

**Rules of Procedure for the Conduct
of Fee Arbitrations and the Enforcement of Awards
by the
Nevada County Bar Association**

I. Jurisdiction and Mandatory Arbitration Requirements:

A. Mandatory Arbitration for Attorneys

1. Arbitration under *Business and Professions Code* Section 6200 *et seq.* is voluntary for a Client and mandatory for an Attorney if commenced by a Client as to amounts charged by an Attorney to a Client for services rendered or costs incurred by an Attorney on behalf of a Client after January 1, 1979.
2. If the Client has agreed, before the fee dispute arises, to arbitrate fee disputes in a fee agreement or other writing, he or she may be compelled to arbitration through a Mandatory Fee Arbitration Program.
3. If the Attorney refuses to respond to or to participate in the arbitration, the hearing will proceed as scheduled and a decision shall be made by the Panel on the basis of the evidence presented to it.

B. Notice of Client's Right to Arbitrate Fee Disputes

1. An Attorney (or an Attorney's assignee) must serve the State Bar form **Notice of Client's Right to Arbitration** (hereafter referred to as Notice) on the Client prior to commencing any action against the Client, (including an arbitration proceeding through another organization, e.g. American Arbitration Association). If Client elects arbitration under *Business and Professions Code* Section 6200 *et seq.*, that election is controlling.
2. This Notice must be served prior to or at the time of service of summons and complaint, the claim in a small claims action or other claim in an action against the Client for the recovery of fees, costs, or both.
3. Failure to give this Notice shall be a ground for the dismissal of the action.
4. The Notice shall be in the form prescribed by the California State Bar Association Board of Governors and shall include a statement of the Client's Right to Arbitration under *Business and Professions Code* Section 6200 *et seq.*

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5. The Notice form is available from the Nevada County Bar Association Fee Arbitration Program (hereafter NCBA Fee Arbitration Program) at the address set forth at Section VI.I.2. below.

C. Fairness and Impartiality

1. In the event that either party to the arbitration believes that he or she cannot obtain a fair and impartial hearing under the procedural rules of the NCBA Fee Arbitration Program Fee Arbitration Committee, he or she may apply for a hearing through a State Bar Panel pursuant to Rule 11.0, *et seq.*, of the *Rules of Procedure of the Hearing of Fee Arbitrations by the State Bar of California*.
2. If the matter is already pending before the NCBA Fee Arbitration Program at the time the request for removal of the action to the State Bar program is made, the NCBA Fee Arbitration Program shall stay the proceedings in Nevada County and release jurisdiction of the matter to the State Bar upon written notification of the State Bar's acceptance of the matter for arbitration.

D. Stay of Proceedings

1. If an Attorney, or the Attorney's assignee, commences an action or another proceeding for arbitration through an agency other than an approved provider of *Business and Professions Code* Mandatory Fee Arbitration, and if the Client is entitled to maintain arbitration under *Business and Professions Code* Section 6200 *et seq.*, the Client may stay the action or other proceeding by:
 - a. Serving and filing a Client's Request for Mandatory Fee Arbitration as provided hereunder with the NCBA Fee Arbitration Program or the State Bar Mandatory Fee Arbitration Program, together with paying the appropriate filing fee as set forth in these Rules and
 - b. Notifying the Court of the stay and attaching a copy of his or her Client's Request for Mandatory Fee Arbitration to the notice of stay filed with the Court.
2. The Request to Arbitrate shall be served and filed prior to filing an answer or any other responsive pleadings in the action.
3. Failure to request fee arbitration prior to the filing of an answer or other responsive pleading to a civil action shall be deemed a waiver of the Client's right to arbitration under the provisions of *Business and Professions Code* Section 6200 *et seq.* if Notice of the Client's Right to Arbitration was given to the Client.

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4. Upon the filing and service of the Client's Request To Arbitrate, the action shall be automatically stayed until the award of the Arbitrators is issued or the arbitration is otherwise terminated.
5. This stay may be vacated, in whole or in part, after a duly noticed hearing, if and to the extent the Court finds that the matter is not appropriate for arbitration under the provisions of the *Business and Professions Code*. The action may thereafter proceed subject to the provisions of *Business and Professions Code* Section 6204.

E. Waiver of Right to Request or Maintain Arbitration

These rules and time limits are very important and Client is cautioned to review them carefully to make sure that a Client's Request To Arbitrate is correctly and timely filed and is complete. Failure to file a correct, complete and timely Request to Arbitrate will result in the loss of the Client's right to arbitrate the dispute, unless the Attorney agrees to proceed with an arbitration despite the problems.

1. A Client's right to request or maintain arbitration is **waived** if:
 - a. The Client does not do all of the following within thirty (30) days after the Client has received Notice of Client's Right to Arbitration:
 - (1) serve a fully completed Client's Request To Arbitrate on the Attorney, including all required attachments to the Client's Request To Arbitrate. The Client's Request shall have an explanation of the dispute, and a copy of the fee agreement, if any, attached to it. This service may be in person or by mail, or by any other method which would be acceptable for the service of a summons under the *Code of Civil Procedure*, and
 - (2) file the completed original Client's Request to Arbitrate (with all required attachments) with the NCBA Fee Arbitration Program by delivering it to the office of the Administrator, and
 - (3) at the same time as filing the Client's Request to Arbitrate, pay the appropriate filing fee to the NCBA Fee Arbitration Program by delivering the correct amount to the office of the Administrator, or

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- b. The Client commences a civil action or files **any** pleading seeking either:
 - (1) judicial resolution of a dispute to which Business & Professions Code 6200 applies, or
 - (2) affirmative relief (i.e., recovery in excess of the amount of fees and costs actually in contention) against the Attorney for damages or otherwise based upon alleged malpractice or professional misconduct, or
 - c. Before filing a Request To Arbitrate, the Client answers a complaint in a civil action, files any responsive pleading to a complaint, or otherwise generally appears for any purpose other than to request a stay so that the arbitration may proceed.
2. If the Client waives the right to arbitration under this article, the parties may stipulate in writing to set aside the waiver and to proceed with arbitration.
- F. **Disputes Subject to Arbitration.** All disputes concerning fees and/or costs charged for professional services by an Attorney or regarding costs sought to be recovered or charged by an Attorney are subject to arbitration under these rules, except:
- 1. disputes in which the Attorney is also admitted to practice in another state, if the Attorney maintains no office in the State of California, and if no material portion of the services was rendered in the State of California, or
 - 2. disputes in which the Client seeks affirmative relief against the Attorney for damages or affirmative relief which is otherwise based upon alleged malpractice or professional misconduct, or
 - 3. disputes in which the fees and/or costs to be paid by the Client or on his or her behalf have been determined pursuant to statute or Court order, or
 - 4. disputes in which the Attorney maintains no office in Nevada County and in which substantial services were not performed in Nevada County, except in cases in which both the Client and the Attorney stipulate to have the matter arbitrated by the NCBA Fee Arbitration Program.

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G. Determination of Jurisdiction

~~a.1.~~ If the jurisdiction of the NCBA Fee Arbitration Program is disputed prior to the appointment of a Panel, the Administrator may either, at the Administrator's sole discretion:

~~a.~~

~~a.~~ Determine whether or not it appears that the NCBA Fee Arbitration Program has jurisdiction, after inviting written comment thereon by the parties and giving the parties an opportunity to submit proof and arguments on this issue in writing. Such a determination will be relayed to the parties in writing. If it is determined that the NCBA Fee Arbitration Program does not have jurisdiction to hear the matter, that determination is final and may not be appealed by either party; or

~~b.~~ b. Appoint a Panel which will, prior to hearing the substantive issues between the parties, hear evidence and argument on the issue of jurisdiction.

~~2.2.~~ Each arbitration Panel shall have the authority to determine whether and to what extent it has jurisdiction over the matter before it, and shall decline to act if there is a determination that it lacks jurisdiction.

~~3.3.~~ In any instance in which jurisdiction is declined, the Chairperson of the Panel shall promptly notify the parties and the Administrator of the NCBA Fee Arbitration Program of this decision in writing.

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- ~~4.4.~~ In addition to the above-mentioned limitations on jurisdiction, jurisdiction may not be asserted by the Panel where the same (or a substantially similar) dispute between the same parties has gone to prior Court judgment or arbitration award.
- ~~5.5.~~ No arbitration shall be dismissed, nor shall the award be modified in any way, solely by reason of the Panel and/or NCBA Fee Arbitration Program's failure to comply with the time requirements set forth in these rules, and the arbitration Panel and/or NCBA Fee Arbitration Program shall not lose the jurisdiction to make an award or to act.
- ~~6.6.~~ 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 "the majority of legal services were provide," 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 the arbitration request will be preserved for purposes of determining whether jurisdiction exists.

H.H. Settlement

1. Settlement of disputes is encouraged.
2. The settlement shall be in writing in the form of a Stipulated Award. All Stipulated Awards shall be binding. The Stipulated Award shall be signed by each of the parties, and shall be submitted to and executed by the Administrator if a Panel has not yet been appointed or to the Panel Chairperson if a Panel has been appointed. The Stipulated Award shall include an allocation of the filing fee, what amounts, if any, are due from one party to another, and any agreements about payment of any money due. If the Stipulated Award is executed by the Panel Chairperson, the Panel Chairperson shall send the Stipulated Award to the Administrator.
3. Upon confirmation that a dispute has been settled, the matter shall be dismissed by the Administrator if a Panel has not yet been appointed.
4. Upon written confirmation of settlement, and execution by the Chairperson of the Panel of the Stipulated Award, and delivery of that Award to the Administrator, the Panel's duties are discharged and the Panel shall have no further obligation to hear or otherwise act in the case.

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II. Initiation of Proceedings

A. Request To Arbitrate

1. Arbitration is initiated by filing a written and complete "Request to Arbitrate" by Client or Attorney in accordance with these Rules and by paying the filing fee in the amount set forth below to NCBA Fee Arbitration Program.
- ~~2.~~ 2. A Request to Arbitrate which is substantially complete, but which contains one or more defects will count as timely filed so long as the defect is cured within ten days of notice of the defect by the Administrator to the filing party. If the defect has not been cured within that time, the Request to Arbitrate will not count as timely filed.
3. 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 the Client confidences and secrets. Absent the Client's written consent to disclosure of confidential information, a fee arbitration with the 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, notice of the request must be sent to the Client by first class mail at the Client's last known address.

~~B.B.~~ B.B. Filing Fee

1. The filing fee for commencing an arbitration shall be paid by the party requesting arbitration.
2. The filing fee shall be delivered to the Administrator of the NCBA Fee Arbitration Program, and made payable to the Nevada County Bar Association.
3. The filing fee shall be ~~\$75~~\$150.00 if the amount in dispute is under \$10,000.00 as stated in the Client's Request to Arbitrate Fee Dispute, or Attorney's Request to Arbitrate Fee Dispute, as of the date of filing of the request to arbitrate, and ~~\$153~~\$300.00 if the amount in dispute is \$10,000.00 or more as stated in the Client's Request to Arbitrate Fee Dispute, or Attorney's Request to Arbitrate Fee Dispute, as of the date of filing of the request to arbitrate.
4. The amount in dispute shall be determined by the Administrator of the NCBA Fee Arbitration Program if it is not clear upon the face of the Request to Arbitrate. This determination shall be final. The Administrator may contact the parties to determine the actual amount in dispute. Each party is under an obligation to advise the Administrator in writing within 10 days of receipt of a Request to Arbitrate which he or she believes incorrectly states whether the

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amount in dispute would require one Arbitrator (i.e., is under \$10,000.00) or three Arbitrators (i.e., is \$10,000.00 or more).

5. If a single Arbitrator is appointed because the amount in dispute is apparently subject to decision by one Arbitrator under these rules, and neither party has advised the Administrator of a higher amount in dispute in writing within 10 days of the date of notice of the appointment, the sole Arbitrator appointed shall have the jurisdiction to determine the entire amount in dispute, and each party shall be presumed to have waived the right to set aside any decision by a single Arbitrator on the ground that it is in excess of the amount to be determined by a single Arbitrator.
6. If a single Arbitrator is appointed because the amount in dispute is apparently subject to decision by one Arbitrator under these rules, and the amount in dispute increases by reason of interest or finance charges between the time of the appointment of the single Arbitrator and the time of the hearing, the single Arbitrator shall have the jurisdiction to determine the entire amount.
7. If one party states that the amount in dispute is such that the matter requires three Arbitrators rather than one Arbitrator, and the filing fee paid is that for disputes requiring one Arbitrator, the party raising the amount in dispute shall pay the difference between the filing fee for single Arbitrator cases and cases in which three Arbitrators are appointed. This additional filing fee may be allocated as an item of costs by the panel in the arbitration. Failure to pay this increased fee within 10 days of the date of raising this issue shall be a waiver of the right to have the matter heard by three Arbitrators and consent to have the matter heard by one Arbitrator.
8. In a situation described in Section II.A.2., the Administrator's time in which to appoint a Panel shall be extended by ten days while awaiting receipt of the corrected Request to Arbitrate and/or correct filing fee.
9. The first \$5100.00 of the filing fee is non-refundable in any circumstances since reasonable costs and expenses are incurred in processing the application, conflict checking to determine whether or not the Assistant Administrator will need to administer this arbitration proceeding, setting up the file, maintaining records as required by the State Bar, contacting prospective Arbitrators, making copies of the Request to Arbitrate and supporting documents, etc. immediately upon receipt of a Request to Arbitrate. Upon request of the party who actually paid the fee, and in the discretion of the Administrator, any additional fee paid may be refunded if, and only if, the matter is settled in writing and the Administrator actually receives notice of that settlement before a Panel has been appointed.
10. Upon receipt of the filing fee, the Administrator shall be entitled to retain the sum of \$5100.00 to cover the costs of administering the claim, no matter what the disposition of the claim. The

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balance of all filing fees shall be regularly transmitted to the Treasurer of the Nevada County Bar Association.

~~C.C.~~ Binding or Advisory Arbitration

1. *Binding Arbitration* All arbitrations are non-binding **unless** both parties agree in a writing signed by both of them after the dispute arose and prior to the commencement of the arbitration hearing that the arbitration shall be binding. The Panel Chairperson may prepare a stipulation for binding arbitration if an agreement is reached at the time of the arbitration hearing. The original of that Stipulation shall be sent to the NCBA Fee Arbitration Program Administrator as part of the case file.
2. If the parties have stipulated that an arbitration be binding as set forth above, the arbitration decision is final and **no appeal from the a binding arbitration award is allowed**, except petitions to the Court as provided for in *Code of Civil Procedure* Section 1285, *et. seq.*
3. All Stipulated Awards are binding, whether or not the Stipulated Award so states.
4. *Advisory (Non-binding) Arbitration* An award in a non-binding arbitration becomes final and binding thirty (30) days after service of the Findings and Award unless a party has sought a trial by filing an action in the civil Court of appropriate jurisdiction within that period or notified the Court in a pending action that the Arbitration has been completed and the Award is rejected.
5. Either party may petition the Court of appropriate jurisdiction to have the arbitration award confirmed and made a judgment as set forth in the *Code of Civil Procedure*.

~~D.D.~~ Reply

~~1.1.~~ The original of an Attorney's Reply to a Request to Arbitrate (Attorney Reply) shall be filed with the NCBA Fee Arbitration Program Administrator, and shall also be served on the Client and on each member of the Panel, at least fifteen days prior to the hearing. The Arbitrator or Chairperson of the Arbitration Panel may permit the Attorney's Reply to be filed after that time in his or her discretion.

~~2.2.~~ The hearing shall proceed on the evidence received, even if the Attorney has not filed and served an Attorney Reply.

~~3.3.~~ All requests, consents and replies shall be on the approved forms, with such attachments as are desired to explain the case to the Panel.

~~4.4.~~ Service by first class mail, postage fully prepaid, shall be sufficient.

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~~E.~~ E. Attorney's Request To Arbitrate

1. If an Attorney seeks arbitration, the arbitration shall proceed only if one of the following applies:
 - a. The Client files and serves a written Consent to Arbitrate within thirty (30) days of service of the Attorney's Request, or
 - ~~b.b.~~ b.b. The Attorney's Request is accompanied by a written fee agreement signed by the Client and the Attorney which provides for non-binding fee arbitration of prospective fee disputes.
2. The Attorney shall submit the appropriate filing fee with the Attorney's Request.

~~F.F.~~ F.F. Consolidation of Requests for Arbitration

The Administrator shall rule on all written requests to consolidate two or more separate arbitration requests and shall serve a copy of the ruling upon all parties and Arbitrators involved. This decision shall be final.

~~G.G.~~ G.G. Discovery

1. No discovery shall be permitted except as specified below.
- ~~2.2.~~ 2.2. The Chairperson of the Panel shall issue subpoenas or subpoenas *duces tecum* (subpoenas requesting the production of documents in addition to or in lieu of testimony) as requested by a party for good cause shown and as the Panel Chairperson deems appropriate and relevant to the determination of the issues before the Panel. Whether or not to issue such subpoenas and the scope thereof shall be determined by the Panel Chairperson.
- ~~3.3.~~ 3.3. Any requests for subpoenas shall be received by the Panel Chairperson no later than 15 days before the scheduled hearing date (which shall be clearly shown in the request) and subpoenas shall be issued and available to or mailed to the requesting party no later than ten days before the hearing date.
- ~~4.4.~~ 4.4. Unless the requesting party has made arrangements to pick up the subpoenas at the office of the Panel Chairperson at a mutually convenient time, the subpoenas shall be mailed to the requesting party.
- ~~5.5.~~ 5.5. The requesting party is responsible for service of any subpoenas and for any witness fees and costs.

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~~6.6.~~ Service of subpoenas *duces tecum* on third parties shall be accompanied by notice of such service and copies of the subpoenas and all attachments or exhibits thereto on the other party no later than the day after the date on which the subpoenas are served. The party on whose behalf the subpoenas are served has the responsibility for serving such copies.

~~7.7.~~ Objections to the subpoenas or subpoenas *duces tecum* shall be addressed to the Chairperson of the Panel who shall determine them, or refer them to the Administrator of the NCBA Fee Arbitration Program if he or she deems more appropriate. The determination by the Chairperson of the Panel or Administrator of the NCBA Fee Arbitration Program is final.

~~8.8.~~ A request by the Client to copy:

- a. The file relating to the matter in which the fee dispute arose;
- b. All time records, statements, or billings, Client ledgers, payment records or hard copies of computer data containing time charges or billing records and evidence of costs charged to the Client relating to the matter in which the fee dispute arose and only relating to this Client;
- ~~c.~~ which must be in writing and must be received by the Attorney no less than 15 days in advance of the hearing date. Client does not have a right to the time records, statements, billings, etc. of other Clients.

~~9.9.~~ The Attorney shall provide copies of the requested documents to Client at Attorney's expense not later than 7 days after the receipt of the request.

~~10.10.~~ If the Attorney does not comply with the Client's request, the Panel Chairperson may preclude the Attorney from producing such documents at the hearing.

~~11.11.~~ The Panel Chairperson is encouraged to require the parties to exchange or submit additional information or documents prior to the hearing or within a specified period after the hearing and before determination of the award, as the Panel Chairperson deems appropriate.

~~H.H.~~ Function of the Office of the Administrator

1. The Office of the Administrator is charged with the fair and impartial administration of these rules, maintenance of the rules and forms, administration of the NCBA Fee Arbitration Program, the appointment of Arbitrators, ministerial duties, maintaining records and files of all arbitrations requested or conducted under the NCBA Fee Arbitration Program, and with making certain determinations as set forth in these rules.

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2. In order to maintain the fair and impartial administration of the NCBA Fee Arbitration Program, the Administrator, and the Administrator's staff, **cannot give legal advice to either party** to any arbitration conducted under these rules. If you have any questions about the rules, arbitration procedures or rights before or after a fee arbitration procedure, you should consult an attorney of your choice.
3. The Office of the Administrator may consult with any Arbitrator about the progress of an arbitration, mandatory fee arbitration rules or any other matter on which the Arbitrator or Administrator deems such a consultation necessary or helpful. Such consultations are not inappropriate *ex parte* communications.

III. Arbitration Panels

A. Appointment of Panel

1. For each dispute in which a Request to Arbitrate has been filed by the Client, or in which a Request to Arbitrate has been filed by the Attorney and either is consented to by the Client or accompanied by such consent in a written and executed fee agreement, an arbitration Panel shall be appointed by the Administrator of the NCBA Fee Arbitration Program from the pool of available Arbitrators.
2. The pool of Arbitrators shall consist of:
 - a. Attorney Arbitrators, defined as persons who are and have been for at least five years, an active member in good standing with the State Bar of California, practice law or reside in Nevada County (except those who have submitted a letter stating that they are unwilling to serve as Arbitrator for a specific year) who shall make reasonable efforts to be available to serve as NCBA Fee Arbitration Program Arbitrators upon reasonable request for such service, retired judges who are an active member of the State Bar of California, and shall not have a pending disciplinary matter filed with the State Bar Court or the imposition of any public professional discipline by the State Bar of California or by any federal court authorized to impose comparable professional discipline against attorneys at any time. The existence of any pending federal or other state bar discipline may be considered by the Administrator of the NCBA Fee Arbitration Program as grounds for denial of appointment to the NCBA Fee Arbitration Program; and

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- b. Lay Arbitrators, defined as persons who have provided sufficient information to the Administrator concerning his or her business, professional or volunteer experience, education, or other qualifications to serve as an arbitrator and who have never been an active or inactive member of the bar of any state or the District of Columbia, and who are not employed in a law practice.
3. In the event of a dispute in the amount of \$10,000.00 or more, a Panel shall consist of three Arbitrators, one of whom shall be designated as the Chairperson of the Panel. The composition of the Panel shall be two Attorney Arbitrators and one lay Arbitrator. The Chairperson of the Panel shall be an Attorney Arbitrator. This appointment and designation shall be made by the Administrator of the NCBA Fee Arbitration Program. When a three member Panel is appointed to a matter, the matter may not proceed with two Arbitrators in the absence of the third Arbitrator.
- 4.4. In the event the amount in dispute is less than \$10,000.00, the Panel shall consist of one Attorney Arbitrator.
- 5.5. All references in these rules to a Panel also apply to a single Arbitrator where only one Arbitrator has been appointed.
- 6.6. The Client shall have the option of requesting, on the Request to Arbitrate, that at least one of the Attorney Arbitrators have experience in either civil law or criminal law (corresponding to the underlying field of representation of Client by Attorney in which the fee dispute arose) and if the Client makes such a request, the Administrator of the NCBA Fee Arbitration Program shall attempt to comply with it in appointing the Panel. The Administrator will inform the Client if after reasonable attempts, it is not possible to obtain an Arbitrator for the case as requested by the Client. In the event that the Client does not waive this request, Client may initiate Fee Arbitration through the State Bar Program.
- 7.7. The parties may stipulate to have any matter, whatever the amount in dispute, heard by one Arbitrator, who shall be an Attorney at law.
- 8.8. Any vacancy which arises by way of disqualification of an Arbitrator, or by reason of the inability of an appointed Arbitrator to serve on the Panel, shall be filled by appointment of another Arbitrator of the same category (Attorney or Lay) by the Administrator of the NCBA Fee Arbitration Program.
- 9.9. The Administrator shall have the authority to remove an Arbitrator or Panel from a case whenever the Administrator determines in his or her sole discretion that there has been an unreasonable delay in performing the duties required under these rules, or for other good cause shown. If an unreasonable delay appears to result from failure to act timely by the

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Assistant Administrator or a Pro Tem Administrator, the case may be reassigned to another Pro Tem Administrator, by order of the President of the NCBA Fee Arbitration Program.

~~10.10.~~ In the event that the Administrator of the NCBA Fee Arbitration Program has a conflict of interest in the dispute with either the Client or the Attorney, the Administrator of the NCBA Fee Arbitration Program shall send the entire dispute to the Assistant Administrator of the NCBA Fee Arbitration Program, who shall assume the duties of the Administrator of the NCBA Fee Arbitration Program in all respects as to that matter.

~~11.11.~~ In the event of a conflict of interest by both the Administrator of the NCBA Fee Arbitration Program and the Assistant Administrator of the NCBA Fee Arbitration Program, any member of the Nevada County Bar Association with experience in conducting fee arbitrations (including the President of the Nevada County Bar Association) may be assigned by the President of the Nevada County Bar Association as Administrator *Pro Tempore* to assume all duties of the Administrator of the NCBA Fee Arbitration Program in that matter. The Administrator *Pro Tempore* shall send copies of all documents in the matter to the Administrator of the NCBA Fee Arbitration Program so that the files will be complete.

~~12.12.~~ In all such conflict cases, Assistant or Pro Tem Administrator of the NCBA Fee Arbitration Program shall send copies of all documents in the matter to the Administrator so that the NCBA Fee Arbitration Program will have a complete file for each case in a central location in the event the State Bar wishes to inspect these files and to facilitate compilation of data or information to respond to requests for NCBA Fee Arbitration Program statistics.

~~B.B.~~ Notice of Appointment of Panel

1. The Panel shall be appointed and the Notice of Appointment of Arbitrator(s) identifying the Panel shall be served on the parties and each member of the Panel by the Administrator of the NCBA Fee Arbitration Program within thirty (30) days of the filing by the Client of the Request to Arbitrate or the Consent to Arbitrate.
2. At the same time, the Administrator of the NCBA Fee Arbitration Program shall send the necessary documents and forms to the Chairperson of the Panel.

~~C.C.~~ Notice of Attorney Responsibility Form

- ~~1.~~ 1. At the same time at which the Notice of Appointment of Arbitrator(s) is mailed to Client and Attorney, the Administrator of the NCBA Fee Arbitration Program shall mail the Notice of Attorney Responsibility form to the Attorney, with proof of service by mail, and a copy of this form and the proof of service by mail to be sent to the Client and each Arbitrator.

~~D.D.~~ Challenge and Disqualification of Arbitrator(s)

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1. An Arbitrator who for any reason may not be impartial shall disqualify himself or herself from the matter by notifying the Administrator of the NCBA Fee Arbitration Program and the Chairperson of the Panel in writing of his or her self-disqualification. No reasons for this self-disqualification need be stated.
2. Each party may disqualify one Arbitrator without cause, known herein as a peremptory disqualification.
3. Each party shall have unlimited challenges for cause.
4. Any disqualification or challenge of an Arbitrator shall be addressed to the Administrator of the NCBA Fee Arbitration Program and served upon the Administrator of the NCBA Fee Arbitration Program, all Arbitrators (including the challenged Arbitrator) and the opposing party or parties no later than ten (10) days after the Notice of Appointment of Panel is served upon the parties and Arbitrators.
5. Failure to raise a disqualification or challenge within this time period serves as a waiver of the challenge for any facts which existed and were (or should have been) known to the party asserting the challenge at the time of the Notice of Appointment of Panel.
6. If there is a peremptory disqualification, the Administrator of the NCBA Fee Arbitration Program shall appoint another Arbitrator in the same category (e.g. Attorney or Lay) as the disqualified Arbitrator within fifteen days of receipt of the notice of peremptory disqualification and shall send an amended Notice of Appointment of Arbitrator(s). If the Chairperson of the Panel is disqualified, the Administrator of the NCBA Fee Arbitration Program shall also appoint the new Chairperson of the Panel. The new Arbitrator shall receive the appropriate documents and forms.
7. Challenges for cause shall be determined by the Administrator of the NCBA Fee Arbitration Program, who shall appoint another Arbitrator in the same category, if required, no fewer than fifteen days and no more than thirty days, after receiving the challenge.
8. During the first fifteen days after service of the request for disqualification for cause, any party or the challenged Arbitrator may submit written statements under penalty of perjury supporting or opposing the challenge for cause. The request for disqualification for cause shall be determined upon the request therefor and these statements (if any are received).
9. The Administrator of the NCBA Fee Arbitration Program may grant additional time in which to file a peremptory challenge after determination of a challenge for cause, but is not required to do so.
10. All determinations of disqualification of an Arbitrator by the Administrator are final.

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IV. Hearing

A. Notice of Hearing

1. Absent good cause approved by the Administrator, copies of the notice of the time, date, and place of the hearing shall be served by the Chairperson of the Panel on all parties and Arbitrators within 30 days of service of Notice of Appointment of Panel.
2. This notice shall be served at least 25 days prior to the hearing date, unless the parties and Arbitrators agree to shorten this notice time.
3. The original Notice of Hearing and all subsequent notices of any change in the hearing date, time or place shall be served upon the Administrator of the NCBA Fee Arbitration Program.

B. Time of Hearing

1. The hearing shall commence within 60 days after service of the Notice of Appointment of Panel, unless there has been a disqualification or an allowed challenge, in which case there shall be an extension not to exceed 30 days, absent stipulation to a longer extension.
2. Upon stipulation or application to the Chairperson of the Panel, the matter may be continued for good cause shown except in the instance where the continuance is for 30 days or more, in which case the continuance must be approved by the Administrator of the NCBA Fee Arbitration Program.
3. The Chairperson of the Panel shall serve written notice of hearing on each party and upon the Administrator of the NCBA Fee Arbitration Program at least 15 days prior to the hearing date.
4. Appearance by a party at a scheduled hearing shall constitute waiver by that party of any deficiency with respect to the giving of notice of hearing.
5. Notwithstanding the failure of either party to attend, the hearing shall proceed as scheduled and a decision shall be made on the basis of the evidence.
6. If neither party attends the hearing and there has been no waiver of appearance granted, the Panel may terminate the arbitration by making an award that neither party is entitled to any relief.

C. Right to Counsel

1. Either party may be represented by an Attorney at Law at his/her or its own expense.

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D. Evidence

1. Stipulations and admissions dispensing with formal proof of facts not in dispute are encouraged.
2. Any relevant evidence shall be admitted by the Panel if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule to the contrary.
3. If a party wishes to submit written evidence or documents, that party should bring to the hearing sufficient copies of the evidence so that each party and all of the Arbitrators have a copy.
4. The Attorney is encouraged to provide at least the following in advance of the arbitration hearing:
 - a. a copy of any written fee agreement(s) with the Client,
 - b. copies of correspondence regarding such agreements, and
 - c. copies of billings or statements.
5. If the Attorney provides these documents to the Client and Panel at least 10 days before the hearing, the Client should be prepared to discuss any objections thereto with particularity.
6. The test of the sufficiency of the evidence for a position shall be a preponderance of the evidence. The party who proffers evidence which is relatively more persuasive than the other shall be entitled to prevail on the issue for which the evidence was considered.
7. The Arbitrators shall receive evidence relating to malpractice or professional misconduct, **but only to the extent that this evidence bears on or provides information about the fees or costs** to which the Attorney is entitled and/or the reasonableness of these fees and/or costs. The mere fact that such evidence might also form the basis for a misfeasance or nonfeasance claim against the Attorney will not preclude consideration of this evidence to the extent that the evidence is related to or has a bearing on the reasonableness of the services provided or of the fees and/or costs charged.
8. All exhibits and documents shall be returned by the Chairperson of the Panel to the parties who submitted them at the time at which the Award is mailed or delivered to the Administrator of the NCBA Fee Arbitration Program. If the exhibits are voluminous, the Chairperson of the Panel may, at his or her discretion, require the party who submitted them to

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arrange to have them picked up or to prepay or reimburse the Chairperson of the Panel for the postage necessary to return them to that party by first class mail.

E. Oaths

1. Testimony of the witnesses shall be given under oath, which shall be administered by the Chairperson of the Panel.

F. Confidentiality

1. All hearings shall be closed to the public except for witnesses while testifying, and except as specified below.
2. The Panel, upon request of the Client, may permit the Client to be accompanied in the hearing by another person (in addition to the Client's Attorney, if any). The Panel may also permit additional persons to attend the hearing following a showing of good cause.
3. However, the Panel shall not permit any person not licensed as an Attorney to represent the Client at the hearing.
4. The Attorney/Client privilege and the work product privilege do not prohibit the disclosure of any relevant communication in connection with an arbitration conducted under these rules.
5. Except as provided by statute, in no event shall such disclosure be deemed a waiver of the confidential character of such matters for any other purpose.

G. Waiver of Personal Appearance

1. Any party who lives 150 miles or more from the site of the hearing may waive personal appearance and submit testimony and exhibits to the Panel by written declaration under penalty of perjury.
2. For good cause shown, the Panel may waive personal appearance at the hearing on request of a party even if he or she does not reside at least 150 miles from the site of the hearing.
3. Submission of testimony by written declaration pursuant to this rule constitutes an appearance.
4. Upon request of one of the parties, and in the discretion of the Panel Chairperson, a party who is unable to personally attend the hearing may participate by "speaker phone" if that technology is available at the hearing site. The party requesting this appearance shall initiate and pay for the call.

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5. If all parties agree in writing, and upon approval of the Panel Chairperson, the hearing may be held by conference call. The party requesting this appearance shall initiate and pay for the call.
- H. Manner and Order of Proof
1. The parties shall present their proof in the manner and order determined by the Panel.
- I. Transcripts
1. Any party may provide for the attendance of a certified shorthand reporter at the requesting party's expense.
 2. Every party to the arbitration shall be entitled to a copy of the reporter's transcript of the testimony upon written request to the reporter and payment of the expense of a copy of the transcript.
 3. The party requesting the attendance of the reporter shall pay for the preparation of the original transcript if any party requests a copy.
- J. Interpreter
1. Any party may provide for the attendance of a person to interpret at the requesting party's expense.
- K. Adjournment
1. The Panel may adjourn from time to time as is necessary in its discretion or for good cause shown at the request of a party.
- L. Contacts with Arbitrators
1. A party or Attorney with a matter pending under these rules shall not communicate with the Panel or any member of the Panel regarding the subject matter of the arbitration or to argue any evidence or position relating to the arbitration except:
 - a. At scheduled hearings, or
 - b. In writing with a copy to all other Arbitrators, all other parties and their counsel, if any, or
 - c. For the purpose of scheduling a hearing date or other administrative procedures, or

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- d. For the purpose of obtaining the issuance of a subpoena as set forth herein.

V. Award

A. Time for Making Award

1. The Panel shall make its award within thirty (30) days of the close of the hearing.
2. If unusual circumstances arise which make it impossible for the Panel to make the award within this time, any extensions must be approved by the Administrator of the NCBA Fee Arbitration Program upon written request to the Chairperson of the Panel.
3. The Panel shall not lose jurisdiction to render an award by reason of failure to make an award within these time limits.

B. Form and Content of Award

1. The award shall be in writing and signed by the Arbitrators concurring therein.
2. The Award shall include a determination of all the questions submitted to the Panel which are necessary in the opinion of the Panel in order to determine the controversy.
3. The award shall be on the State Bar approved form or shall contain specific language which clearly states each of the following:
 - a. The total amount of Attorney's fees and/or costs which should have been charged.
 - b. The total amount already paid by Client.
 - c. The allocation of the arbitration filing fee between Attorney and Client. In all cases which proceed to arbitration hearing, the Panel shall determine (and must state) whether to award this fee as an item of costs to the party who paid it, not to award costs for this filing fee or to allocate the filing fee between the parties.
 - d. The exact amount of any payment or refund due, and the names of the payor and payee **or** a statement that no payment is due to or from either party.
4. Additionally, in each case in which the award includes a provision that the Attorney refund any Attorney's fees and/or costs, the award shall contain a determination of the individual Attorney who is responsible for refunding fees and/or costs.

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5. The Panel is encouraged to write a narrative award setting forth their findings and conclusions as to each question submitted to the Panel, the decision of which is necessary to determine the controversy. However, they are not required to do so. They are required to complete the Findings and Award form in the approved format.
6. The Panel may make an award of a refund of unearned previously paid fees and/or costs.
7. The Panel may include in the award a determination of interest due, if any, including the rate, method of calculation, and date on which interest commenced or will commence.
8. The Panel does not have the jurisdiction to award relief to the Client beyond the issue of the Attorney's fees and/or costs to which the Attorney is or was entitled but the Panel may consider evidence of malpractice insofar as it relates to the Attorneys' fees and/or costs. No affirmative relief on any issue of malpractice may be made.
9. The Panel does not have the jurisdiction to award Attorney's fees "incurred in preparation for or in the course of the fee arbitration proceeding," to either party, even if the parties had a contract providing for such fees (*Business & Professions Code* §§6203(a) & 6203(c)).
10. Whenever there are three Arbitrators, a majority vote shall be sufficient for all decisions of the Arbitrators, including the award.

C. Service of Award and Other Documents to be Served Contemporaneously

1. The Panel Chairperson shall mail the original of the award to the Administrator of the NCBA Fee Arbitration Program, who shall serve copies of the signed award by mail or personal delivery, at his or her discretion, on each party. The Administrator of the NCBA Fee Arbitration Program shall prepare an original declaration of service on the parties.
2. The Panel Chairperson shall return all exhibits and documents to the parties who submitted them at the time of the service of the award as set forth above.
3. The Administrator of the NCBA Fee Arbitration Program shall also serve a copy of the State Bar approved Notice of Your Rights After Fee Arbitration on each of the parties.

VI. Definitions and Miscellaneous Provisions

A. Appointment of NCBA Fee Arbitration Program Chairperson

1. The Administrator of the NCBA Fee Arbitration Program shall be appointed by the President of the Nevada County Bar Association as soon as reasonably possible after election of the President each year.

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2. The President of the Nevada County Bar Association shall also select an Assistant Administrator. In the event that the Administrator is unable to act in any particular matter, the Assistant Administrator shall perform the duties of the Administrator.
3. In the event that the Administrator and Assistant Administrator are unable to act in any particular matter, the President of the Nevada County Bar Association shall appoint a Pro Tem Administrator for that arbitration matter who shall perform the duties of the Administrator.

B. Death or Incompetence of a Party

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

C. Service of Notices and other Documents

1. Unless otherwise specifically stated in these Rules, service may be made either by personal delivery or by deposit in the United States mail in a sealed envelope addressed to the party to be served, with first class postage fully prepaid.
2. For service to be effective, the envelope must be addressed to the person on whom it is to be served, at his or her office or home address as most recently supplied by that person on a document which has been filed in the arbitration and served on the party making the service by mail. If no such address has been supplied, it shall be addressed to the Attorney at his or her official state bar membership address and/or to the Client at his or her last known residence or mailing address.
3. 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.
4. Notices shall be on the forms provided by the NCBA Fee Arbitration Program, or may be otherwise prepared, so long as they contain all of the information as the forms provided by the NCBA Fee Arbitration Program.

D. Amendment of Rules

1. The NCBA Fee Arbitration Program Rules shall be reviewed by the Administrator annually to determine whether they should be amended to conform to changes in state law and in the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs as approved by the California State Bar Board of Governors.

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2. Any member of the NCBA or public may also submit proposed changes, so long as the proposed changes conform to the then-current Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs as approved by the California State Bar.
3. Any submission of proposed rules which do not conform to these Guidelines and Minimum Standards will not be presented as proposed amendments.
4. If the Administrator determines that such amendments are necessary, or that other amendments are appropriate, these proposed amendments shall be submitted to the executive committee of the NCBA for review and the issue of whether the amendments should be approved shall be placed on the agenda of a regularly scheduled meeting of the NCBA. If the executive committee determines that the amendments are merely to conform to changes in law, changes required by the California State Bar or are not substantial or substantive, it shall direct the Administrator to submit the changes directly to the California State Bar.
5. If the California State Bar determines that the amendments are not merely to conform to changes in law or changes required by the California State Bar, or are substantial, it shall direct that the issue of whether the amendments should be approved shall be placed on the agenda of a regularly scheduled meeting of the NCBA.
6. A vote approving the amendments by more than half of the members attending that meeting shall be sufficient to constitute approval by the membership. The amended proposed rules shall then be sent to the California State Bar for approval at a regularly scheduled meeting. If the amended rules are approved by the California State Bar as conforming to the then-current Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs as approved by the California State Bar, the Amended rules shall become effective, as of the date the Administrator receives notification of approval by the State Bar.
7. Until the Administrator receives notification that the amended rules have been approved by the California State Bar, the current rules remain in effect.
8. Such amendments shall not be effective as to any arbitrations which are then pending, which shall be determined pursuant to the Rules in effect at the time the arbitration was commenced, unless all parties stipulate in writing to pursue the arbitration under the new rules.

E. Filing Fee Waiver

1. The filing fee may be waived by the Administrator of the NCBA Fee Arbitration Program upon verified application from the party requesting a waiver showing the party's income and source of income.

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2. The standard to determine the eligibility for fee waiver shall be the same standard as used by the Nevada County Superior Court in determining applications to proceed *in forma pauperis* in a civil action.

F. Accountability for Funds

1. The filing fees and reimbursement fees from the State Bar of California (if any) shall be deposited to the general bank account of the Nevada County Bar Association and accounted for by the Nevada County Bar Association Treasurer.
2. These funds shall be used to pay the costs of the NCBA Fee Arbitration Program, including but not limited to, copying and printing costs, postage, long distance telephone calls, and reimbursement by the NCBA Fee Arbitration Program for costs advanced on behalf of the NCBA Fee Arbitration Program. These funds shall not be used for any other purpose, unless such an allocation of the funds to the general fund or for another specified purpose has been specifically approved by general vote of the NCBA Fee Arbitration Program members attending a meeting at which this issue has been regularly scheduled as an agenda item.
3. The Administrator of the NCBA Fee Arbitration Program shall regularly submit a statement of any such expenses to the Treasurer of the Nevada County Bar Association for payment.

G. Immunity

1. In arbitrations conducted pursuant to these rules, which have been approved by the Board of Governors of the State Bar, the arbitrating association, and its directors, officers and employees, including volunteer Arbitrators, shall have the same immunity which attaches to judicial proceedings.

H.H. Statute of Limitations

1. *Statute of Limitations Tolerd.* The statute of limitations for commencement of an action for Attorney's fees and/or costs is tolled from the time of filing and service of a Request to Arbitrate until thirty (30) days after the award is served.
2. *Statute of Limitations as a Bar to Arbitration.* No arbitration of a fee dispute may be held if a civil action requesting the same relief would be barred by any provision of Title 2 (commencing with Section 312) of Part 2 of the *Code of Civil Procedure* (the applicable statute of limitations); except that this shall not apply to a Request To Arbitrate by a Client commenced **after** the filing of a civil action by the Attorney.

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I.I. Definitions and Miscellaneous

1. The *Administrator (or Administrator of the NCBA Fee Arbitration Program)* refers herein to the person who has been appointed by the president of the Nevada County Bar Association as the Administrator of the NCBA Fee Arbitration Program. All actions which can or shall be taken by the Administrator of the NCBA Fee Arbitration Program as set forth herein can or shall be performed by the Assistant Administrator or the Administrator *Pro Tempore*, as appropriate, in cases in which the Administrator of the NCBA Fee Arbitration Program cannot act for any reason.
2. *NCBA Fee Arbitration Program* means and refers to the fee arbitration program administered by the Nevada County Bar Association in accordance with these Rules. Whenever these Rules indicate that a copy or original of any form or other matter must be sent to the NCBA Fee Arbitration Program or the Administrator of the NCBA Fee Arbitration Program, the item should be addressed as follows:

NEVADA COUNTY BAR ASSOCIATION
Fee Arbitration Program
Administrator
Post Office Box 1473
Nevada City, CA 95959

3. This address may be changed by notice to the State Bar of California Committee on Mandatory Fee Arbitration, the parties and Arbitrators in pending arbitrations and general notice to the members of the Nevada County Bar Association.
4. The *Chairperson of the Panel* or *the Panel* shall refer either to the chairperson of a Panel of three Arbitrators or the sole Arbitrator assigned to the case, as appropriate.
5. *Approved Forms* The forms which have been approved for use by the Nevada County Bar Association and/or the State Bar of California. These shall be made available upon request.
6. The following are the approved forms:
 - (1) Notice of Client's Right To Arbitrate Fee Dispute,
 - (2) Client's Request To Arbitrate,
 - (3) Attorney's Request To Arbitrate,
 - (4) Notice of Arbitration Request,
 - (5) Attorney's Reply to Request to Arbitrate,
 - (6) Notice of Attorney Responsibility,
 - (7) Notice of Hearing,

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- (8) Findings and Award,
- (9) Notice of Your Rights After Fee Arbitration

- 7. *Parties* means the parties to the arbitration shall include the Client (defined as a person who directly or through an authorized representative consults, retains or secures legal service or advice from an Attorney in the Attorney's professional capacity), any third party payor, and the Attorney (the member of the California State Bar who has rendered the legal service or advice).
- 8. *State Bar Committee* means the State Bar of California's Committee on Mandatory Fee Arbitration.
- 9. *State Bar Program* means the State Bar of California's Mandatory Fee Arbitration Program.

J. Effect of Time Requirements

- 1. The NCBA Fee Arbitration Program shall not lose jurisdiction, nor shall an arbitration be dismissed, nor any award modified in any way solely because of the NCBA Fee Arbitration Program's failure to comply with any time requirements as set forth in these Rules.

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