

**San Diego County Bar Association**  
**Fee Arbitration and Mediation - Local Rules**  
**(Approved by the Board of Governors November 21, 2008)**

**ARTICLE I**  
**PURPOSE**

**RULE 1.0 PURPOSE AND COMPOSITION OF**  
**THE COMMITTEES**

**1.1 Purpose**

The purpose of the Fee Arbitration and Mediation Committees is to arbitrate or mediate disputes between attorneys and clients concerning costs and/or fees charged for professional services by attorneys in San Diego County.

**1.2 Officers**

The President of the San Diego County Bar Association ("Association") shall appoint, from among the members of the two Committees, a Chair and or Vice-Chair(s), who shall serve at the pleasure of the President.

**1.3 Members**

The Fee Arbitration Committee shall consist of members of the Association and non-member non-attorneys who are willing, on a voluntary basis, to arbitrate disputes concerning costs and/or fees charged for professional services by attorneys in San Diego County in accordance with these rules. The Mediation Committee shall consist of members of Association and non-member non-attorneys who are willing, on a voluntary basis, to mediate disputes concerning costs and/or fees charged for professional services by attorneys in San Diego County in accordance with these rules.

**1.4 Coordinator**

The Executive Director of the Association shall appoint one or more employees of the Association to function as Coordinator(s) to the Program. The Coordinator(s) shall perform administrative/coordinative functions as directed by the Chair and the Vice-Chair(s) of the Committees.

**RULE 2.0 ENABLING AUTHORITIES**

Sections 6200 through 6206 of the California Business and Professions Code establishes a system and procedure for the arbitration and mediation of disputes concerning costs and/or fees charged for professional services by attorneys. Pursuant to section 6200(d), the Board of Governors of the State Bar of California ("State Bar") has authorized arbitration and mediation of such disputes by local bar associations and has promulgated Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs ("Guidelines"). The San Diego County Bar Association Fee Arbitration and Mediation Local Rules ("Rules") ATTACHMENT A Revised 09/9/2008

have been developed and adopted to comply with (1) the Business and Professions Code, (2) the Guidelines, and (3) the needs and desires of the Association; and they shall apply to all arbitrations and mediations conducted by the Committees.

**ARTICLE II**  
**FILING FEE**

**RULE 2.0 FILING FEES, REFUNDS, and FEE**  
**WAIVERS**

**2.1 Filing Fees**

Before any request for arbitration is processed, the appropriate filing fee must be paid. The Applicant shall pay an arbitration filing fee, equal to five percent (5%) of the amount in dispute, but not less than Seventy-five Dollars (\$75.00) and not more than Five Thousand Dollars (\$5,000). The filing fee includes one optional mediation session of up to three hours.

**2.2 Refund Policy**

\$75.00 of the initial filing fee shall be non-refundable. Written notice of settlement and/or dismissal must be provided to the SDCBA Fee Arbitration Committee to qualify for any refund as follows: If notice that the matter is settled or dismissed is received after filing, but before assignment to an arbitrator or a panel or a mediator, the Association shall retain 25% of the filing fee above the nonrefundable \$75.00. If notice that the matter is settled and/or dismissed is received after assignment to an arbitrator (or panel) or mediator, but no hearing has been scheduled, the Association shall retain 50% of the filing fee above the non-refundable \$75.00. If a hearing has been scheduled and written notice of the settlement and/or dismissal is received by the Association at least **five** (5) days prior to the scheduled hearing, the Association shall retain 75% of the filing fee above the non-refundable \$75.00. No other refunds shall be made. The refund shall be made to the party who paid it.

**2.3 Filing Fee Waiver**

A client may file an application for a filing fee waiver on a form, which may be obtained from the Coordinator of the Programs. The Chair or a Vice-Chair of the Fee Arbitration Committee may grant or deny the filing fee waiver or grant a reduced fee. The order of the Chair or Vice-Chair shall be final.

**ARTICLE III**  
**FEE ARBITRATION PROGRAM**

**RULE 3.0 JURISDICTION**

**3.1 Statement of Jurisdiction**

The Fee Arbitration Committee shall have jurisdiction over any disagreement concerning fees paid to an attorney, or fees charged or claimed for legal services rendered or costs incurred by an attorney, including without limitation, the time and terms of payment if:

- (a) the office of the attorney is in San Diego County or substantial legal services were performed in San Diego County; and
- (b) the attorney (1) is required to arbitrate pursuant to California Business & Professions Code Section 6200, or (2) consents to the jurisdiction of the Committee
- (c) 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 provided,” and such ruling is final and not appealable to the State Bar. Should the fee dispute transfer to a different fee arbitration program after the request for arbitration is filed, the original date of postmark or receipt of the arbitration request will be preserved for purposes of determining whether jurisdiction exists.

**3.2 Pre-Award Interest**

Arbitrators shall have the authority to award pre-award interest in accordance with the parties’ contract or at the legal rate.

**3.3 Filing Fee**

Arbitrators shall have the authority to require any party to bear all or a portion of the arbitration filing fee.

**3.4 Affirmative Relief**

The Committee shall have no jurisdiction to award affirmative relief against an attorney in the form of damages or as an offset or otherwise for harm caused by alleged malpractice or professional misconduct. Claims of malpractice or professional misconduct will be considered by the Committee, but only to the extent such claims bear on the fees to which the attorney may be entitled. The award of the Committee shall be without prejudice to the presentation of such claims in a court of law.

**3.5 Discipline**

The Committee shall have no jurisdiction to censure, suspend or disbar an attorney, all of which are within the exclusive jurisdiction of the State Bar.

**3.6 Court-Established Fees**

The Committee shall have no jurisdiction to arbitrate disputes in which the amount of the fee to be paid by the client has been established by statute, court order, or the order of an administrative agency, or where such fee determination is within the exclusive jurisdiction of a court.

**3.7 Discretion to Decline Jurisdiction**

The Committee shall have discretion to decline to accept jurisdiction or to dismiss a proceeding without prejudice if (a) the fee arbitration program administered by the State Bar is the more appropriate forum, or (b) the dispute can be more appropriately handled by another committee of the Association, or (c) other good cause appears.

**RULE 4.0 RIGHT OR OBLIGATION TO ARBITRATE**

**4.1 Notice of Client’s Right to Arbitration**

The attorney shall give the client the State Bar prescribed “Notice of Client’s Right to Arbitration” at or before the time of service of summons or claim in an action against the client, or before or at the commencement of any other proceeding against the client under a contract between attorney and client which provides for an alternative to arbitration under Business and Professions Code Sections 6200- 6206, for recovery of fees, costs or both for professional services rendered. Failure to give this notice shall be a ground for dismissal of the action or other proceeding. The notice shall not be required, however, prior to initiating mediation of the dispute.

**4.2 Client’s Obligation to Arbitrate**

Unless the client has previously agreed to arbitration under California Business and Professions Code Sections 6200-6206 of all disputes concerning fees, costs or both, a client may not be compelled to arbitrate any fee dispute with any attorney. If an attorney requests arbitration of a fee dispute with a client, the Committee shall obtain jurisdiction only if the client has previously agreed in writing to arbitrate or executes a written Arbitration Agreement.

**4.3 Attorney’s Obligation to Arbitrate**

A client can compel an attorney to arbitrate a fee dispute. (See Rule 7.2) If an attorney fails to respond to a client’s request for arbitration or refuses to participate, the arbitration will proceed as scheduled and a decision will be made on the basis of the evidence presented.

**RULE 5.0 WAIVER OF CLIENT'S RIGHT TO REQUEST OR MAINTAIN ARBITRATION**

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

- (a) answers a complaint in a civil action before filing a request for arbitration, if a notice of the right to arbitrate was given pursuant to Rule 4.1 above; or
- (b) commences an action or files any pleading seeking judicial resolution of a fee and/or cost dispute or seeking affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct; or
- (c) fails to file with the Association a written request for arbitration received or postmarked on or before the 30th day after receipt of the form entitled "Notice of Client's Right to Arbitration" given pursuant to Rule 4.1.

**RULE 6.0 BINDING/NON-BINDING ARBITRATION**

**6.1 Agreement for Binding Arbitration**

Arbitration is not binding unless all parties agree in writing, after the dispute has arisen, that it will be binding. At any time before the actual taking of evidence at the hearing, the parties may agree in writing to be bound by an arbitration award. After all parties have agreed in writing to be bound by an arbitration award, a party may not withdraw from that agreement. If all parties agree in writing that the arbitration is binding, the award is binding and there can be no trial or appeal in a civil court. A binding award may be corrected, vacated or confirmed pursuant to Code of Civil Procedure Section 1285 et seq.

**6.2 Non-Binding Arbitration**

If the parties have not agreed in writing to binding arbitration, any party may request a trial after arbitration or commence an action in a civil court pursuant to Business and Professions Code Section 6204 within thirty (30) days after the arbitration award has been mailed; provided, however, if any party has willfully failed to appear at the arbitration hearing, that party shall not be entitled to a trial after arbitration. The decision as to whether the non-appearance was willful will be made by the court. The party who failed to appear at the arbitration hearing shall have the burden of proving that the failure to appear was not willful. If a trial is not timely requested, or an action is not timely commenced, the award automatically becomes binding 30 days after the award is mailed.

**RULE 7.0 INITIATION OF ARBITRATION**

**7.1 Filing of Application for Arbitration and Applicant's Statement of Facts**

Arbitration is initiated by (a) filing (1) an executed Application for Arbitration and Applicant's Statement of Facts ("Application") and (2) a signed Arbitration Agreement ("Agreement"), and (b) payment of the arbitration filing fee, as defined in Rule 2.1 or 2.3. The Application and Agreement forms shall be prepared by the Committee, shall be available at the offices of the Association, and shall be furnished to any person by the Coordinator, together with a copy of these Rules, upon request.

**7.2 Client-Initiated Arbitration**

If the Application is filed by a client, the client shall be the Applicant, and the attorney shall be the Respondent. Upon initiation of arbitration by the client, the Coordinator of the Committee shall:

- (a) if the Committee lacks jurisdiction, so notify the Applicant and close the file;
- (b) if there is apparent jurisdiction, (1) serve by mail one copy of the Application and the Agreement, signed by the Applicant, to the Respondent, together with the State Bar approved Notice of Attorney Responsibility, a blank form for Respondent's Statement of Facts and a copy of the Rules, (2) request Respondent to execute and return copies of Respondent's Statement of Facts and the Agreement within twenty (20) calendar days, and (3) advise Respondent that if Respondent's Statement of Facts and the Agreement, signed by the Respondent, are not received within 20 calendar days, the matter may nevertheless be assigned to an arbitrator or arbitration panel for hearing.

**7.3 Attorney-Initiated Arbitration**

If the Application is filed by an attorney, the attorney shall be the Applicant, and the client shall be the Respondent. Upon initiation of arbitration by an attorney, the Coordinator shall:

- (a) if the Committee lacks jurisdiction for any reason, including the Respondent's failure to sign and return the Agreement, so notify the Applicant and close the file; or
- (b) if there is apparent jurisdiction,
  - (1) serve by mail one copy of the Application and the Agreement, signed by the Applicant, to the Respondent, together with a blank form for the Respondent's Statement of Facts and a copy of the Rules,
  - (2) notify the Respondent that arbitration is voluntary, unless the client has previously agreed to arbitration under California Business and Professions Code Sections 6200-6206 of all disputes concerning fees, costs or both,

(3) request the Respondent to execute and return Respondent's Statement of Facts and the Agreement, signed by the Respondent within 20 calendar days and

(4) forward to Applicant the Notice of Attorney Responsibility.

#### **7.4 Additional Parties to Arbitration**

The request for arbitration may be made by (i) a person who is not the client but who may be liable for or entitled to a refund of attorney's fees or costs ("non-client"), or (ii) the attorney claiming entitlement to fees against a non-client. A fee arbitration between an attorney and a non-client is not intended to abrogate the requirement that the attorney exercise independence of professional judgment on behalf of the client or the protection of client confidences and secrets. Absent the client's written consent to disclosure of confidential information, a fee arbitration with a non-client is not intended to abrogate the attorney's duty to maintain client confidences and secrets, unless such disclosure is otherwise permitted by law. Absent the client's signature on the request for arbitration, when an arbitration with a non-client is initiated, notice of the request must be sent to the client by first class mail at the client's last known address. The programs shall adopt procedures to insure that such notice has been sent to the client.

#### **7.5 Notice of Attorney Responsibility**

The Coordinator shall serve on the attorney(s) designated by the client or attorney the State Bar approved Notice of Attorney Responsibility form. This notice shall be served at the time the attorney is notified of the applicant's filing for arbitration, if the client is the applicant. If the attorney is the applicant, this notice shall be served at or before the time the Coordinator forwards the application to the Respondent. If an attorney is named as an additional party by client or attorney, the notice shall be served promptly by the Coordinator together with the document adding the attorney as an additional party.

#### **7.6 Request for Additional Information**

The Chair or a Vice-Chair of the Committee shall have discretion to require additional information in writing from any party when such additional information is desirable or necessary.

#### **7.7 Consolidation of Arbitration Proceedings**

The Chair or a Vice-Chair shall rule on all written requests to consolidate two or more separate arbitration proceedings.

### **RULE 8.0 ARBITRATOR COMPENSATION**

#### **8.1 Compensation of Arbitrators**

No arbitrator shall be entitled to compensation for services unless the hearings extend beyond two days. A hearing of three hours or

less in one day will be considered as a one half day hearing. A hearing of more than three hours in one day will be considered a one day hearing. Unless waived in writing, each arbitrator will be compensated at the rate of \$200.00 for each half day and \$400.00 for each day after the first two days of hearing. The compensation shall be paid equally by each party directly to each arbitrator, in advance, for each day of hearing on which compensation is payable. No compensation will be paid to arbitrators for services other than during formal hearing sessions, nor until such formal hearing sessions extend beyond two days. Any disputes concerning compensation of the arbitrators will be determined by Chair or Vice Chair(s) of the Fee Arbitration Committee, and their determination shall be binding on the parties, including the arbitrators.

### **RULE 9.0 APPOINTMENT OF ARBITRATORS**

#### **9.1 Number of Arbitrators**

If the amount in dispute is less than \$25,000.00, a Committee member shall be assigned to hear the matter as a sole arbitrator. If the amount in dispute is \$25,000.00 or more, a Committee member shall be assigned to act as presiding arbitrator on a panel of three arbitrators, consisting of the presiding arbitrator, another attorney and one non-attorney arbitrator.

#### **9.2 Selection of Arbitrators**

The Coordinator shall select the sole or presiding arbitrator. If a panel is required, the Coordinator shall also select one other member of the Association, who need not be a member of the Committee, and a non-attorney member who has previously been approved by the Committee to serve on the panel. The client may request either a civil or criminal attorney to serve as an arbitrator; however, such election must be related to the underlying case. Such a request must be submitted by the client at the time the written Application on the approved Committee form is submitted to the Committee. Selection of arbitrators shall not be random but shall be based upon relevant criteria, including without limitation: (1) the member's familiarity with the area of law underlying the fee dispute, (2) the geographical location of the parties, (3) the complexity of the matter, (4) whether the member is responsible for other pending matters, (5) the experience of the member, (6) the availability of the member, and (7) the preference of the member to act as a sole or presiding arbitrator. No member who has been admitted to practice law for less than five years shall be assigned to act as a sole or presiding arbitrator. Subject to the foregoing, the Coordinator shall attempt to select sole and presiding arbitrators on a rotational basis, distributing the work of the Committee as evenly as possible among its members.

#### **9.3 Challenge-Disqualification of Arbitrator(s)**

Each party may disqualify one arbitrator without cause and shall have unlimited challenges for cause. Any disqualification of or challenge to an arbitrator shall be ineffective unless made in writing and served on the Coordinator within fifteen (15) days

after the service of a copy of the assignment letter naming the sole arbitrator or the panel of arbitrators. An arbitrator who believes that he/she cannot render a fair and impartial decision shall disqualify him/herself or shall surrender to a reasonable challenge. If an arbitrator does not disqualify him/herself, the challenge shall be decided by the Chair or a Vice-Chair.

#### **9.4 Matters Where Dispute is \$1000 or less: By Declaration Only.**

If a fee dispute involves \$1000 or less, the arbitration shall be decided by a Presiding Arbitrator appointed by the Coordinator of the Fee Arbitration Program based on the written declarations of the parties. There shall be no oral hearing. Each party shall submit all supporting documents and a complete statement of the reasons for the dispute, and/or response, under penalty of perjury; the client shall do so at the time of the submission of the request or consent to arbitrate, the attorney at the time of the response or request to arbitrate. Each party will have 30 days from the date of service of the initial statement or response to reply. The record shall thereafter be forwarded to the Presiding Arbitrator for action. The Presiding Arbitrator may require either or both parties to submit additional information within 30 days.

### **RULE 10.0 PRE-HEARING PROCEDURES**

#### **10.1 Notice of Hearing**

The sole or presiding arbitrator shall arrange a time and place for the arbitration hearing. Sole and presiding arbitrators are encouraged to communicate informally with the parties and the other arbitrators, if any, to arrive at a mutually agreeable time and place for the hearing. The hearing should be conducted as soon as reasonably possible.

#### **10.2 Service**

Not less than twenty (20) days before the hearing, unless the parties agree to a shorter time, the Notice of Hearing shall be served on all parties, other arbitrators, and the Committee, either personally or by first class mail, postage prepaid. Service is effective on the date of mailing.

#### **10.3 Contents**

In addition to the date, time and place of hearing, the Notice of Hearing shall state the names of all arbitrators and advise the parties of their rights: (1) to request a subpoena to compel the attendance of witnesses or the production of documents, (2) to present witnesses or documentary evidence, (3) to cross-examine witnesses, (4) to have witnesses placed under oath, (5) to be represented by counsel, at their own expense, (6) to employ a certified shorthand reporter, at their own expense, to make a stenographic record of the proceedings, and (7) to employ an interpreter, at their own expense, for personal assistance at the hearing. The Notice of Hearing shall also advise the parties that if either party, who has been duly notified, fails to appear at the hearing, the matter may be heard and determined on the basis of the evidence produced.

#### **10.4 Waiver**

Failure by a party at or before a hearing to object to any alleged deficiency with respect to notice waives such deficiency. The arbitrator(s) shall rule on any objections asserted.

#### **10.5 Communications**

It shall be the duty of the Coordinator to (a) provide the Applicant with a copy of the Respondent's Statement of Facts and to notify the Applicant that a written reply to the Respondent's Statement of Facts may be submitted and (b) to provide all arbitrators with copies of any written communication submitted by either party.

#### **10.6 Subpoenas**

The sole or presiding arbitrator, upon written application and for good cause shown, may issue subpoenas to compel the attendance of witnesses or the production of relevant documents. The requesting party will then be responsible for serving the subpoena.

#### **10.7 Continuances**

Continuances may be granted by a sole or presiding arbitrator. However, continuances are not favored and should not be granted, except for good cause shown, once the hearing date has been set and the Notice of Hearing has been served.

#### **10.8 Clarification of Issues and Exchange of Documents**

The Sole or Presiding Arbitrator may request that the parties clarify the issues, submit additional documents and exchange documents in advance of the hearing.

#### **10.9 Prohibited Contacts with Arbitrators**

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

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

## **RULE 11.0 CONFIDENTIALITY**

### **11.1 Closed Hearing**

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

### **11.2 Additional Persons**

Upon request of the client, the sole or presiding arbitrator shall permit the client to be accompanied by another person and may also permit additional persons to attend.

### **11.3 Arbitration Award Public**

The arbitration award is public. The arbitration case file, including the request, reply, exhibits and transcripts shall be confidential.

## **RULE 12.0 ATTENDANCE OF PARTIES**

### **12.1 Right to Attend**

All parties have the right to attend the hearing and be heard.

### **12.2 Failure to Attend**

If any party to an arbitration, who has been duly notified, fails to appear at the hearing, the matter may be heard and determined on the basis of the evidence produced. In the discretion of the arbitrator(s), the award may also include findings as to the willfulness of any party's non-attendance at the hearing.

### **12.3 Waiver of Appearance**

Any party may waive personal appearance and submit to the panel testimony and exhibits by written declaration under penalty of perjury, or may appear telephonically at that party's sole expense.

### **12.4 Designation of Representative**

Any party unable to attend the hearing may designate a lawyer or non-lawyer representative. A waiver of appearance and/or designation of a representative or the submission of testimony by written declaration pursuant to this rule shall be filed with the Committee at least ten (10) days before the hearing.

## **RULE 13.0 ATTENDANCE OF ARBITRATORS**

If a member of a panel of arbitrators, who has been duly notified, fails for any reason to appear at the hearing, either of the attorney arbitrators may, with the written consent of both parties and in his or her discretion, proceed with the arbitration acting as a sole arbitrator. Under no circumstances will the hearing proceed with two arbitrators or with one lay arbitrator. Otherwise, the matter shall be continued.

## **RULE 14.0 HEARING PROCEDURES**

### **14.1 Right to Counsel**

Any party to an arbitration has the right to be represented by an attorney, at the party's own expense, at any stage of the proceedings.

### **14.2 Oaths**

All testimony shall be given under oath or affirmation, to be administered by the sole or presiding arbitrator.

### **14.3 Stipulations**

Stipulations and admissions and other procedures, which narrow issues or reduce the need for formal testimony, are encouraged.

### **14.4 Evidence**

The parties shall be permitted to present testimony and documentary evidence, which is relevant to the issues to be decided. Any evidence which is deemed trustworthy and material may be considered. Formal rules of evidence and judicial procedure need not be observed. The sole or presiding arbitrator shall preside at the hearing and shall rule on the admission and exclusion of evidence, on the order of proof, and on questions of procedure and shall exercise all powers relating to the conduct of the hearing. The parties shall be afforded full and equal opportunity for the presentation of evidence as well as the opportunity to cross-examine witnesses. The sole arbitrator or the hearing panel may, in its discretion, decline to admit into evidence at the hearing a party's documents which were required to be exchanged in advance of the hearing, but were not exchanged.

### **14.5 Attorney-Client Privilege**

In accordance with California Business and Professions Code Section 6202, the disclosure of any attorney-client communication or attorney's work-product shall be limited to relevant communications between parties to the fee dispute and the work product for which the disputed fee has been demanded, and in no event shall such disclosure be deemed a waiver of the confidential character of such matters for any other purpose.

### **14.6 Reporter/Transcripts**

Any party may employ a certified shorthand reporter, at such party's expense, to make a stenographic record of the proceedings. Any other party to the arbitration shall be entitled to a copy of the reporter's transcript of the testimony upon written request and payment of the cost of reproduction. No other means of recording the proceedings shall be permitted.

### **14.7 Interpreter**

If necessary, any party may provide for the attendance of an interpreter, at such party's own expense, for personal assistance at the hearing.

**RULE 15.0 AWARD**

**15.1 Deliberation**

After the matter has been submitted, the arbitrator or arbitrators, as the case may be, shall consider all the evidence and render a decision in the form of an award.

**15.2 Contents of Award**

The award shall be in writing. Except as provided in Rule 15.3, it need not be in any particular form, but it should include a statement of the proceedings (including service of the hearing notice, the date, time, and place of each hearing, appearance, and whether the arbitration is binding or non-binding) and a determination of each question submitted to the arbitrator(s), the decision of which is necessary to determine the controversy, including the name of the individual responsible attorney(s). The determination of the questions presented should include the parties' contentions, a summary and analysis of the evidence, and the arbitrator or arbitrators findings and conclusions based upon the evidence. If the arbitrator or arbitrators determine that a party's non-attendance was willful, the award shall also include findings as to the willfulness of the party's non-attendance at the hearing.

**15.3 Required Form of Award**

The award shall include substantially the following language, as appropriate:

The amount that the attorney claims the services and costs were worth: \$ \_\_\_\_\_

The amount that the client claims the services and costs were worth: \$ \_\_\_\_\_

The arbitrators find that the total amount of fees and/or costs, which should have been charged in this matter are: \$ \_\_\_\_\_

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

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

Client: \$ \_\_\_\_\_  
Attorney: \$ \_\_\_\_\_

For a net amount of: \$ \_\_\_\_\_

Accordingly, the following award is made:

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

**OR**

Attorney, (name) shall refund to Client,  
(name) : \$ \_\_\_\_\_

**OR**

Nothing further shall be paid by either attorney or client.

**15.4 Responsible Attorney(s)**

If a refund is owed to the client and where questions are raised as to who is the responsible attorney(s) in the arbitration, the arbitrator(s) shall make the determination and shall include in the award the name of the responsible attorney(s).

**15.5 Majority Vote**

In the case of matters heard by a panel of arbitrators, the award shall be made by majority vote. If there is a dissent, it shall be in writing and signed separately.

**15.6 Settlement of Disputes, Stipulated Settlement, Withdrawal from Arbitration.**

The Committee encourages parties to resolve their dispute by voluntary settlement.

- (a) Upon confirmation by the parties or the hearing panel if one has been assigned that the dispute has been settled, the matter shall be dismissed by the program in the absence of an assigned hearing panel, or by the panel chair if a notice of assignment of the hearing panel has been served on the parties.
- (b) If the parties settle the fee dispute and wish to obtain a stipulated award incorporating the terms of a written settlement agreement, the Committee Chair, if no hearing panel has been assigned, or the Sole Arbitrator or Presiding Arbitrator, if the hearing panel has been assigned, may issue a stipulated award incorporating by reference the parties. written settlement agreement. The Program will serve the stipulated award in the same manner as it would serve an arbitration award as prescribed elsewhere in these rules.;
- (c) If a party wishes to withdraw from a binding arbitration and the matter has not been settled, all other parties must agree to the matter being withdrawn;
- (d) If there is a written agreement between the parties requiring arbitration of the fee dispute through the Mandatory Fee Arbitration Program, all other parties must consent to a request for withdrawal before the proceeding is dismissed.

**15.7 Transmittal**

When the award has been signed, the presiding arbitrator shall send it, together with the entire file, to the Coordinator of the Committee. The Chair or a Vice-Chair of the Committee shall review the form of the award for compliance with the Rules and

applicable laws. Upon approval of the award by the Chair or a Vice-Chair, the Coordinator shall serve a copy of the award on the parties by first class mail, postage prepaid, and shall include a State Bar approved "Notice of Your Rights After Fee Arbitration" in the award package.

## **ARTICLE IV** **VOLUNTARY FEE MEDIATION PROGRAM**

### **RULE 16.0 PREAMBLE**

Mediation is a process by which those who have a dispute, misunderstanding, or conflict come together, with the assistance of a trained neutral mediator, to resolve the issues and problem in a way that meets the needs and interests of the parties. Fee Mediation is an alternative to Fee Arbitration.

### **RULE 17.0 JURISDICTION**

Participation in the mediation program is entirely voluntary for both 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.

The Mediation Committee shall have jurisdiction to perform mediation of attorney/client fee disputes under the authority of Business and Professions Code Section 6200.

The Mediation Committee shall have jurisdiction to mediate any dispute in which a request for arbitration has been accepted for filing by the SDCBA, the appropriate filing fee has been paid or an order granting a waiver of that fee has been filed, and all parties have signed the *Agreement to Mediate*.

Matters not resolved by the Fee Mediation Program will return to the Fee Arbitration Program for resolution.

### **RULE 18.0 APPOINTMENT/QUALIFICATION OF MEDIATORS**

The Mediation Committee shall appoint qualified volunteer mediators, both lawyers and non-lawyers, to a pool of mediators. The Mediation Committee shall establish and publish guidelines for the qualifications of mediators, which include the requirement that all mediators have a minimum of 25 hours of mediator training.

### **RULE 19.0 MEDIATION PROCESS**

#### **19.1 Commencement of Mediation**

The matter will proceed to mediation only if all parties indicate on the "*Application for Fee Arbitration/Mediation*" form that they wish to mediate the dispute and they sign the "*Agreement to Mediate*" form.

After any jurisdiction, venue or other issues have been decided; the Coordinator shall serve the "*Application for Fee Arbitration/Mediation*" and the "*Agreement to Mediate*" ("consent") forms signed by the applicant on the other party. The other party shall have 15 days from the date of service to return the signed consent form to the SDCBA.

If the other party does not return the signed consent within 15 days, or returns an unsigned consent within that time period, the matter shall proceed to arbitration.

The filing fee paid to initiate fee arbitration shall include one mediation session of up to three hours in length.

#### **19.2 Assignment of Mediator**

Within 15 days after receipt of the signed consent form from all parties, the Mediation Coordinator shall assign one mediator and shall notify the parties of the assignment. The notice shall include the name, address and telephone number of the mediator assigned.

#### **19.3 Disqualification of Mediator**

(1) The Mediation Coordinator 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. The challenge will be resolved by the Mediation Committee.

(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 fifteen (15) days after receipt of the Mediator assignment, addressed to the Mediation Coordinator, with a copy to the Mediator and the other party.

(3) Upon the withdrawal or removal of the Mediator, the Mediation Coordinator shall reassign the matter and notify the parties of the new Mediator within fifteen (15) calendar days.

#### **19.4 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) 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 Mediation Coordinator.

#### **19.5 Mediation Session Date Continuance**

A request for a continuance of the session date should be made to the Mediator. Each side shall have one continuance without the agreement of the other party(s). Otherwise the Mediator only with the agreement of all parties will grant a continuance. Should one side object to such a 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 Mediation Coordinator of any continuance or of the necessity to proceed to arbitration.

#### **19.6. 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 for Arbitration/Mediation or Response 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 for Arbitration/Mediation or Response form. Any party submitting such a brief shall also provide the other side with a copy.

#### **19.7. The Mediation Session**

Mediations shall normally be scheduled for no more than a three-hour session. The filing fees already paid to the Association for the filing of the Application for Fee Arbitration/Mediation shall include one optional mediation session up to three (3) hours. 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 \$150.00 per hour. This is true regardless of the fact that a client may have been granted a waiver of the Association filing fee. The mediator compensation shall be paid directly to the mediator by the parties. If any party is unable or unwilling to continue to pay for additional Mediator time beyond the first three 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.

Only the parties to the mediation, their attorneys or other advisor, if any, and the Mediator shall be present during the mediation.

However, the Mediator shall have the authority to determine if others may be present during the process.

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.

#### **19.8. The Outcome**

##### **(1) Resolution**

If the parties resolve the dispute, the points of agreement shall be immediately reduced to writing at the session. All parties shall sign and 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 Mediation Coordinator in writing that the matter was resolved. The file will be closed and the Mediation Coordinator shall forward to the parties a copy of the *State Bar of California's Notice of Your Rights After Mediation*.

##### **(2) Written Agreement Requirements**

###### **(a) 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 (Minimum Standard III.7.).

###### **(b) 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 (Minimum Standard III.8.):

The following agreement is made:

(a) Client, \_\_\_\_\_, shall pay to

Attorney, \_\_\_\_\_, the sum of \$ \_\_\_\_\_

OR

(b) Attorney, \_\_\_\_\_, shall pay to

Client, \_\_\_\_\_, the sum of \$ \_\_\_\_\_

OR

(c) Nothing further shall be paid by either Attorney

or Client.

##### **(3) No Resolution**

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

#### **RULE 20.0**

#### **CONFIDENTIALITY**

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

B. The mediation session(s), or any documents prepared for or during the mediation, shall be confidential, in accordance with the provisions of California Evidence Code Section 1115-1128.

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.

**ARTICLE V**  
**ENFORCEMENT OF THE ARBITRATION OR**  
**MEDIATION AWARD**

**RULE 21.0 ENFORCEMENT OF AWARDS**

The enforcement of arbitration awards or mediation agreement issued by the Committee(s) shall be governed by Sections 6203 through 6204 of the California Business and Professions Code and Sections 1285 through 1287.6 of the California Code of Civil Procedure.

**ARTICLE VI**  
**REMOVAL TO THE STATE BAR**

**RULE 22.0 REMOVAL TO STATE BAR**  
**PROGRAM**

**22.1 Removal:**

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

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

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

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

d) A request for removal to the State Bar will be decided by the State Bar's Presiding Arbitrator under the applicable rules of procedure of the State Bar. Upon service of an order granting a request for removal, the party who paid the filing fee to the program shall receive a refund of the filing fee from the Program.

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

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

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

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

\* \* \* \* \*

Adopted by the Board of Directors  
of the San Diego County Bar Association  
and  
Reviewed and Approved by the Board of Governors  
of the State Bar of California

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