

**The Bar Association of San Francisco  
Attorney/Client Fee Dispute Program**

**Arbitration Rules of Procedure**

Draft 2/09/09

**1. PURPOSE AND COMPOSITION**

**A. Purpose**

The Attorney Fee Dispute Committee (Committee) of the Bar Association of San Francisco (Association) arbitrates and mediates disputes between Attorneys and Clients under the Attorney Fee Dispute Program (Program) concerning the costs and fees charged by the Attorney for professional services.

**B. Chairperson and Other Officers**

The Executive Director of the Association shall appoint a Chair of the Attorney Fee Dispute Executive Committee (Executive Committee). The Chair shall exercise the powers and bear the responsibilities set forth in these Rules and such other powers and responsibilities as may be necessary to carry out the functions of the Program. Included in these powers is the power of the Chair to determine all questions of interpretation of these Rules at any stage of the proceedings. The Chair shall also appoint Vice Chairs of the Executive Committee who shall perform duties assigned by the Chair including acting as Chair, should the Chair be unable to act. Should both the Chair and the Vice Chairs be unable to act for any reason, the Executive Director of the Association shall appoint a Chair pro tempore.

**C. Arbitrators**

The membership of the Committee for the Program shall be composed of both Attorney Arbitrators and non-Attorney Arbitrators.

**1. Attorney Arbitrators**

Attorney Arbitrators shall have been in practice for a minimum of two (2) years and shall be members in good standing of the State Bar of California and the Bar Association of San Francisco, and who in the opinion of the Chair possess the qualifications necessary to function effectively as Arbitrators.

**2. Non-Attorney Arbitrators**

Non-Attorney Arbitrators shall be individuals who are not licensed to practice law, did not attend law school or otherwise affiliated with the legal profession, who work or reside in the San Francisco Bay Area and who in the opinion of the Chair possess the qualifications necessary to function effectively as Arbitrators.

**D. Staff**

The Executive Director of the Association shall appoint an employee of the Association to function as Director of the Program. The Director shall perform or assign to Staff administrative functions as directed by the Chair.

**2. APPLICABLE LAWS AND REGULATIONS**

**A. Legal Basis for Rules of Procedure**

The statutory law specifically pertaining to arbitration of Attorney's fees is contained in Sections 6200-06 of the Business and Professions Code (The State Bar Act), effective January 1, 1979. As amended, Section 6200(d) provides for arbitration conducted by local bar associations, subject to the State Bar of California Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs by local bar associations. These Rules comply with applicable statutory law and with the State Bar Guidelines. The most current version of the Rules shall be the governing Rules, regardless of when the Request for Resolution of a Fee Dispute was filed.

**B. Matters Not Provided For In These Rules**

The California Arbitration Act, Code of Civil Procedure Sections 1282-84.2 shall apply to matters not dealt with in these Rules or in Business and Professions Code Sections 6200-06. In the event of a conflict between these Rules and the Code of Civil Procedure, these Rules shall govern.

**C. Rules Concerning Enforcement of Awards**

Except as specifically provided in these Rules, judicial enforcement of any arbitration award issued by the Committee shall be governed by applicable provisions of Code of Civil Procedure Sections 1285-94.2 and Business and Professions Code Sections 6200-06.

**3. TYPES OF DISPUTE/JURISDICTION**

**A. Jurisdiction Over the Parties**

The Committee shall have jurisdiction in a fee dispute if:

1. The Attorney or the law firm has an office in San Francisco;
2. The Attorney or the law firm maintained an office in San Francisco at the time the services were rendered;
3. A substantial portion of the work for which fees were charged was performed in San Francisco
4. There is no local county bar association arbitration program available in the county in which the Attorney practices, and the Client resides in San Francisco;
5. There is a local bar association arbitration program available in the county in which the Attorney practices, but the parties desire to arbitrate the matter in San Francisco and the parties stipulate to transfer the jurisdiction to the Association; or
6. The Chair determines that good cause exists for the exercise of jurisdiction and that such jurisdiction is lawful and otherwise appropriate.
7. In the event of 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 provided and such a ruling shall be final and not appealable to the State Bar. Should the fee dispute transfer to a different fee arbitration program after the Request for arbitration has been filed, the original postmark or receipt of the arbitration Request will be preserved. For the purposes of determining whether jurisdiction exists. Any filing fees paid will be refunded pursuant to Rule 7.C.4

#### **B. Amount in Dispute**

The Committee shall not take jurisdiction of any fee dispute involving an amount in controversy of less than \$1000, unless the Chair, for good cause shown, determines that arbitration should be permitted. The State Bar of California will hear matters under \$1000. This minimum amount does not apply, however, to a fee dispute between a Client and an Attorney who was referred by the Lawyer Referral & Information Service of The Association.

#### **C. Committee's Jurisdiction**

##### **1. Fee Dispute with Client**

The purpose and charter of the Committee is to hear and decide disputes concerning the amount or balance of fees or costs claimed by the Attorney to be owed by the Client, or the amount of retainers, deposits or payments by the Client, as to which the Client seeks or claims a refund.

##### **2. Fee Dispute with Non-Client Party**

a) The request for arbitration may also 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. For the purposes of these Rules a Non-client shall be defined as a Client and all rules as to Client apply to a Non-client party.

b) 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, 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 initiated by a non-client, the program will give notice of the Request to the client by first class mail at client's last known address.

##### **3. Cost of Arbitration**

Pursuant to Business and Professions Code Sections 6203 (a) and (c), neither party to the Arbitration may recover costs or Attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding, with the exception of the filing fee, notwithstanding any contract between the parties providing for such costs or fees.

##### **4. Claims of Malpractice**

The Arbitrator(s) shall receive evidence relating to claims of malpractice and professional misconduct, but only to the extent that those claims bear upon the fees or costs to which the Attorney is entitled. The Arbitrator(s) shall not award affirmative relief in the form of damages, offset or

otherwise, for any injuries underlying any such claims of malpractice and professional malpractice.

#### **5. Interest**

The Arbitrator(s) may also award to the prevailing party, in addition to fees and costs due, interest on the unpaid balance until the date of the Award, at a rate not to exceed the maximum interest rate that may be awarded on judgments in accordance with California law.

#### **6. Court-Established Fees Excluded**

The Committee has no jurisdiction over disputed Attorney fees to be paid by the Client that are fixed by court schedule, court order, the order of an administrative agency, or by statute.

#### **7. Contingency Fee Matters**

In a matter where the fee agreement provides for a contingent fee, the Committee usually cannot hear the dispute until the underlying matter has concluded.

#### **8. Incarcerated Client**

If the Client is incarcerated, the Committee will not accept jurisdiction, unless filed by Non-Client, Rule 3.C.2. The matter should be filed instead with the State Bar of California's Mandatory Fee Arbitration Program.

#### **9. Removal to State Bar Mandatory Fee Arbitration Program**

1) If a request for arbitration has been filed and:

a) A party to the arbitration requests removal to the State Bar program, the party must inform the program in writing, with a copy to all sides. The party should contact the State Bar Mandatory Fee Arbitration Program regarding procedures for such a transfer. The program will place the case on hold pending the decision of the State Bar. Or

b) The program believes a matter filed should be heard by the State Bar, the parties and the State Bar shall be notified in writing. The file will be placed on hold pending transfer decision.

2) Should the fee dispute transfer to The State Bar after the Request has been filed, the original postmark or receipt of the arbitration Request will be preserved. The program file will be closed and any filing fee refunded pursuant to Rule 7.C.4.

### **4. MANDATORY OR VOLUNTARY ARBITRATION**

#### **A. Arbitration Clause in Fee Agreement**

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

If an Attorney's Fee Agreement contains a provision providing for arbitration concerning attorney's fees and costs and does not require that such arbitration be binding, such provision is consistent with California law and enforceable by the Attorney. Under such provision, the Client may be compelled to participate in arbitration under this program and the parties are required to divide the arbitration filing fee equally.

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

Pursuant to Business and Professions Code Section 6204(a), a Client cannot be required to submit to binding arbitration to resolve a fee dispute before the dispute arises. Any provision in an Attorney Fee Agreement purporting to require the Client to submit disputes to binding arbitration is

considered void and unenforceable. If an Attorney Fee Agreement contains such a provision, the Client is under no obligation to submit to arbitration under this Program. In such cases, the Client may, however, voluntarily request or consent to arbitration and may choose either binding or non-binding arbitration. If the Client agrees to arbitrate under these circumstances, the filing fee is not to be divided and is subject to the fee provisions set forth in Rule 13.

## **B. Voluntary Arbitration**

### **1. Client May Not be Compelled to Arbitrate**

Unless the Client has previously agreed in writing to arbitration pursuant to Rule 4.A, a Client may not be compelled to arbitrate any fee dispute with his or her Attorney. If an Attorney requests arbitration of a fee dispute with the Client, the Committee has jurisdiction if the Client has previously agreed in writing pursuant to Rule 4.A. or if the Client timely executes a Reply Form consenting to arbitration.

## **C. Mandatory Arbitration**

### **1. Mandatory for Attorneys**

Arbitration of fee disputes relating to services performed on or after January 1, 1979 is mandatory for Attorneys if requested by the Client.

#### **a) Client's Right to Arbitrate**

Pursuant to Business and Professions Code Section 6201(a), an Attorney seeking to bring a civil action to recover Attorneys fees in any court, including Small Claims Court, or to commence any other procedure against the Client under a contract between Attorney and Client which provides for an alternative to arbitration under Business and Professions Code Section 6200, including arbitration in any other forum, must notify the Client of the Client's right to have such a fee dispute submitted to arbitration under this Program. The State Bar of California's (State Bar) "Notice Client's Right to Arbitration" form *must* be used.

#### **b) Failure of Attorney to Notify the Client of Right to Arbitration**

If an Attorney fails to notify the Client of the Client's right to arbitration using the State Bar required Client's Right to Arbitration form, and the Client either responds to or answers the lawsuit or other arbitration proceeding, or the Attorney obtains a default against the Client, the Attorney may not claim that the Client has waived the right to arbitration. Failure of the Attorney to use the required State Bar form is a ground for dismissal or stay of any action or other arbitration proceeding filed.

### **2. Mandatory for Clients**

Arbitration of a fee dispute is mandatory for Clients if the Client has previously agreed in writing to arbitration of all disputes concerning fees or costs pursuant to Rule 4.A.

## **D. Obtaining Stay of a Lawsuit or other Arbitration Action**

If an Attorney has sued for Attorneys fees in any court or has initiated any other arbitration proceeding for such fees, a Client may file a Request for Resolution of a Fee Dispute with the Committee, unless the Client received the required State Bar Client's Right to Arbitrate form and the thirty (30) days to file for arbitration has elapsed. Once the Client has

filed the Request for Resolution of a Fee Dispute with the Program, the action shall be automatically stayed in accordance with Business and Professions Code Section 6201(c). The Staff, upon receipt of a copy of the complaint in the civil action or proof of initiation of other arbitration proceeding, and the completed Request for Resolution of a Fee Dispute, shall file a request for a stay of the court or other proceedings. If a filing fee is required by the court to file a request for a stay, the Petitioner must advance the fee to the Staff so that the request for a stay can be filed. However, in the discretion of the Arbitrator(s), the Respondent Attorney may be directed, as part of the Award, to reimburse the Petitioner, in whole or in part, for such costs.

## **E. Waiver by Client of Right to Mandatory Arbitration**

The Client will be deemed to have waived the right to mandatory arbitration if the Client:

1. Files an answer to any civil action seeking judicial resolution of the fee dispute or equivalent response in another arbitration proceeding if the Client received a proper State Bar Client's Right to Arbitrate form;

2. Commences an action or files any pleading concerning the fee dispute or seeking relief based upon alleged malpractice or professional misconduct by the Attorney; or

3. Fails to file the completed Request for Resolution of a Fee Dispute form and the filing fees with the Program post-marked within thirty (30) days after receipt of the required State Bar Notice of Client's Right to Arbitration form by the Attorney.

## **F. Committee Jurisdiction Declined**

The Committee shall decline jurisdiction within thirty (30) days after giving notice to a Petitioner for arbitration by First Class Mail at the Petitioner's last known address that the Petitioner has:

1. Failed to pay the filing fee in full;
2. Failed to comply with the terms of any filing fee payment schedule ordered by the Committee; or
3. Failed to properly complete the Request for Resolution of a Fee Dispute.

## **5. BINDING OR NON-BINDING**

### **A. Binding Arbitration**

A Binding Arbitration Award is not subject to appeal and may be vacated or corrected by a court of competent jurisdiction only for one or more of the grounds listed in Code of Civil Procedure Sections 1286.2 and 1286.6. The Arbitrator(s) have limited jurisdiction to correct an Award. See Rule 11.A. Awards are binding in the following cases:

1. If both sides agree after the dispute arises;
2. In a fee dispute under Civil Code Section 2860

### **B. Withdrawal of Binding Arbitration Election**

A party who has requested Binding Arbitration may withdraw that request and elect Non-binding Arbitration, so long as the other parties have not also requested Binding Arbitration before the request for Binding Arbitration is withdrawn. In no event shall a withdrawal of a request for Binding Arbitration be effective until the Staff, and all

parties receive written notice. Except as set forth in Rule 6.G., and only prior to the first Hearing Date, Binding Arbitration may be changed to Non-binding Arbitration after all parties have requested Binding Arbitration only by written agreement signed by all parties and sent to the Staff and Arbitrator(s).

### **C. Non-Binding Arbitration**

1. A Non-binding Arbitration Award is not binding on a party, except as to Rule 13.E and entitles either party to a trial, or another forum, after arbitration on the issues that were subject to the arbitration. If the parties previously agreed to resolve the fee dispute through arbitration other than the mandatory fee arbitration program, and either party acts to reject the non-binding Award within the time required after a non-binding Award has been mailed, either party has the right to require the dispute be resolved through other arbitration instead of a new trial in court, under the terms of the preexisting arbitration agreement.

2. If either party willfully fails to appear at the arbitration, that party shall not be entitled to a trial or new arbitration on issues which were the subject of the arbitration. The determination of willfulness shall be determined by the court, and the party who failed to appear shall have the burden of proving that the failure to appear was not willful.

3. A trial or another arbitration after non-binding arbitration must be applied for within thirty (30) days after the mailing of the Award, as shown on the Proof of Service attached to the Award. The thirty (30) days run from the date of mailing, not from the date of receipt of the Award. If a civil action has already been filed, the party seeking a trial after arbitration must file in that court a Rejection of Arbitration Award and Request for Trial after Arbitration. If no action has been filed at the time the advisory Award was rendered, either party may initiate another arbitration or trial by filing a complaint in the proper forum or court.

3. If a party does not request a trial, or arbitration pursuant to 5.C.2.a) above, within thirty (30) days from the mailing of the Award by the Staff to the parties, the ~~Advisory~~ Non-Binding Award becomes binding pursuant to Business and Professions Code Section 6203(b).

## **6. INITIATION OF ARBITRATION**

### **A. Commencement of Fee Dispute Arbitration by the Client**

1. To commence arbitration a Client must do all of the following:

a) Submit by mail or personal delivery to the Program one (1) completed original Client's Request for Resolution of a Fee Dispute form ("Request") and four (4) copies of the completed Request form. Each party seeking arbitration must sign the Request form. Attorneys may not sign the Request form for or on behalf of parties.

b) Attach photocopies of all required documents to each of the five forms. Do not send original documents. The required documents are:

- 1) An explanation of the dispute in detail;
- 2) A copy of the written fee agreement; if there is no written fee agreement or no copy is available, an

explanation of the fee agreement between attorney and client:

3) If the Attorney has filed a lawsuit to collect the fees, a copy of the first page of the lawsuit, showing court and case number;

4) If the Attorney sent a "Notice of Client's Right to Arbitration" form to the client, a copy must be attached and the Client must file a completed Program Request for Resolution of a Fee Dispute form with the Program within 30 days of receipt of the Notice

5) Pay the appropriate filing fees

2. Upon receipt of the Client's executed Request, the Staff shall do the following:

a) Determine whether the Committee has jurisdiction over the matter. All questionable cases of jurisdiction shall be referred to the Chair for a determination of jurisdiction in accordance with Rule 7.C.

b) If a lawsuit or other proceeding has been commenced by the Attorney, assist the Client in obtaining a Stay of Proceedings.

c) Serve the Request form upon the Respondent, with the blank Respondent Reply form, the Rules of Procedure and the State Bar required Attorney Responsibility form.

### **B. Attorney's Reply**

1. The Attorney must do all of the following within twenty (20) calendar days from the date of notification from the Staff:

a) File one (1) completed original and four (4) copies of the completed Reply form. All parties must sign the form. A lawyer representing a party may not sign the Reply form for or on behalf of the party.

b) Attach to each of the five (5) forms photocopies of all required documents. Do not send original documents. The required documents are:

- 1) An explanation of the dispute in detail;
- 2) A copy of the written fee agreement; if there is no written fee agreement or no copy is available, an explanation of the fee agreement between attorney and client;

c) Pay any appropriate filing fees.

2. Failure to comply with Rule 6.B.1 within the specified time will result in the matter proceeding to arbitration without the Attorney's Reply.

a) To file a late Reply:

1) If the matter has not been assigned to an Arbitrator or panel, the Attorney must submit a written application to the Chair of the Committee showing good cause to file a late Reply, with a copy to all parties. An Order will be issued, granting or denying leave to file a late Reply. Or;

2) If the matter has been assigned to an Arbitrator or Panel, the application for good cause should be sent to the Chief or Sole Arbitrator with a copy to all parties and the Program. An Order will be issued, granting or denying leave to file a late Reply. Such order may deny or limit the Attorney's right to present evidence at the hearing. If a late Reply is presented at the hearing without an Order granting leave to file same, the Arbitrator(s) shall not consider it. Should the Attorney fail to submit a Reply, the

hearing will proceed as scheduled and a decision shall be made on the basis of the evidence before the Arbitrator(s)

3. Should the Attorney designate a different Responsible Attorney, that Attorney will be notified by the Staff, sent a copy of the Request for Resolution of a Fee Dispute and the Reply, and added as a party. The designated Responsible Attorney shall file a response, with a copy to all parties, within twenty (20) days from the notification from the Staff. Failure to file a response will result in the matter proceeding to hearing, and a decision made on the basis of the evidence before the Arbitrator(s).

4. Upon receipt of the Attorney's Reply, the Staff shall:

a) Serve the Petitioner with a copy of the Attorney's Reply.

b) Refer the proceeding to a Mediator or Arbitrator(s), upon receipt of the Reply or upon the expiration of twenty (20) calendar days. If both parties agree to mediation, the Rules of Mediation, beginning on page 13 herein shall apply.

### **C. Commencement of Fee Dispute Arbitration by an Attorney**

1. To commence arbitration an Attorney must do all of the following:

a) File one (1) original Attorney's Request for Resolution of a Fee Dispute form and four (4) copies of that completed ("Request") form. Each party seeking arbitration must sign the Request form. A lawyer may not sign the Request form for or on behalf of the parties.

b) Attach to each of the five (5) forms photocopies of all required documents. Do not send original documents. The required documents are:

1) An explanation of the dispute in detail;

2) A copy of the written fee agreement; if there is no written fee agreement or no copy is available, an explanation of the fee agreement between attorney and client;

c) Pay any appropriate filing fees

2. Upon receipt of the Attorney's executed Request the Staff shall do the following:

a) Determine whether the Committee has jurisdiction over the matter. All questionable cases of jurisdiction shall be referred to the Chair for a determination of jurisdiction in accordance with Rule 7.C.

b) Serve the Attorney's Request upon the Client, with the blank Reply form and the Rules of Procedure.

### **D. Client's Reply**

1. If the Client consents to arbitration or has previously agreed in writing to arbitration pursuant to Rule 4.A., the Client must do all of the following within twenty (20) calendar days from the date of the notification from the Staff:

a) Submit by mail or personal delivery to the Program one (1) original and four (4) copies of the completed Reply form. Each party must sign the Reply form. A lawyer may not sign the Reply form for or on behalf of parties.

b) Attach photocopies of all required documents to

each of the five forms. Do not send original documents. The required documents are:

1) A detailed written description of the dispute;

2) A copy of the written fee agreement; if there is no written fee agreement or no copy is available, an explanation of the fee agreement between attorney and client;

3) If the Attorney has filed a lawsuit to collect the fees, a copy of the lawsuit;

4) If the Attorney sent a "Notice of Client's Right to Arbitration" form, a copy of that form.

5) Pay any appropriate filing fees

2. If the Client has previously agreed in writing to arbitration pursuant to Rule 4.A., the Client must file the Reply and participate. Failure to comply with Rule 6.B.1, within the specified time will result in the matter proceeding to arbitration without the Client's Reply.

a. To file a late Reply;

1) If an Arbitrator or Panel has not been assigned, the Client must submit a written application to the Chair of the Committee, with a copy to all parties and the Program, showing good cause to file a late Reply. An Order will be issued, granting or denying leave to file a late Reply. or;

2) If the matter has been assigned to an Arbitrator or Panel, the application for good cause should be sent to the Chief or Sole Arbitrator with a copy to all parties, the other arbitrators and the Program. Following receipt and consideration of the application, an Order will be issued granting or denying leave to file a late Reply. If a late Reply is filed, or presented at the hearing, without an Order granting leave to file same, the Arbitrator(s) shall not consider it.

3. Should the Client fail to submit the Reply, the hearing will proceed as scheduled and a decision shall be made on the basis of the evidence before the Arbitrator(s).

4. Upon receipt of the Client's Reply, the Staff shall: Serve the Petitioner with a copy of the Client's Reply and refer the proceeding to a Mediator or Arbitrator(s), upon receipt of the Reply or upon the expiration of twenty (20) calendar days. If both parties agree to mediation, the Rules of Mediation, beginning on page 13, herein, shall apply.

5. If the Client has not previously agreed in writing to arbitrate pursuant to Rule 4.A. and indicates on the Reply form a refusal to arbitrate, the Staff shall forward a copy of the Reply to the Attorney and close the file. Filing fees will be refunded pursuant to Rule 13.

a) If the Client fails to file the Reply form within thirty (30) days, the Staff shall notify the Attorney. If within five (5) days of notification from the Staff the Attorney files a written request for additional time, to allow the Client to respond, the file shall remain open a total of ninety (90) days from the filing of the Request. Should the Client still fail to file the Reply form after ninety (90) days, the file will be closed. The filing fees paid shall be refunded pursuant to Rule 13.

### **E. Designation of Petitioner/Respondent**

The party commencing the arbitration shall be designated as the Petitioner, whether that party is the Client or the Attorney. The party filing the Reply shall be designated as the Respondent.

#### **F. Change of Claim**

Any amendment by a party to the Request or Reply must be filed at least twenty (20) days prior to the arbitration hearing, except for good cause as determined by the Chief or Sole Arbitrator. If the change of claim increases the amount in dispute, the party requesting the change must pay to the Program the appropriate filing fee on the difference. In the event that a Request or a Reply is amended, the other parties shall have the right to change the election of advisory or binding arbitration. A party choosing to change its election must notify the Staff, the Arbitrator(s) and the other parties in writing at least five (5) days prior to the hearing.

#### **G. Withdrawal of Request for Resolution of a Fee Dispute**

##### **1. No Valid Arbitration Clause in Fee Agreement**

If the matter is voluntary because the fee agreement does not contain an arbitration clause pursuant to Business & Professions Code 6200 or includes an invalid binding arbitration clause pursuant to Rule 4.A., and both sides have not yet agreed to Binding Arbitration, a Request for Resolution of a Fee Dispute may be withdrawn in writing by the party requesting arbitration at any time prior to the setting of the hearing date. Such a withdrawal must be sent in writing to the other parties, the Arbitrator(s) and the Staff. If both parties have agreed to Binding Arbitration or the hearing date is set, a Request may be withdrawn only with the written consent of all parties. Withdrawal of the Request shall result in a forfeiture of the filing fee and shall constitute a waiver of the right to arbitrate.

##### **2. Valid Arbitration Clause in Fee Agreement**

If the arbitration is mandatory because the fee agreement contains a valid arbitration clause pursuant to Rule 4.A., Request for Resolution of a Fee Dispute may only be withdrawn with the written consent of all parties in the matter. Withdrawal of the Request shall result in a forfeiture of the filing fee and shall constitute a waiver of the right to arbitrate.

#### **H. Settlement of a Dispute**

If the parties settle the dispute, they must advise the Staff and the Arbitrator(s) in writing with copies to all parties. Filing fees will be refunded pursuant to Rule 13.B.2.

### **7. APPOINTMENT OF ARBITRATOR(S)**

#### **A. Selection of Arbitrator(s)**

The Arbitrator(s) shall be selected from a list maintained by the Committee. Arbitrators shall be selected based upon relevant factors including availability experience, complexity of the case, and any Client request on the Request Form for an Arbitrator who practices civil or criminal law.

#### **B. Number of Arbitrators**

##### **1. Amount in Dispute less than \$10,000**

In all cases in which the amount in controversy is less than \$10,000, one (1) Arbitrator shall be assigned to hear the case. That Arbitrator shall be an attorney.

#### **2. Binding Arbitration**

In cases in which the amount in controversy is \$10,000 or more, and the Client has agreed to Binding Arbitration, a Panel of three (3) Arbitrators shall be appointed to hear the case, one of which is not an attorney. Notwithstanding the amount in controversy, the parties may agree to have the matter heard by one (1) Arbitrator. That Arbitrator shall be an attorney.

#### **3. Non-Binding Arbitration**

In cases in which the amount in controversy is less than \$20,000 and the Client has not agreed to Binding Arbitration, one (1) Arbitrator will hear the case. That Arbitrator shall be an attorney. In cases in which the amount in controversy is \$20,000 or more, a Panel of three (3) Arbitrators shall be appointed to hear the case, one of which is not an attorney. Notwithstanding the amount in controversy, the parties may agree to have the matter heard by one (1) attorney Arbitrator.

#### **C. Jurisdictional Hearings**

In any case where there is a jurisdictional or other threshold question appropriate for preliminary determination, the Chair shall make such determination solely on any documents submitted concerning the jurisdictional dispute or may direct that the dispute be assigned to a Jurisdictional Hearing. The Chair may designate an Arbitrator to serve as Jurisdictional Arbitrator. The Staff shall notify the parties in writing of the date and time and the name of the Jurisdictional Arbitrator.

##### **1. Hearing length**

Except by leave of the Jurisdictional Arbitrator, each party to the arbitration will be limited to thirty (30) minutes to present his or her position. The parties shall receive the Award of the Jurisdictional Arbitrator within twenty (20) days of the hearing. Arbitrator compensation in a jurisdictional matter is governed by Rule 13.E.

##### **2. Applicable Rules**

Provisions contained in these Rules for Pre-Hearing Procedures, Hearing Procedures and Awards shall apply to Jurisdictional Proceedings only to the extent that such rules are deemed to be consistent with the purposes of such proceedings or necessary to safeguard the rights of the parties, as determined by exercise of the sound discretion of the Jurisdictional Arbitrator.

##### **3. Final Determination**

All jurisdictional rulings are binding and final.

##### **4. Filing Fees**

In the event of a lack of jurisdiction, the Staff shall so notify the parties, close the file, and refund the filing fee in part or in full, as determined by the Chair, depending on the time spent on the matter by the Committee. In no event shall the Program retain more than 50% of the filing fee paid.

#### **D. Appointment of Chief Arbitrator**

In all cases assigned to a three (3) member arbitration Panel, the Staff shall appoint one (1) Attorney member as Chief Arbitrator. The Chief Arbitrator shall have an equal vote with the other members of the Panel but shall be responsible for the conduct of the arbitration and the writing of the arbitration Award.

#### **E. Appointment of Non-Attorney Arbitrators**

In cases assigned to a three-member arbitration Panel, one (1) of the Arbitrators shall be a non-attorney Arbitrator.

#### **F. Notice to Panel and Parties**

The Staff shall promptly notify the Arbitrator(s) of their appointment and shall send copies of the case file to the Arbitrator(s). The Staff shall also notify the parties of the identity of the Arbitrator(s).

#### **G. Disqualification of Arbitrator(s)**

If an Arbitrator is aware of any reason which would preclude the Arbitrator from serving as an impartial Arbitrator, the Arbitrator shall promptly notify the Committee. A party may disqualify one (1) Arbitrator without cause and an unlimited number for cause, by notifying the Staff in writing, with a copy to all parties, within seven (7) days of receiving the identity of the Arbitrator(s), except for good cause. The Chair shall rule on challenges for cause and such rulings shall be final.

#### **H. Reassignment to Another Panel**

The Chair shall have the authority to reassign any pending case to a replacement Panel, if deemed appropriate in the chairs discretion, at any time prior to submission of a case.

### **8. PRE-HEARING PROCEDURES**

#### **A. Correspondence/ Communication**

Parties shall not contact the Arbitrator(s) directly by telephone or in person. All communications with the Arbitrator(s) shall be in writing, by US Mail, or facsimile, and must be copied to all parties, or their counsel, if any, and the Staff. If any correspondence sent does not indicate that complete copies have also been sent to the other parties, it may be returned unanswered.

#### **B. Submission of Evidence**

In the event that either party wishes to submit any additional information or documents not included in the Request for Resolution of a Fee Dispute or Reply, such party shall file a written list of such evidence, together with copies of such documents at least ten (10) days prior to the hearing, with a copy to the Staff, Arbitrator(s) and each other. The Arbitrator(s) may decline to accept or consider any evidence not submitted prior to the hearing. All documents should be submitted prior to hearing.

#### **C. Scheduling of the Hearing**

The Staff shall mail a Request for Resolution of a Fee Dispute Hearing Dates Form to all parties. This form must be completed, leaving at least seven (7) days available in each month, and returned to the designated Arbitrator(s) within the time period provided on the form. The failure of a party to complete or return the form in a timely manner will constitute the consent of that party to the scheduling of the hearing at the sole discretion of the Arbitrator(s), and that party will be deemed to have consented to the date set for hearing.

#### **D. Notice of Hearing**

It is the goal of these Rules that all hearings be completed within sixty (60) days from assignment of the dispute to the Arbitrator(s), and that all post-hearing

submissions be completed within twenty (20) days after close of the hearings. It shall be the duty of the Chief or Sole Arbitrator to arrange a time and place for the arbitration hearing and to notify the parties, other Arbitrators and the Staff of that hearing. The hearing shall be held in San Francisco unless all parties and Arbitrators agree otherwise. The Chief or Sole Arbitrator may communicate informally with the parties to the dispute and the other Arbitrator(s) to arrive at a mutually agreeable time and place for the hearing. It is advisable to schedule a hearing for a date within twenty (20) days of assignment to allow for the possibility of a continuance, postponement, more than one hearing or submission of pre-hearing briefs or arguments, if such are permitted by the Arbitrator(s). A party who does not provide current addresses to the Staff or otherwise fails to make themselves available for a hearing shall have no ground to object to any hearing and Award made in their absence if notice has otherwise been properly given.

#### **E. Discovery**

##### **1. Pre-hearing Discovery**

Pre-hearing discovery is permitted only upon written application to the Chief or Sole Arbitrator at least thirty (30) days prior to the hearing, except for good cause. Except as provided in Rule 8.E.2 and 3, the written application must set forth specific discovery requested and show good cause, with a copy to each Arbitrator, all parties and the Staff. The other parties shall then have five (5) days to respond or object in writing to the Chief or Sole Arbitrator, with a copy to the other parties and the Staff. The Chief or Sole Arbitrator shall then issue a Discovery Order, granting or denying the request in part or in whole. The decision of the Arbitrator shall be final.

##### **2. Client's File**

In accordance with the Rules of Professional Conduct, Rule 3-700, upon written request of the Client, the Attorney shall provide the Client with a complete copy of the file, at no cost to the Client. This does not require an Order by the Arbitrator and the Attorney must comply within 20 days of the written request of the Client to the Attorney.

##### **3. Attorney's Billing Records**

Following a written request by the Client to the Attorney, with a copy to the Arbitrator(s) and the Program, seeking the Attorney's detailed billing records, copies of such records must be sent to the Client and the Arbitrator(s). This shall be a Standing Order and does not require a written order from the Arbitrator(s). The request must be made at least thirty (30) days prior to the hearing, except for good cause, and the Attorney must comply within twenty (20) days of the mailing, fax transmission or hand delivery of the request.

##### **4. Failure to Comply with Discovery Orders**

Failure to comply with Discovery Orders or to provide documents in accordance with Rules 8.E.2 and 3 will be considered by the Arbitrator(s) at the hearing. The Arbitrator(s) may apply such remedy as deemed just, which may include resolution of issues in favor of the party deprived of the documents ordered produced.

#### **F. Subpoenas**

To subpoena a person or documents, a party may write to the Chief or Sole Arbitrator and request that blank subpoena(s) be issued. The person and/or the custodian of documents being subpoenaed should receive at least five (5) days notice. It is the responsibility of the party serving the subpoena to serve it with a tender of witness fees in the amount of \$35.00 for each witness, and mileage to and from the hearing in the amount of ~~\$.20~~ \$.58 per mile. A copy of the subpoena shall be sent to the Staff, the Arbitrator(s), and the parties or their counsel, if any.

#### **G. Witnesses**

In the event that either party wishes to have witnesses appear without subpoena, the party desiring such witnesses shall submit their names, and the expected time involved in direct examination, in writing to the opposing parties, the Staff and the Arbitrator(s) at least five (5) days prior to the hearing.

#### **H. Transcripts of Arbitration Hearing**

Any party may have the hearing recorded by a Certified Shorthand Reporter, at his/her own expense, subject to the following conditions:

1. The Staff, the Arbitrator(s) and all parties must be notified in writing of the intent to record at least five (5) days prior to the hearing. It shall be the responsibility of the requesting party to arrange for the transcript.

2. If the non-requesting party does not desire a copy of the transcript, the requesting party shall bear the full cost. If both parties desire a copy of the transcript, the cost shall be divided equally between the parties.

3. Upon request by the Arbitrator(s), a copy of the transcript will be provided to the Arbitrator(s) at the cost of reproduction, this cost to be borne by the party requesting the transcript.

4. The use of the transcript is governed by Rule 9.H.

#### **I. Tape Recordings**

Any party may tape record the hearing, at his/her own expense, subject to the following conditions:

1. The Staff, the Arbitrator(s) and all parties must be notified in writing of the intent to record at least five (5) days prior to the hearing. It shall be the responsibility of the requesting party to arrange for the recording.

2. The party recording the hearing must provide the Arbitrator(s) and other parties with copies of the recording, at the recording party's expense, if requested.

3. The use of the recording is governed by Rule 9.H.

#### **J. Interpreter**

Any party may bring to the hearing an interpreter. Arrangement for such an interpreter must be made by that party. A professional interpreter is not required, but is allowed and will be at that party's expense. The Staff, the other parties and the Arbitrator(s) must be notified in writing of the name of the interpreter five (5) days prior to the hearing.

#### **K. Clarification of Issues**

If the issues to be arbitrated are not clearly set forth in the Request, Reply, or any accompanying documents, the

Arbitrator(s) may request the parties to clarify the issues or submit additional documentation. The Arbitrator(s) may in their discretion decline to determine any issues not set forth in documents submitted prior to the hearing as required by the Rules.

#### **L. Rescheduling the Hearing Date (Continuance)**

1. Continuances are not favored and should not be granted, except for good cause. Application for a continuance must be made to the Staff in writing explaining the good cause, at least five (5) days prior to the hearing. A copy of the request must be sent to the Chief or Sole Arbitrator or Mediator, with copies to the other parties, and other arbitrators if applicable. Application for a continuance made less than five (5) days before the hearing must explain why the application could not be timely made, and the Staff, at least five (5) days prior to the hearing except for good cause shown. In the event that a continuance is requested at the hearing, the Chief or Sole arbitrator, or the Mediator, shall either grant or deny the request and notify the Program. In the event that a continuance is granted, the matter will be reset for a hearing to be held not later than thirty (30) days from the date of the original hearing, except for good cause.

2. There is an administrative charge for each approved continuance of the Mediation or Arbitration date, which may be waived or reduced per 8.I.3. The continuance fee, payable to BASF, must accompany the continuance request sent to Staff; the fee will be returned if the continuance is denied but will not be refunded if the matter settles after the continuance is granted. If the request is granted at the hearing, the requesting party shall forward the continuance fee to the Program. The fee is as follows:

a. Amount in Dispute is \$2,500 or less, the continuance fee is \$50.00.

b. Amount in Dispute is \$2,501 to \$5000; the continuance fee is \$75.00.

c. Amount in dispute is over \$5000, the continuance fee is \$100.

3. The Committee may waive or lower the continuance fee:

a. If the original Program filing fee was previously waived for the party. Or,

b. In the opinion of the Committee, good cause exists.

## **9. HEARING PROCEDURES**

#### **A. Attendance of Parties**

In the event that one of the parties fails to appear at the hearing, the Arbitrator(s) shall attempt to contact the party to determine the grounds for such failure to appear. If a party willfully refuses to appear, the hearing shall go forward and a decision will be made based upon the evidence produced. In the alternative, the Chief or Sole Arbitrator may elect to delay submission of the matter or may elect to go forward with one side and allow the other side to submit written testimony, or the Arbitrator(s) may elect to proceed with the hearing and the controversy may then be determined based upon the evidence produced, notwithstanding such failure to appear. In any event, the facts with regard to the failure to appear shall be stated in the Award. In the event that one of the parties refuses or fails to

appear, and a party who is present requests a continuance so that the presence of the absent party may be compelled by subpoena or otherwise for examination, such continuance shall be granted within the time limits of these Rules.

#### **B. Waiver of Personal Appearance**

Any party who lives one hundred (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. With the approval of the Chief Arbitrator, other means, such as speakerphone or conference call, may be used. A party living within one hundred (100) miles of the hearing must apply to the Chief or Sole Arbitrator in writing, with copies to the other parties and the Staff, for approval to waive personal appearance.

#### **C. Attendance of Arbitrator(s)**

If at the time set for the hearing, all three (3) members of the Panel are not present, the ~~Chief Arbitrators present~~ shall decide either to postpone the hearing or, with the consent of the parties, to proceed with the hearing ~~and act as with a Sole Arbitrator~~. A sole arbitrator must be one of the attorney arbitrators on the panel. In no event shall a hearing be conducted by or proceed with two (2) Arbitrators.

#### **D. Representation at Hearing**

Any party may be represented at the arbitration hearing, either by an Attorney or a non-Attorney spokesperson. The Staff, the other parties and the Arbitrator(s), should be notified in writing, at least five (5) days prior to the hearing, except for good cause, if a party will be represented by an Attorney or a non-Attorney spokesperson. Representation shall be at the personal expense of the party. The Arbitrator(s) may not award Attorneys fees or costs for the arbitration, regardless of any such contract between the parties.

#### **E. Evidence/Testimony at Hearing**

Parties may present testimony and documentary evidence, pursuant to Rule 8.B., relevant to the fee dispute. Any evidence which reflects on the competence or professional ethics of the Attorney shall be heard and considered only to the extent that such evidence has a direct bearing on the fee dispute, and such evidence shall not be considered for any other purpose. The Arbitrator(s) may hear any evidence which is deemed trustworthy and which is material to the fee dispute. Formal rules of evidence shall not apply. The disclosure at the hearing of any Attorney/Client communication or Attorney's work-product shall be limited to relevant communications between the parties to the fee dispute and to any work-product which is the subject of the fee dispute. In no event shall such disclosure be deemed a waiver of the confidentiality of such matters for any other purpose. The Chief or Sole Arbitrator shall determine the order of presentation of evidence and the time allotted to each party for presentation of evidence, and argument, and shall be the sole judge of the relevance of any offered evidence and the hearing procedures employed.

#### **F. Stipulations**

Stipulations and admissions that narrow issues or foreclose the need for formal testimony are encouraged.

#### **G. Oaths**

The Chief or Sole Arbitrator is empowered to administer oaths. Testimony need not be given under oath to be considered and the decision whether to administer oaths shall be made by the Chief or Sole Arbitrator.

#### **H. Privacy and Confidentiality**

1. Hearings shall be closed to the public, except for witnesses while testifying and others who are directly participating in the proceeding. The parties may, however, agree to permit others to attend the proceedings. The arbitration case file, including the Request, Reply, exhibits and transcripts, as well as the Award itself are to remain confidential. Absent a court order compelling disclosure of the award, a Program may not disclose the award to any individual or entity that was not a party to the arbitration proceeding. An award shall remain confidential except as may be necessary in connection with a judicial challenge to, confirmation or enforcement of, the Award, or as otherwise required by law or judicial decision. The arbitration files shall be confidential and preserved by the Committee in such a manner as to assure protection from unauthorized dissemination of Attorney-Client communications or Attorney work product disclosed during the course of the arbitration. However, at the discretion of the Chair of the Committee and the request of The State Bar, the files may be opened to the State Bar.

2. 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 for disposition, as The State Bar deems appropriate.

3. In any subsequent proceeding the admissibility of any transcript or tape recording made pursuant to Rules 8.H or 8.I shall be governed by Business and Professions Code Section 6202 and the applicable Rules of Evidence.

#### **I. Adjournment**

The Chief or Sole Arbitrator may adjourn the hearing from time to time as may be necessary.

#### **J. Submission**

At the close of the hearing, the matter shall be deemed submitted. The Chief or Sole Arbitrator may hold the matter open within the time limits set by Rule 10.D for later submission of briefs, argument, or other evidence. The Chief or Sole Arbitrator shall insure that both parties are provided an equal opportunity to submit such materials and shall submit a date certain for final submission of the matter. Other than as directed by the Chief or Sole Arbitrator, no evidence may be received by any Arbitrator following completion of the hearing.

### **10. AWARD**

#### **A. Arbitrator(s) Decision**

After the matter has been submitted, the Arbitrator(s) shall consider all of the evidence relevant and material to the fee dispute and shall determine all issues necessary to resolve the dispute. Upon appropriate findings, the

Arbitrator(s) may issue an Award as follows:

**1. Valid Written Fee Agreement; Attorney Entitled to Fee Claimed**

Where the Arbitrator(s) finds that the parties entered into a valid, binding written fee agreement; that the Attorney performed services appropriate under that agreement; and that the Attorney's claim conforms to the services so performed, the Attorney is entitled to an award of the fee claimed by the Attorney.

**2. Valid Written Fee Agreement; Attorney Entitled to Portion of the Fee Claimed**

Where the Arbitrator(s) find that the parties entered into a valid, binding written fee agreement, that the Attorney performed some services appropriate under that agreement, but that some services for which a fee is claimed by the Attorney were not appropriate under that agreement, the Attorney is entitled to an Award of the portion of the fee claimed by the Attorney that the Arbitrator(s) find applicable to services appropriately rendered under the agreement. Services that the Arbitrator(s) may find to be inappropriate, even if rendered under a valid, binding written fee agreement include:

- a) Services that were unnecessary or ineffectual;
- b) Services that were rendered inefficiently;
- c) Such portion of the services appropriately rendered under the agreement as the Arbitrator(s) find to be appropriately devalued where the Arbitrator(s) also find that, while otherwise rendering services efficiently and effectively, the Attorney so conducted some material aspect of the representation, such as Attorney-Client communications or Attorney billing for services rendered, in such a way as to reduce materially the overall value of the services to the Client; or to cause the representation to be unduly and unnecessarily burdensome to the Client; or to cause the representation materially to depart in such respects from the reasonable informed expectations of the Client, and
- d) Services claimed by the Attorney that the Arbitrator(s) find not to have been rendered.

**3. Unconscionable Fee Agreement**

Where the Arbitrator(s) find an otherwise valid written fee agreement to be unconscionable in one or more of its terms, the Attorney is entitled to an award of that which the Arbitrator(s) find, in the totality of the circumstances presented, to have been the reasonable value, if any, of the services actually rendered by the Attorney to the Client.

**4. No Valid, Binding Written Fee Agreement**

As provided in Sections 6147 and 6148 of the Business and Professions Code, where there is no valid binding written fee agreement, the Attorney is entitled to an award of the reasonable value, if any, of the services actually rendered to the Client.

**5. Factors Bearing upon Arbitrator(s) Determination of the Reasonable Value of Services Rendered**

Where it becomes necessary or appropriate for the Arbitrator(s) to determine the reasonable value of services

rendered by the Attorney to the Client, the following factors may be considered as appropriate in making a determination:

- a) The amount of the fee in proportion to the value of the services performed.
- b) The relative sophistication of the Attorney and the Client.
- c) The difficulty of the legal and factual issues involved in the underlying cases and the skill required of the Attorney to perform the legal service properly.
- d) The amount involved in the underlying matter, and the results obtained.
- e) The time limitations imposed by the Client or by the circumstances.
- f) The nature and length of the professional relationship with the Client.
- g) The experience, reputation, and ability of the Attorney performing the services.
- h) Whether the fee is fixed or contingent.
- i) The time devoted to the matter by the Attorney.
- j) The informed consent of Client to the fee agreement.

**B. Majority Vote**

When the Arbitration Panel consists of three (3) Arbitrators, the decision and Award shall be by majority vote.

**C. Cost of Arbitration**

Pursuant to Business and Professions Code Sections 6203 (a) and (c), neither party to the Arbitration may recover costs or Attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding, with the exception of the filing fee, notwithstanding any contract between the parties providing for such costs or fees.

**D. Written Award**

The Arbitrator(s) shall prepare a written Award in the format required by the Committee, which includes the language set forth in the State Bar of California Guidelines and Minimum Standards. This includes at a minimum the following:

- 1) Full names of the parties;
- 2) Whether the Award is binding or non-binding;
- 3) Full name of the Attorney responsible for any possible refund to the Client;
- 4) Fee incurred and amount in dispute;
- 5) Statement of Facts/Issues in dispute
- 6) Statement of Reasoning
- 7) Amount of filing fee paid and by whom;
- 8) Allocation of the filing fee between the parties;
- 9) Where appropriate, the circumstances bearing on the willfulness of any party's nonappearance at the hearing; and
- 10) A clear statement specifying the precise amounts and who owes what to whom, using the full names of parties.

**E. Processing of the Award**

1) The Award shall be signed by all Arbitrator(s) and mailed to the Staff, and it is desirable that it be sent within fifteen (15) days following submission of the matter. The Staff shall have fifteen (15) days in which to process the Award after its receipt from the Arbitrator(s). It is the

objective of the Committee that no more than forty-five (45) days elapse between the date of submission of the matter and the date of the Award. Failure to comply with the forty-five (45) day time frame does not constitute grounds for vacating or dismissing the Award. The Executive Committee shall review the Award, may vacate or modify the Award as necessary, and may refer the matter to another Panel. Should the Executive Committee vacate an Award and order a new hearing, the vacated Award is not made part of the file and is not available for review by anyone, including the parties.

2) Upon approval of the Award by the Executive Committee, the Staff shall serve a copy of the Award, together with a copy of the State Bar's Your Rights After Fee Arbitration on the parties. Once approved and issued to the parties the Award shall be governed by Rule 11.

#### **F. Settlement at Hearing/ Stipulated Awards**

The parties may agree in writing to a stipulated Award at any time prior to ~~the date~~ issuance of the Award. The Arbitrator(s) will prepare the Award in accordance with Rule 10.D, attaching the Stipulation executed by the parties. The Award will be processed in accordance with Rule 10.D. Unless provided otherwise in the Stipulation executed by the parties, all other Rules apply to the validity, enforcement and execution of Awards will also apply to Stipulated Awards.

#### **G. Post Hearing Communications**

After the close of the hearing, no party shall communicate in any manner directly with the Arbitrator(s) except as provided in Rule 9.J.

### **11. EXECUTION OF AWARDS**

#### **A. Vacate an Award**

Once it has been issued to the parties, an Award may only be vacated by a court. The Your Rights After Fee Arbitration, accompanying the Award, explains the proper procedure.

#### **B. Correction of an Award**

The Arbitrator(s) cannot rehear the case or reconsider their decision. The Arbitrator(s) can only correct an Award for miscalculation of figures, or an evident mistake in the description of any person, thing or property referred to in the Award, or if the Award is imperfect in a matter of form not affecting the merits of the controversy. A request for this type of correction must be made in writing, with a copy to the other parties within ten (10) days of the date the Award was mailed (See Code of Civil Procedure Section 1284).

#### **C. Amend or Supplement an Award**

There are limited circumstances under which an Arbitrator may amend or supplement an Award after it is issued. These consist of issues which have been brought before the Arbitrator or Panel of Arbitrators, either in testimony or briefing, but for some reason the Arbitrator(s) fails to include resolution of that issue or issues in the Award. An Arbitrator can make appropriate amendments or supplements to an Award when there has been an inadvertent omission of an issue or issues that have relevance to the Award, and where, without their inclusion, the Award would be incomplete or fail to include all of the matters brought before the Arbitrator(s) and necessary for decision. Any jurisdiction on the part of an Arbitrator to

amend or supplement and Award expires after the passage of thirty (30) days following the service of a signed copy of the Award on the parties. A request for this type of correction must be made in writing with a copy to the other parties within ten (10) days of the date the Award was mailed.

#### **D. Binding Awards**

Payment of amounts due as a result of a binding Award is to be made immediately following receipt of the Award, unless a petition to vacate the Award is filed in a court of competent jurisdiction.

#### **E. Non-binding Awards**

If either party to an arbitration which results in a Non-binding Award wishes to obtain a trial after arbitration, such judicial review must be initiated by the filing of a Rejection of Award and Request for Trial if there is a pending action, or the commencement of a trial in court within thirty (30) days after mailing of the Award. If the parties previously agreed to resolve the fee dispute through arbitration other than the mandatory fee arbitration program, and either party acts to reject the non-binding Award within the time required after a non-binding Award has been mailed, either party has the right to require the dispute be resolved through other arbitration instead of a new trial in court, under the terms of the preexisting arbitration agreement.

#### **F. Fees and Costs**

In the event that an Award must be enforced by the entering of a judgment upon the Award by a court having competent jurisdiction, the prevailing party may be entitled to costs and a reasonable allowance for Attorneys fees involved in obtaining such judgment.

### **12. ENFORCEMENT OF ARBITRATION**

The Committee may take such steps as necessary to ensure compliance with the purposes and requirements of these Rules and the notice requirements of Business and Professions Code Sections 6200 et seq. Should an Attorney fail or refuse to comply with an Award, and 100 days have passed from the date the Award was mailed to the parties, the Client may call The State Bar at (415) ~~241-2020~~ 538-2020 to report such failure or refusal to comply. The State Bar will assist the Client in collection of the Award and has the authority to place the Attorney on inactive status until the Award is complied with, pursuant to Business and Professions Code Section 6203(d).

### **13. FILING FEES AND COSTS**

#### **A. Filing Fees**

1. The filing fee entitles parties to mediation and/or arbitration. The schedule is based on the amount in dispute as follows:

a) Five (5%) percent of the amount in dispute, with a \$50 minimum filing fee; when the total amount in dispute is ten thousand dollars (\$10,000) or less;

b) Seven percent (7%) of the amount in dispute, when the total amount in dispute is more than ten thousand dollars (\$10,000), and less than one million dollars (\$1,000,000) with a maximum filing fee of five thousand

dollars (\$5000); or

c) When the total amount in dispute is one million dollars (\$1,000,000) or more, the filing fee is five thousand dollars (\$5,000) plus a surcharge of \$250 for each million dollars or fraction thereof in excess of the first million dollars. **2. Calculation of the Amount in Dispute**

The amount in dispute is the difference between the fees charged or claimed by the Attorney, and the amount, if any, which the Client has indicated to be the reasonable value of the legal services received, as set forth in the Request for Resolution of a Fee Dispute and Reply. If the Arbitrator(s) find that the amount in dispute is greater than originally stated in the Request for Resolution of a Fee Dispute and Reply, the Award may direct the parties to pay to the Program the additional filing fee due. Any such award of filing fees to the Program is binding on the parties regardless of the nature of the Award.

### **3. Payment of the Filing Fee to the Program**

The filing fee shall be paid by check, money order or credit card payable to The Bar Association of San Francisco, by the Petitioner, whether Client or Attorney, at the time of the filing of the Request for Resolution of a Fee Dispute. However; if the parties have a written fee agreement with a valid arbitration clause, pursuant to Rule 4.A., the Program filing fee shall be paid equally by the parties. The Petitioner shall pay one half (1/2) when filing the Request for Resolution of a Fee Dispute and the Respondent shall pay one half upon filing the Reply forms. The fee will be allocated in the Award pursuant to Rule 13.A.4. In the event that the filing fee check is returned by the bank, the applicant shall pay an additional \$20 returned check fee to BASE.

### **4. Award of the Filing Fee**

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

### **5. Failure to Pay Filing Fee**

a) No matter may be referred to a Panel of Arbitrators, Mediator or a Sole Arbitrator without payment of the filing fee by the Petitioner, except as in Rule 13.C. Failure of the Petitioner to pay such fee within written notice shall be deemed an abandonment of the petition, and a waiver of the right to arbitrate, and the file shall be closed.

b) Upon due notice from the Program, non-payment by the Respondent of any filing fees due pursuant to Rule 13.A.3 may, at the discretion of the Arbitrator(s), result in the limitation of Respondent's evidence.

### **B. Refunds**

No filing fees are refundable by the Program except as otherwise provided in these Rules.

#### **1. Client Refuses or Fails to Consent**

If the Attorney files a Request and the Client has not previously agreed in writing to mandatory fee arbitration and:

a) Returns the Reply form indicating a refusal to arbitrate, the filing fee paid shall be refunded, less a one hundred dollar (\$100) administration fee or one-half (1/2) of the fee paid, whichever is less.

b) Fails to file the Reply form:

(1) Where no extension has been requested in accordance with Rule 6.D.4.a, the file will be closed and the filing fee paid will be refunded, less a one hundred dollar (\$100) administration fee or one-half (1/2) the filing fee, whichever is less; or

(2) Where an extension has been requested in accordance with Rule 6.D.4.a, after ninety (90) days from the filing of the Request, the file will be closed and the filing fee paid will be refunded, less a one hundred dollar (\$100) administration fee or one-half (1/2) the filing fee, whichever is greater, up to a maximum Program administration fee of one thousand dollars (\$1000).

### **2. Settlement**

If the parties settle the dispute and so advise the Staff in writing, with a copy to all parties and, if assigned, to each Arbitrator or Mediator, the filing fee shall be refunded to the party who paid it, as follows:

a) Before initial Arbitrator or Mediator assignment; the filing fee paid shall be refunded, less a one hundred dollar (\$100) administrative charge or one-half (1/2) the fee paid, whichever is less.

b) After Arbitrator or Mediator assignment; but ten (10) days or more before the initial mediation/arbitration date, the filing fee paid shall be refunded, less the one hundred dollar (\$100) administration fee or three-quarters (3/4) of the fee paid, whichever is greater, with a maximum administration fee of two thousand five hundred dollars (\$2,500).

c) After Arbitrator or Mediator assignment and less than ten (10) days before the initial mediation/arbitration date, there shall be no refund of any filing fees paid.

d) At the mediation/arbitration, there shall be no refund of filing fees.

### **C. Waiver of Filing Fee**

1. A Request for Resolution of a Fee Dispute must be filed with the Staff before a waiver will be considered. Any party requesting arbitration who is financially unable to pay the filing fee may apply for a waiver of the fee. Forms for such an application are available on request from the Staff.

2. The application is reviewed and granted or denied based on the standards in California Rules of Court.

3. Denial of the waiver may be appealed to the Chair. Such appeal must be made in writing and state good cause why the waiver should be granted. The processing of the Request for Resolution of a Fee Dispute will be stayed pending the determination by the Chair. No party shall be required to reply until the application for waiver is finally approved or denied.

4. For the purposes of a stay in any pending court or other proceeding, the arbitration shall be deemed pending from the date the Request is filed.

5. If waiver is granted, the Arbitrator(s) may never the less determine and allocate the appropriate filing fee between the parties and order it to be paid to the Program. Such a ruling is binding on the parties regardless of the binding or non-binding nature of the Award.

#### D. Possible Additional Fee and Costs

1) Pursuant to Business and Professions Code Sections 6203 (a) and (c), neither party to the Arbitration may recover costs or Attorneys fees incurred in preparation for or in the course of the fee arbitration proceeding, with the exception of the filing fee, notwithstanding any contract between the parties providing for such costs or fees.

~~2) No costs other than the filing fee are generally to be assessed in connection with an arbitration. However, see Rule 13.E for additional possible costs and should Costs may be assessed in the event of excessive costs for photocopying, telephone calls, and the like, be incurred, th The Chair may charge one or more parties costs to compensate the Arbitrator(s), the Program, or both. The amount of such charges shall be determined by taking account of the amount of time spent and the ability of the parties to pay. In no case will the costs assessed exceed ten (10%) percent of the amount in controversy. Any costs so assessed shall be binding and enforceable as an Award against the party or parties so charged, regardless of the binding or non-binding nature of the fee dispute Award.~~

#### E. Arbitrator Compensation

Each Arbitrator serves for one full day on each case at no charge. In the event that a hearing takes more than one full day, the Chair may award compensation as follows:

~~1. In arbitrations which consume five (5) or fewer days of hearing time, the Arbitrator(s) will not be compensated for the first day of hearing, but thereafter each arbitrator normally will be compensated at a rate of three five hundred dollars (\$300) (\$500) per half day (four (4) hours) [see 13.E.3 for possible exception], or fraction thereof for hearing time, to be paid equally by both parties, unless the Chair determines that a different rate allocation is appropriate. A request for such compensation shall be made in writing by the Chief or Sole Arbitrator to the Chair in accordance with Rule 13.E.5.6.~~

~~2. In arbitrations, which consume more than five (5) days of hearing time, reasonable compensation for the hearing time spent after the first day may be determined and awarded, to be paid equally by the parties, unless the Chair determines that a different allocation is appropriate. Such a request for compensation shall be made in writing to the Chair in accordance with Rule 13.E.6.~~

2. The parties may be required to deposit in advance an amount to cover the estimated hearing time if the time required is expected to be greater than one day. A request for a compensation deposit shall be made in writing by the Chief or Sole Arbitrator to the Chair and an Order for Advance Deposit may issue. If at the conclusion of the matter, the deposited amount is greater than the compensation Award, a refund will be issued to the parties. If compensation Award is greater than the deposit, parties will be ordered to pay the additional compensation amount.

3. In extraordinary circumstances, the Chair may modify or award additional compensation to the Arbitrator(s) based on the complexity of the matter, the amount in dispute, and other appropriate factors, by adjusting the Award of eCompensation upward or

downward.

~~4. Either party or the Arbitrator(s) may apply, at any time during the course of the arbitration, for an advance ruling by the Chair regarding terms of compensation, which will be deemed reasonable for the Arbitrator(s) in the case.~~

~~5. In any case in which it is brought to the attention of the Chair by the Chief or Sole Arbitrator that the required hearing time may be expected to be greater than one day, or in other extraordinary circumstances, the parties may be required to deposit in advance with the Committee an amount to cover the estimated hearing time calculated pursuant to this Rule 13D.~~

~~6.5. In any case where an Arbitrator seeks compensation, the Arbitrator must submit A written request for Arbitrator compensation shall be sent to the Staff when the Arbitration Award is submitted to the Program. The request shall include a letter from the Chief or Sole Arbitrator setting forth the reasons why compensation should be awarded, the amount of compensation sought and copies of the time sheets of all Arbitrators supporting the request. and a letter brief setting forth the reasons why compensation should be awarded. Such request shall be deemed a request and consent to a separate, summary arbitration proceeding concerning the amount of Arbitrator compensation, pursuant to this Rule. Where three Arbitrators are assigned, all Requests for Compensation shall be so consolidated as a single, separate, summary arbitration proceeding. The Staff shall serve copies of the Request for eCompensation on all parties to the arbitration when the Award is served. Within fifteen (15) days after the Request for Compensation is served by mail, a Any party may object objecting to the Request for Compensation, or to the amount of compensation, by submitting a letter brief to the Program setting forth the reasons for such objection, and any-written materials relevant materials to such objection, within 15 days with a copy to all parties and Arbitrator(s). The Chair, or the Chair's designee, as Arbitrator, shall determine, without hearing, the amount of compensation to be awarded to the Arbitrator(s), based on the submissions of the Arbitrator(s) and the parties. Any The Arbitrator Compensation Award shall be an additional arbitration Award and shall be binding on the parties and the Arbitrator(s), regardless of the binding or non-binding nature of the fee dispute Award. Any judgment confirming a Compensation Award shall include a provision for Attorney's fees to be awarded in connection with any collection efforts.~~

#### 14. SERVICE

Unless expressly stated in these Rules to the contrary, service of any notice or other papers shall be by personal delivery or first class delivery by U.S. Mail. All parties must keep the Program informed of their current address; failure to do so will result in the matter going forward with notices being sent to the last known address.

MEDIATION RULES ON NEXT PAGE

# Mediation

## Rules of Procedure

Draft 2/2009

### I. APPOINTMENT AND RESPONSIBILITIES

It is the policy of the The Bar Association of San Francisco (Association) to promote the consensual resolution of Attorney/Client Fee Disputes, and Attorney/Attorney Fee Disputes and to avoid the necessity of arbitration of these disputes when agreeable to the parties. Therefore, the Association finds that a mediation alternative to the arbitration program currently offered by the Association, in accordance with Business and Professions Code Section 6200 regulating Attorney/Client fee disputes, is desirable and authorizes the institution of a Mediation of Fee Disputes Program regulated by these Rules of Mediation. The Association hereby delegates to the Attorney Fee Disputes Committee the authority and responsibility to appoint and maintain a Panel of qualified mediators in accordance with the Attorney Fee Disputes Committee's Arbitration Rules of Procedure and these Mediation Rules. Further, the Committee shall determine all questions of interpretation of the Rules at any stage of the proceedings.

### II. JURISDICTION

A. Participation in this mediation program (Program) is entirely voluntary for the parties. No party to any dispute shall be required to engage in mediation through this Program, and any party may terminate the mediation at any stage.

B. The Committee shall have jurisdiction to perform mediation of Attorney/Client Fee Disputes under the authority of Business and Professions Code Section 6200.

### III. APPOINTMENT/QUALIFICATION OF MEDIATORS

The Committee shall appoint qualified volunteer Mediators, both lawyers and non-lawyers, to a pool of Mediators. The Committee shall establish and publish guidelines for the qualifications of Mediators, which include the requirement that all Mediators have a minimum of 40 hours of mediator training.

### IV. THE PROCESS

#### A. Commencement of Mediation

The matter will proceed to mediation only if all parties indicate on the Request and Reply forms that they wish to mediate the dispute. If all parties do not wish to mediate, the matter will proceed to arbitration in accordance with the Arbitration Rules of Procedure.

#### B. Assignment of Mediator

The Committee shall notify the parties of the assignment of the Mediator within fifteen (15) calendar days

after receipt of the Request and Reply indicating the willingness to mediate.

#### C. Disqualification of Mediator

1. The Committee shall, as part of the assignment process, inform the prospective Mediator of the names of the parties and the nature of the case and ask if there is any personal bias regarding the parties or the subject matter, or any reason that the perception of bias could arise with any of the parties. A Mediator who has any personal bias, or who feels that the perception of bias may exist, regarding a party or the subject matter of the dispute, shall not serve as a Mediator in the dispute.

2. Any party may challenge one Mediator for no cause and an unlimited number for cause. The challenge must be made in writing no later than five (5) working days after receipt of the Mediator assignment, addressed to the Committee, with a copy to the Mediator and the other party.

3. Upon the withdrawal or removal of the Mediator, the Committee shall reassign the matter and notify the parties of the new Mediator within ten (10) calendar days.

#### D. Mediation Session Date

Within ten (10) calendar days after the mailing of the Mediator assignment the Mediator shall arrange a mediation date which shall take place within thirty (30) calendar days after the Mediator assignment was mailed. The Mediator shall promptly send the Agreement to Mediate, which shall include notification of the location, date and time of the session, to the parties and the Program.

#### E. Mediation Session Date Continuance

Any request for a continuance of the session date may be made to the Program Staff Mediator, with a copy to the Mediator and all parties. The copy to the Staff must include a continuance fee payable to BASF in accordance with Rule 8.I.2 Each side shall have one continuance without the agreement of the other party(s). Otherwise, a continuance will be granted ~~by the Mediator~~ only with the agreement of all parties. Should one side object to a second continuance request, the requesting party shall be given the choice to either attend the session on the date set or proceed directly to arbitration without utilizing the mediation service. ~~The Mediator shall promptly notify the Staff in writing of any continuance or of the necessity to proceed to arbitration.~~

#### F. Preparation for the Mediation Session

Prior to the first mediation session, the Attorney will provide copies of the relevant detailed billing records to the Mediator and the other side, if not already included in the Attorney's Request or Reply form. The parties may, by agreement, exchange other documents containing information relevant to the dispute. Either or both parties may provide the Mediator with a brief written statement outlining any pertinent information not contained in the Request or Reply for Resolution of a Fee Dispute. ~~Any party~~

~~submitting such written statement shall also provide the other side with a copy.~~ The Mediator and each party to the mediation shall sign a Mediation Agreement, in the form provided by the Program which substantially complies with the State Bar of California's required form, prior to the commencement of the first mediation session.

**G. The Mediation Session**

1. Mediations shall normally be scheduled for no more than a four-hour session. The filing fees already paid to the Program for the filing of the Request for Resolution of a Fee Dispute shall include up to four mediation hours, and administrative costs. Refer to Arbitration Rule 13.B.2 for information concerning refunds. Upon agreement of the parties and concurrence of the Mediator, additional or longer sessions may be scheduled. Mediator compensation for additional Mediator time and sessions shall be at an amount to be agreed upon by the parties and the Mediator but shall be no more than \$150 per hour notwithstanding that a Client may have been granted a waiver of the Program filing fee. If a Client is unable to pay for Mediator time beyond the first four hours, the session shall conclude or other arrangements can be made between the Mediator and the parties. Such additional, or longer, sessions shall be governed by these Rules.

2. Only the parties to the mediation, their Attorneys or other advisor, if any, and the Mediator have the right to be present during the mediation. However, the Mediator shall have the authority to determine if others may be present during the process.

3. Nothing in these Rules shall prevent the Mediator from meeting with the parties and/or their 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.

4. If a party fails to appear, the Mediator shall have the option of rescheduling the mediation or terminating the mediation. The Mediator shall report any such action taken to the Committee.

**H. The Outcome**

**1. Resolution**

If the parties resolve the dispute, the points of agreement shall be reduced immediately to writing at the session. All parties shall sign and retain and original of the settlement agreement. ~~copies will be distributed to the parties.~~ Signing of the Agreement indicates that it accurately sets forth the points agreed to. The Mediator shall not draft any release, or provide legal advice concerning the terms of the agreement. The Mediator shall promptly notify the Committee in writing that the matter resolved. The file will be closed and the Staff shall forward to the parties a copy of the State Bar of California's Your Rights After Mediation.

There is no refund of the filing fees when the mediation is successful and the matter settles.

**a) Written Agreement Requirements**

**1) Responsible Attorney**

The State Bar of California Guidelines and Minimum Standards requires that each mediated agreement in which the parties agree that the Client shall receive a refund of previously paid fees/costs shall include the name of the individual responsible Attorney (s) responsible for making the refund.

**2) Required Language**

Each mediated agreement shall be in writing and signed by the Client and the responsible Attorney(s) and shall include substantially the following language:

The following agreement is made (using full names):

(a) [Client] [~~Non-client party~~] [Attorney], \_\_\_\_\_, shall pay to [~~Client~~] [~~Non-client party~~] [Attorney], \_\_\_\_\_ the sum of \$ \_\_\_\_\_ ;~~or~~

~~(b) Attorney, \_\_\_\_\_ shall pay to Client \_\_\_\_\_ the sum of \$ \_\_\_\_\_ ;~~~~or~~

~~(c) (b) Nothing further shall be paid by either Attorney or Client or Non-client. And;~~

(d) The parties have considered the allocation of the filing fee paid to the Program in making this decision.

(e) The Parties waive the provisions of Evidence Code Sections 1115-28 that would otherwise prohibit disclosure of the term of this agreement, and further, stipulate that this agreement is binding and shall be enforceable pursuant to California Code of Civil Procedure Section 664.6.

**2. No Resolution**

If the parties are unable to resolve the dispute through mediation, the Mediator shall notify the Committee in writing and the matter will proceed to arbitration in accordance with the Rules of Arbitration.

**V. CONFIDENTIALITY**

A. All communications, negotiations, or settlement discussion by and between participants and/or Mediators shall remain confidential.

B. The mediation session or sessions, or any documents prepared for or during the mediation, shall be confidential, in accordance with the provisions of California Evidence Code Sections 1115-27.

C. The Mediator, Association Staff and Committee members shall be deemed ineligible to testify in any civil judicial or quasi-judicial proceeding, including arbitration, as to any statements made at or in connection with the mediation.