

SAN BERNARDINO COUNTY BAR ASSOCIATION
RULES OF PROCEDURE FOR THE HEARING OF FEE ARBITRATIONS

1. The Chair ("Chair") of the Client Relations Committee ("Committee"), appointed by the President of the San Bernardino County Bar Association ("Bar Association"), shall be responsible for implementing and operating local procedures for fee arbitrations under the provisions of Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs. (Adopted 12/16/78, effective 01/01/79 with subsequent amendments.)

2. All members of the Committee may be appointed by the President (or program administrator), and at least six lay residents of the County may be appointed.

3. All terms of the Chair and Committee Members shall be for one year and coincide with the term of office of the President of the Bar Association, November 1 to October 31. Appointments may be successive, from year to year.

4. The Chair or program administrator shall, unless the parties stipulate to a lesser number, appoint three-member Arbitration Panels to hear every matter coming before the Committee under the provisions of these rules where the matter in dispute is over \$5,000 and agreed to as binding by both parties. For all non-binding arbitrations, or matters of \$5,000 or less, one (1) Committee Member shall be appointed. Effective 07/01/90, one non-lawyer member shall be appointed on each three-member panel. At the option of the client, **as provided for by question #13 on the Client's Request for Arbitration of a Fee Dispute form**, one Committee Member of a three (3) person panel or the sole arbitrator shall be an attorney whose area of practice is either Civil or Criminal Law.

5. These Rules of Procedure shall apply to all arbitration proceedings insofar as they are applicable, including, but not limited to the following:

All matters which come to the attention of Committee Members, while acting as members of the Committee, shall be considered strictly confidential and the content of same shall not be discussed with nor divulged to any person other than Committee Members, members of the Board of Directors of the Bar Association and/or Lawyer Referral Service, or, when necessary and requested, to an appropriate representative of the State Bar of California.

6. Matters may be referred to arbitration by:

- A) The Chair of the Committee after review of a complaint letter;
- B) The administrator of the Fee Arbitration Program after same;
- C) Request of either client or attorney; *or*
- D) Request of petitioner who is not the client of the attorney, but responsible for or entitled to a refund of fees and/or costs, who may be included as a party on a Client's Request for Arbitration filed by the client and signed by all such parties.

7. Both the attorney and the client may agree to be bound by the award of the arbitrator(s) by checking the box marked "binding" and signing their respective forms. However, in the absence of such an agreement, the arbitration shall be conducted as usual, after which, either party shall be entitled to trial after arbitration by commencing an action in court within thirty (30) days after mailing of notice of award, except that if either party *willfully* fails to appear at the arbitration hearing, that party shall not be entitled to a trial after arbitration. See Bus. & Prof. Code #6204(a) for clarification of this rule. If no action is filed within the thirty (30) day limit, the award will become binding. An arbitration conducted without a signed agreement to binding arbitration is termed *advisory*.

8. The chairman or program administrator shall serve on the attorney designated by the client **prior to** the time of service of the notice appointing the arbitration panel the State Bar approved Notice of Attorney Responsibility form, that in the event 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) **must** make that determination and shall include in the award the names of the attorney(s) and if appropriate, the law firm.

9. Upon receipt and within 60 days of an executed Client's Request for Arbitration, and a determination that the matter shall be submitted for arbitration to the Bar Association's Fee Arbitration Program, the Chair or Program Administrator of the Client Relations Committee shall designate the arbitration panel and transmit the relevant information so that arbitration can proceed and shall also transmit, at the same time, a copy of these Rules to both the attorney and the client as well as a copy of the executed agreement. Both the attorney and client shall be notified by the arbitrator(s) selected.

10. The selection of Committee Members to act as arbitrators shall be based on the type of case involved in the dispute (or client's selection by rule #4), availability of arbitrator, absence of conflict and rotation. The client and the attorney who have a fee dispute submitted to arbitration shall each, respectively, have the right to object to the assignment of the arbitrator, or one of the arbitrators so designated, without cause and to have an unlimited number of challenges with cause, **provided that they so advise the Chair or Program Administrator of the Committee within five (5) days from the date of notification of the identity of the arbitrator(s)**. In the event of such objection, the Chair or Program Administrator of the Committee shall forthwith designate an additional arbitrator, or arbitrators, as the case may be.

11. Upon receiving the Client's Request for Arbitration, together with relevant material from the Chair or Program Administrator of the Committee, the arbitrator (or presiding arbitrator) shall designate the time, date (but no later than 45 days), and place of the arbitration hearing, and shall so advise the other two arbitrators and the client and attorney of same. This shall be by the mailing of a Notice of Hearing ("Notice") to the respective arbitrator(s) and parties involved. Said Notice shall be in a form approved by the Chair and shall advise the parties that witnesses and records may be presented at the time of the hearing, if desired. The said Notice may also designate a limitation of time for the presentation of evidence at the arbitration hearing.

12. The arbitration hearing and the arbitration proceedings **shall be conducted according to the following provisions:**

- A) A fair, speedy and impartial hearing and award (Business and Professions Code § 6200(c).
- B) That the attorney, or his assignee, prior to or at the time of filing an action against the client for the recovery of fees for professional services, serve personally or by first class mail, upon the client, the **State Bar approved Notice of Client's Right to Arbitrate** (Bus. & Prof. Code §6201[a]).
- C) That, in the event the client has requested arbitration and the attorney refuses to participate, the hearing shall nevertheless be held, evidence taken and an award rendered (*Bus. & Prof. Code § 6200[c]: Arbitration shall be voluntary for a client and mandatory for an attorney if commenced by a client*).

13. Any party may request the attendance of a reporter or interpreter after providing for his compensation for recording the proceedings, and every party to the arbitration shall be entitled to a copy of said reporter's transcript of the testimony upon written request and payment of the expense thereof.

14. Within fifteen (15) days subsequent to the termination of the arbitration hearing, the arbitrator(s) shall cause to be prepared an award in writing in the general form approved by the Chair, and said award shall be signed by the arbitrator(s).

15. Each award served on the parties shall contain substantially the following language:

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:

(a) Client, (name), shall pay attorney, (name) :

\$ _____

OR

(a) Attorney, (name), shall refund to client, (name) :

\$ _____

OR

Nothing further shall be paid by either client or attorney.

~~46. Upon the signing of the award by the arbitrator(s), a copy of the award will be transmitted to each party, proof of service being required for each transmittal. The original document shall promptly be returned to the arbitration file. Exhibits may be returned to the respective parties along with the award and the NOTICE OF RIGHTS AFTER ARBITRATION (with attachments) WILL SERVED ON BOTH PARTIES WITH THE AWARD.~~

16. The panel shall forward the original of the signed award to the Program, which shall serve a copy of the award by mail on each party together with a Notice of Rights After Arbitration form approved by the State Bar Board of Governors. No award is final or is to be issued until approved for procedural compliance and as to the form of the award by the Committee Chair or such person as the Chair may designate for this purpose. After approval of the award as to the procedural compliance and approval as to the form of the award, the Program shall serve a copy of the award by mail on each party together with a Notice of Rights After Arbitration form approved by the State Bar Board of Governors. Any party who has submitted exhibits or documents to the panel shall, upon service of the award, make arrangements to retrieve them.

17. Any costs incurred by either or both parties to the arbitration shall be borne by the respective parties incurring same; provided, however, that at the discretion of the arbitrator(s), any filing fees incurred by either party may be ordered paid by the other party.

18. At the discretion of the arbitrator(s), the award may provide for payment on an installment basis.

19. At the discretion of the arbitrator(s), and with the agreement of the parties, the arbitrator(s) may dispense with the hearing and make a decision based on documents and other information submitted.

20. Whenever an arbitration involves a dispute between a current Committee Member and a client, the Chair shall have discretion to use the services of former Committee Members as arbitrators, or members of similar committees in other Bar Associations.

21. The arbitrator(s) shall have the right to award to client a refund of unearned, **previously paid fees** or an appropriate amount to the prevailing party, at his discretion.

22. If a duly notified party fails to appear at a hearing, the arbitrator(s) may determine the award in that party's absence.

23. All notices of hearing and of decision shall be given by first class mail.

24. A continuance may be granted for **reasonable** cause at the discretion of the arbitrator(s).

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

- A) **After receipt of the thirty-day notice of right to arbitrate** the client files a response to a civil action before filing request for arbitration; or
- B) The client commences an action or files any pleading seeking judicial resolution of a fee dispute or seeking affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct; or
- C) The client fails to file for arbitration within the thirty (30) day limit after receipt of the Notice of Right to Arbitrate.

26. Fees are not subject to arbitration in:

- A) Disputes where the client seeks affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct; or
- B) Disputes where the fee to be paid by the client or on his behalf has been determined pursuant to statute or court order.

27. If both parties agree in writing that arbitration shall be binding, no appeal from the award, except that provided for in CCP §1285 is allowed. **If the client was referred to the attorney by the Lawyer Referral Service of the Bar Association, that attorney must agree to binding arbitration.**

28. The arbitration award is public; the arbitration case file (including request, reply, exhibits and transcripts) remains confidential to the extent provided by Rule 5 of these Rules of Procedure.

29. The Committee will assume jurisdiction over all fee disputes submitted, but will, when required or requested, take into consideration the geographical location of: 1) the court or majority of legal services provided; 2) the office of attorney at the time services were rendered; 3) the client's residence or 4) the principal address of client's business – and release or refuse jurisdiction when applicable.

30. A client or an attorney who believes that he or she cannot obtain a fair and impartial hearing under the Procedural Rules of this Bar Association shall be entitled to a hearing through a State Bar Panel upon protest. In a matter already pending before this program, the Bar Association shall release jurisdiction of the matter upon notification of the State Bar's acceptance of said matter for arbitration.

31. The arbitration filing fee schedule for the bar association is as follows: If the disputed amount is \$1,440.00 or under, the fee is \$100.00. If the disputed amount is \$1,441.01 to \$49,999.99, the fee is seven percent (7%) of that amount. If the disputed amount is over \$50,000.00, the fee is \$3,500.00.

32. The arbitration filing fee refund policy of the San Bernardino County Bar Association is as follows: If case is cancelled by client within five working days of filing, the filing fee will be refunded in full. One-half (½) of filing fee will be refunded after five day period but before assignment of arbitrator. Except at the discretion of the program administrator or executive director, no refund will be issued after assignment of arbitrator.

(Revised 12/05/91-#25, 27.)

(Revised 02/25/92-#26, 5.)

(Revised 01/29/94-#1, 2, 4, 6d, 7, 8, 9, 10, 11b, 29.)

(Revised 05/07/96-#9, 29; added #31, 32.)

(Revised 06/28/96-#4,8,10,12,16,17,21,24,25A) & C),27,30,32.)

(Revised 11/09/98-#31.)

(Revised 01/01/2004-#31) Increase fee ceiling to \$3500.

(Revised 09/28/06 #16) Service of Award.