as set forth in these rules; or
- (5) In an emergency.

5. THE HEARING

(a) RIGHT TO COUNSEL

Either party, at his/her own expense, may be represented by an attorney.

(b) EVIDENCE

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

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, costs, or both, to which the attorney is entitled. The arbitrators shall not award affirmative relief, in the form of damages, offset or otherwise, for injuries underlying any such claim. Nothing in this section shall be construed to prevent the arbitrators from awarding a refund of unearned fees, costs, or both, previously paid to the attorney by the client.

(c) STIPULATIONS ENCOURAGED

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

(d) DISCOVERY

No discovery is allowable. However, the Panel Chair may in its discretion require an exchange of documents and/or information before the hearing, if good cause exists. The Panel Chair may, in its discretion, decline to admit into evidence documents that were required to be exchanged but were not.

(e) SUBMISSION OF DOCUMENTS

If no required exchange is ordered by the Panel Chair and if either party intends to submit documents, copies must be mailed directly by 1st class mail, postage prepaid to each arbitrator and to the opposing party **AT LEAST TEN (10) DAYS PRIOR TO THE SCHEDULED HEARING DATE**. In the arbitrator's discretion, a party shall not be precluded from submitting documents not provided in advance of the hearing.

(f) SUBPOENA

The sole arbitrator or Panel Chair, shall, for good cause shown, issue subpoenas and/or subpoenas duces tecum at the request of a party. CCCBA shall provide the blank subpoenas and the requesting party shall be responsible for obtaining the arbitrator's signature and for service of the subpoenas. The party requesting subpoenas will be responsible for any witness fees and costs.

The subpoena shall be served within a reasonable time prior to the date for submission of documents under Rule 5(e) above.

(g) OATHS

All testimony shall be given under oath or affirmation, administered by the Panel Chair.

(h) WAIVER OF PERSONAL APPEARANCE

Any party who lives 100 miles or more from the site of the hearing may waive personal appearance and submit to the panel testimony and exhibits by written declaration under penalty of perjury and/or by telephone conference.

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.

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

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

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

(i) MANNER OF PROOF

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

(j) TRANSCRIPTS

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

(k) TRANSLATOR

Any party may provide and pay for the attendance of a person to translate at that party's sole expense. The translator shall be administered an oath to accurately and completely translate the party's or witness's testimony.

(l) ADJOURNMENT

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

(m) TIME LIMITATIONS

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

6. AWARD

- (a) 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 then be served on the parties forthwith by the Program.
- (b) The award shall be in writing. The award shall indicate whether it is binding or non-binding. It shall include a determination of all the 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), and if appropriate, the law firm. The award shall also contain a statement of the basis for the award. In the discretion of the arbitrators, the award may also include findings as to the willfulness of any party's non-attendance at the hearing. In the event a refund is determined to be owed to the client, the award shall include the name of the individual attorney(s) responsible for making the refund.
- (c) Whenever there are three arbitrators, a majority vote shall be sufficient for all decisions of the arbitrators, including the award. The award shall be signed by the arbitrators concurring therein. Any dissent from the award shall be served with the award.
- (d) The award may include an allocation of the filing fee and any fee paid by the client for filing a stay with the court; however, it shall not include an award for any other costs of the arbitration, including attorneys fees resulting from the arbitration proceeding, even if the parties had a contract providing for the award of such fee.
- (e) Each award served on the parties shall contain substantially the following language:

The Hearing Panel 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: \$_____

Subtotal \$_____

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

is allowed 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:

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

OR

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

OR

[3] Nothing further shall be paid by either attorney or client.

- (f) The Hearing Panel shall forward the original of the signed award and the signed binding arbitration agreement to the Contra Costa County Bar Association. No award is final or is to be issued until approved for procedural compliance and as to the form of the award by the Committee Chair or such person as the Chair may designate for this purpose. After approval of the award 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.

If no arrangements have been made within 60 days the exhibits or documents will be destroyed.

- (g) The Hearing Panel may correct a binding or non-binding award only on the grounds set forth in Code of Civil Procedure section 1286.6 (a) “evident miscalculation of figures or evident mistake in the description of a person, thing or property referred to in the award”, and (c) “the award is imperfect in a matter of form, not affecting the merits of the controversy”, and under the procedures set forth in Code of Civil Procedure section 1284. An application for such a correction does not extend the deadline for seeking a civil trial after a non-binding award is rendered, and a non-binding award will automatically become binding thirty (30) days after it is served on the parties.

(1) A party requesting correction or amendment under this rule must file a request in writing to the Program and serve a copy on the other party within ten (10) days after service of the award. Any party to the arbitration may make a written objection to such request. Such request does not toll the time period for filing a civil action to challenge the award.

(2) Any corrected or amended award will be served by the Program. The time for filing a civil action to challenge the award begins from the time of service of the amended or corrected complaint.

(3) 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.

7. ENFORCEMENT OF AWARD

- (a) In any matter in which the award of the arbitrator includes a refund of fees and/or costs to the client and the award is/or has become binding and the attorney has not

complied with that award, the client has the right to pursue enforcement of the award through the State Bar of California, Mandatory Fee Arbitration, San Francisco, California.

8. INITIATION OF MEDIATION

(a) REQUEST FOR MEDIATION

The filing party shall be given the opportunity to request mediation of the fee dispute by checking the appropriate box on the Request for Arbitration form. Upon agreement of all the parties to mediation, Rule 8 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 4(a).

(b) JURISDICTION

(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.

(2) The CCCBA shall have jurisdiction to mediate any dispute in which a request for arbitration has been accepted for filing by the CCCBA, the appropriate filing fee has been paid or an order granting a waiver of that fee has been filed, and all parties have agreed in writing to mediate.

(3) Each party to the mediation shall sign an agreement to mediate in the State Bar approved form provided by the CCCBA prior to the assignment of a mediator.

(c) APPOINTMENT/QUALIFICATIONS OF MEDIATORS

(1) Mediators shall be appointed by the CCCBA.

(2) Both lawyers and non-lawyers shall be qualified to mediate under these rules if they fulfill the requirements of Rule 8(c) (3) below.

(3) Prior to serving as a mediator, each mediator must complete at least ~~25~~ 40 hours of mediator training acceptable to the CCCBA. (Current volunteer mediators who completed at least 25 hours are grandfathered-in.)

(d) INITIATION OF MEDIATION

(1) Upon any request for arbitration which includes a request to mediate a fee and/or cost dispute and after any jurisdiction, venue or other issues have been decided, the CCCBA shall serve the “Agreement to Mediate” form signed by the petitioner on the other party. The other party shall have 30 days from the date of

service to return the signed “Agreement to Mediate” form to the CCCBA.

(2) If the other party does not return the signed agreement within 30 days, or returns an unsigned consent agreement within that time period, the matter shall proceed to

arbitration.

(3) The filing fee paid to initiate fee arbitration through the CCCBA 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 3 (e).

(e) ASSIGNMENT OF A MEDIATOR

Within 15 days, or as soon thereafter as is reasonably possible, after receipt of the signed agreement from all parties, the CCCBA 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.

(f) DISQUALIFICATION OF MEDIATOR

(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.

(2) A mediator shall disclose any information providing a basis for recusal of a judge under Code of Civil Procedure section 170.1. Upon assignment each mediator will complete a "Mediator Statement of Disclosure" that will be served to the parties along with the "Notice of Mediator Assignment."

(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 15 days after receipt of the notice of assignment of the mediator, addressed to the CCCBA with a copy to the mediator and the other party. The challenge shall be resolved by the Committee Chair or his or her designee.

(4) Upon the withdrawal or removal of the mediator, the CCCBA shall reassign the matter and notify the parties of the new mediator within 15 days of notice of withdrawal or removal or as soon thereafter as is reasonably possible.

(g) MEDIATION SESSION

(1) Within ~~10~~ 15 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~~ 45 days from the date the notice of assignment of mediator was served or as soon thereafter as reasonably possible. The mediator shall immediately mail the "Agreement to Mediate Confirmation" notice to the parties and the CCCBA, which includes the location, date and time of the session.

(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.

(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.

(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.

(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 Contra Costa County Bar Association.

(h) 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 parties 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.

(i) RESOLUTION

(1) If the dispute is resolved by the parties, the points of agreement shall be reduced to writing at the session and signed by the responsible attorney and the client. In the event the parties agree that the client shall receive a refund of previously paid fees and/or costs, the mediated agreement shall include the name of the individual attorney(s) responsible for making the refund. The agreement shall be set forth using the "Fee Mediation Settlement Agreement" form as approved by the State Bar of California.

(2) Duplicate originals of the signed agreement shall be distributed to each party who signed it and to the CCCBA.

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

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

(5) If the parties are unable to reach a resolution of the fee dispute through mediation, the mediator shall promptly notify the CCCBA and the matter shall proceed to arbitration under these rules.

(6) If an agreement has been reached, the CCCBA shall provide the parties a copy of the State Bar approved "Notice of Rights after Mediation."

(j) 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 for the purpose of enforcement of that agreement.

9. GENERAL RULES FOR MEDIATIONS AND ARBITRATIONS

(a) DEATH OR INCOMPETENCY OF A PARTY

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

(b) CONFIDENTIALITY

(1) All arbitration and mediation files are confidential.

(2) 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.

(3) 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 mediation/arbitration proceedings.

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

(c) SERVICE

(1) Unless otherwise specifically stated in these rules, service on the client shall be by personal delivery, by deposit in the United States mail, or by deposit in a business facility used for collection and processing of correspondence for mailing with the United States Postal Service pursuant to Code of Civil Procedure section 1013(a)(3), postage paid, addressed to the person on whom it is to be served, at his or her address as last given, on any document which has been filed in the arbitration. The client shall keep the Program advised of his or her current address.

(2) Unless otherwise specifically stated in these rules, service on an individual attorney shall be at the latest address shown on the official membership records of the State Bar. Service shall be in accordance with subsection 9 (c) (1) above.

(3) If either party is represented by counsel, service shall be on the party as indicated in subsections 9 (c) (1) and 9 (c) (2) of this rule, and on the counsel at the latest address shown on the official membership records of the State Bar.

(4) The service is complete at the time of deposit. The time for performing any act shall commence on the date service is complete and shall not be extended by reason of service by mail.

(5) Where a facsimile 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.

(6) It is the responsibility of all parties to notify the Contra Costa County Bar Association, in writing, of any address or telephone number change which may occur prior to the serving of the Award and post-arbitration notice. In the event that the client fails to keep the Program advised of his or her current address, the Program may close the arbitration request, if it is made by the client, after 30 days from the date that the Program learns of the invalid address.

(d) REFERRAL TO STATE BAR

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

(e) CONTRA COSTA COUNTY BAR ASSOCIATION

(1) Copies of all correspondence between the parties and between the parties and the arbitrator pertaining to the fee arbitration shall be mailed to the CCCBA.

(2) Whenever these Rules indicate that a copy of any form or other matter be sent to the CCCBA, the item should be addressed as follows:

Contra Costa County Bar Association
704 Main Street
Martinez, CA 94552
Attn: Fee Arbitration Coordinator

Telephone: (925) 686-6900

CCCBA RULES OF PROCEDURE OCT 2007.doc