

**Rules of Procedure for Fee Arbitrations and Mediations
for the
Bar Association of Northern San Diego County**

(Approved 2010)

ARTICLE I

DEFINITIONS

RULE 1.0 Definitions.

As used in this chapter:

- 1.1 ACTION:** A civil judicial proceeding brought to enforce, redress, or protect a right.
- 1.2 ADMINISTRATOR:** The staff assistant (“Fee Arbitration and Mediation Committee Clerk”) appointed by the chair or vice-chair of the committee who is responsible for administering the local bar association’s Mandatory Fee Arbitration Program and performing administrative functions as directed.
- 1.3 AWARD:** The decision of the arbitrator or arbitrators in the fee arbitration proceeding.
- 1.4 CLIENT:** A person who directly or through an authorized representative consults, retains, or secures legal services or advice from an attorney in the attorney’s professional capacity.
- 1.5 DECLARATION:** A declaration is a document in compliance with the requirements of Code of Civil Procedure section 2015.5, or an affidavit.
- 1.6 FILE:** Fee arbitration records and papers in a specific fee arbitration case.
- 1.7 HEARING PANEL:** One or three arbitrators assigned to hear the fee dispute and to issue the award.
- 1.8 NON-LAWYER ARBITRATOR:** A lay arbitrator is a person who has not been admitted to practice law in any jurisdiction and has not worked regularly for a public or private law office or practice, court of law, or attended law school for any period of time. Paralegal assistants, law firm staff, and law clerks shall not serve as lay arbitrators.
- 1.9 OFFICERS:** The president of the Bar Association of Northern San Diego County (“association”) appoints a chair and one or two vice-chair(s) of the committee who serve at the pleasure of the president. It is their duty to administer the fee arbitration program, supervise the program’s fee arbitrators, and rule on matters as set forth in these rules.

- 1.10 PANEL CHAIR:** Refers to either the sole arbitrator or panel chair of a three-member panel assigned to hear a matter. The panel chair is responsible for ruling on matters pertaining to the individual case assigned as set forth in these rules.
- 1.11 PARTY:** A person who initiates or is named in an arbitration proceeding under these rules including an attorney, a client or other person who is not the client but may be liable for payment of, or entitled to, a refund of attorney's fees.
- 1.12 PROGRAM:** Unless indicated otherwise, reference to the "program" means the Mandatory Fee Arbitration Program of the Bar Association of Northern San Diego County. **The Fee Arbitration and Mediation Committee ("committee") is authorized to arbitrate and/or mediate disputes between attorneys and clients concerning fees, costs, or both charged for professional services.**
- 1.13 STATE BAR:** The State Bar of California. Unless indicated otherwise, reference to the state bar means the State Bar's Office of Mandatory Fee Arbitration.
- 1.14 TRIAL:** Trial after non-binding fee arbitration means: (1) an action in the court having jurisdiction over the amount in controversy or, (2) arbitration pursuant to the parties' pre-existing arbitration agreement.

ARTICLE II

ARBITRATION GENERALLY

RULE 2.0 Arbitration Mandatory for Attorneys.

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

RULE 2.5 Notice of Client's Right to Arbitration Before Lawsuit or Other Proceeding to Collect Fees.

The attorney shall, prior to or at the time of service of summons in a lawsuit against the client for the recovery of fees, costs, or both for professional services rendered or prior to or at the commencement of any other proceeding under a contract that provides for alternative to arbitration under Business and Professions Codes section 6200-6206, forward to the client a written "Notice of Client's Right to Arbitration" using the State Bar approved form. Failure to give this notice shall be a ground for the dismissal of the lawsuit or other proceeding.

RULE 3.0 Party's Failure to Respond or Participate.

In a mandatory fee arbitration, if a party fails to respond to a request for arbitration or refuses to participate, the arbitration will proceed as scheduled and an award will be made on the basis of the evidence presented to the hearing panel. The award may include findings on the subject of a party's failure to appear at the arbitration. A party who is found to have willfully failed to appear at the arbitration is not entitled to a trial after non-binding arbitration.

RULE 4.0 Disputes Covered.

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

- 4.1 disputes where the attorney is also admitted to practice in another jurisdiction or where the attorney is only admitted to practice in another jurisdiction, and he or she maintains no office in the State of California, and no material portion of the services was rendered in the State of California;
- 4.2 claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct;
- 4.3 disputes where the fees or costs to be paid by the client or on the client's behalf have been determined or are determinable pursuant to statute or court order;
- 4.4 disputes where the request for arbitration is made by a person who is not liable for or entitled to a refund of attorney's fees or costs; or
- 4.5 disputes where the claim has been assigned by the client.

RULE 5.0 Non-Binding and Binding Arbitration.

- 5.1 Arbitration is not binding unless all parties agree in writing after the fee dispute arises. Such agreement shall be made prior to the taking of evidence at the hearing. If any party has not agreed in writing to binding arbitration, the arbitration is non-binding. Following service of a non-binding arbitration award, either party may request a trial pursuant to Business and Professions Code section 6204 within 30 days after the non-binding arbitration award has been served. If a trial after arbitration is not requested, the non-binding award automatically becomes binding 30 days after the award is served, except that if any party is found to have willfully failed to appear at the hearing as provided for under these rules, that party shall not be entitled to a trial after arbitration. The decision as to whether the non-appearance was willful is made by the court. The party who failed to appear at the hearing shall have the burden of proving that the failure to appear was not willful. An award may also be corrected, vacated, or confirmed pursuant to Code of Civil Procedure section 1285 et seq.
- 5.2 If all parties agree in writing, after the fee dispute arises, that the arbitration is binding, the award is binding and there can be no trial after arbitration in a civil court on the issue of fees and costs. A binding award may be corrected, vacated or confirmed pursuant to Code of Civil Procedure section 1285 et seq.

RULE 6.0 Withdrawal of Binding Arbitration Election.

- 6.1 If the parties agree in writing, after the fee dispute arises, to binding arbitration, the arbitration shall proceed as binding. The parties may request binding arbitration as provided on the program forms. In the absence of a written agreement made after the fee dispute arises to submit to binding arbitration, the arbitration shall be non-binding.

- 6.2** A party who has requested binding arbitration may withdraw that request and request a change to non-binding arbitration in writing to the program and the other parties, so long as the other parties have not already agreed to binding arbitration.
- 6.3** If the party who initially requests arbitration requests that the arbitration will be binding, and the respondent party's reply agrees to binding arbitration but also seeks to materially increase the amount in dispute, then the party who requested arbitration may withdraw his request that the arbitration be binding. Such withdrawal of consent to binding arbitration, by the initiating party, must be communicated in writing to the program within ten days of that party's receipt of the reply.
- 6.4** Except as provided above, if the parties have already agreed to binding arbitration, the binding election may be changed to non-binding arbitration only by written agreement signed by all parties before the taking of evidence.

RULE 7.0 Right to Counsel.

All parties, at their expense, may be represented by an attorney.

RULE 8.0 Waiver of Right to Request or Maintain Arbitration

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

- 8.1** files an answer or other response to a complaint in an action or other equivalent response in any other proceeding before filing a request for arbitration, after the required form entitled "Notice of Client's Right to Arbitration" was given pursuant to Business and Professions Code section 6201(a);
- 8.2** commences an action or files any pleading seeking judicial resolution of a fee or cost dispute or affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct;
- 8.3** fails to deliver to the program a request for arbitration on the approved program form that is postmarked or received on or before the 30th day from the date of the client's receipt of the form entitled "Notice of Client's Right to Arbitration" given pursuant to Business and Professions Code section 6201, subdivision (a). Should the fee dispute transfer to a different fee arbitration program after the request for arbitration is filed, the original date of postmark or receipt of the arbitration request will be preserved for purposes of determining whether the request for arbitration was made within the 30-day time period.

RULE 9.0 Stay of Proceedings.

If an attorney, or the attorney's assignee, commences an action to collect fees or costs in any court or other proceeding, with limited exceptions including provisional remedies, the court action or other proceeding is automatically stayed upon filing a request for fee arbitration with a State Bar approved fee arbitration program. The party who requested fee arbitration has a duty

to notify the court of the stay and attach a copy of the arbitration request form. If the person who requested or caused the stay has not appeared in the action or other proceeding, or is not subject to the jurisdiction of the court, the plaintiff must immediately file a notice of stay and attach a copy of the arbitration request form showing that the proceeding is stayed. Upon request, the program may provide a copy of a notice of automatic stay to the party.

ARTICLE III

PROGRAM

RULE 10.0 Determination of Jurisdiction.

- 10.1** The program shall notify the parties of its intent to reject any request for arbitration when it is clear from the face of the request that the provisions of Business & Professions Code section 6200 have not been met or the matter is time-barred under Business & Professions Code section 6206. Where the existence of an attorney-client relationship is in dispute, the parties may stipulate to submit the issue for a determination by the program, which otherwise lacks jurisdiction to determine that issue.
- 10.2** The committee chair may request that the parties submit written statements supporting their respective positions on the issue of whether the program has jurisdiction over their fee dispute or whether the dispute is time barred. For good cause, the committee chair may assign the matter to a hearing panel to take evidence and make a determination of whether jurisdiction should be accepted.
- 10.3** Within 15 days from service of notice of a ruling on a challenge to jurisdiction or claim that the matter is time-barred, a party may file a written request for reconsideration based on new evidence. The committee chair shall rule on the request for reconsideration.
- 10.4** There is no appeal of the committee chair's decision following reconsideration. Any ruling on reconsideration by the local bar program is final.
- 10.5** If there is an approved local bar association program that is willing to accept jurisdiction where the parties consent in writing to submit to such jurisdiction, a program may assume jurisdiction over a matter even if the program does not have original jurisdiction.

RULE 11.0 Jurisdiction by the Program.

- 11.1** The program shall have jurisdiction over a fee dispute if a substantial portion of the legal services was performed in the county where the program is located, or the attorney involved in the dispute has an office in northern San Diego County or maintained an office in northern San Diego County at the times the services were rendered.

11.2 In the event of a dispute between the parties as to which program should hear the matter, the program where the arbitration request was first filed shall determine that the arbitration will be conducted in the county where “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.

RULE 12.0 Removal to the State Bar of California.

12.1 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. 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 response 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.

12.2 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.

RULE 13.0 Effect of Failure to Adhere to Time Requirements.

The program shall neither lose jurisdiction, nor shall any arbitration be dismissed nor any award invalidated or modified in any way, solely because of the program's or the hearing panel's failure to comply with time requirements as set forth in these rules.

ARTICLE IV

INITIATION OF ARBITRATION PROCEEDING

RULE 14.0 Request for Arbitration.

- 14.1** Arbitration may be initiated by a client, an attorney, or a third party entitled to request mandatory fee arbitration.
- 14.2** An arbitration is initiated by filing a written "Request for Arbitration" with the program on the approved program form and paying the appropriate filing fee as established by the program. Service of the request on the other party with whom there is a fee dispute named on the request form shall be made by the program.
- 14.3** At the time of service of a request on an attorney, the program may serve with it a copy of the approved "Notice of Attorney Responsibility" form. If the form was not previously served, the program must serve this form no later than the time of service of the notice appointing the arbitration panel.
- 14.4** The party requesting arbitration may amend the request up to 15 days after mailing it to the program unless a request for clarification is made by the program. Thereafter, it may be amended only with the approval of the committee chair or by the panel chair if a notice of assignment of the hearing panel has been served on the parties.
- 14.5** The request for arbitration may be made by (i) a person who is not the client, but who may be liable for or entitled to a refund of attorney's fees or costs ("non-client"), or (ii) the attorney claiming entitlement to fees against a non-client. A fee arbitration between an attorney and a non-client is not intended to abrogate the requirement that the attorney exercise independence of professional judgment on behalf of the client or the protection of client confidences and secrets. Absent the client's written consent to disclosure of confidential information, a fee arbitration with a non-client is not intended to abrogate the attorney's duty to maintain client confidences and secrets unless such disclosure is otherwise permitted by law. Absent the client's signature on the request for arbitration, when an arbitration with a non-client is initiated, the program will give notice of the request to the client by first-class mail at the client's last known address.

15.0 Filing Fee.

15.1 The party requesting fee arbitration shall pay a filing fee with the request form. The arbitrator shall, at his or her discretion, allocate the entire amount of the filing fee, or a portion thereof, to one or more of the parties. Such allocation shall be clearly stated in the award.

15.2 The joining of additional parties as petitioner or respondent shall not increase the filing fee.

15.3 Filing Fee Schedule.

Before any request for arbitration is processed, the appropriate filing fee must be paid. The applicant shall pay an arbitration filing fee equaling 5% (five percent) of the amount in dispute, but not less than \$50.00 (Fifty Dollars) and not more than \$2,500.00 (Two Thousand Five Hundred Dollars).

RULE 16.0 Request for Waiver of Filing Fee.

16.1 A party seeking arbitration may file with the program an application for a filing fee waiver on the approved program form. The person seeking waiver of the filing fee who is not a client and who may be liable for or entitled to a refund of attorney's fees identified by the client as set forth in Rule 14.4, may be required to submit supporting documents regarding his or her own financial status to the program to support the client's application for a filing fee waiver. If the non-client party replies to the program that he or she no longer has an interest in the outcome of the arbitration, the application will proceed based on the client's supporting documents alone.

16.2 For good cause shown, the committee chair may grant or deny the filing fee waiver or order a reduced fee. The order of the committee chair shall be final.

16.3 The financial statement filed in support of a request for a fee waiver shall not be disclosed by the program to the other party.

RULE 17.0 Response to Request for Arbitration.

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

17.2 If the attorney seeks arbitration, and there is no written agreement between the parties that fee disputes be submitted to fee arbitration, arbitration shall proceed only if the client consents in writing on the approved form within 30 days of service of the request unless the attorney is seeking removal from a local bar program under rule 10.2 of a matter in which the client has already requested arbitration or has consented to an attorney's request for arbitration.

RULE 18.0 Requests and Responses to Requests for Arbitration.

Parties filing or responding to a Request for Arbitration shall file one (1) original and the required number of copies of all forms and supporting documentation with the program. Copies of materials filed with the program will be forwarded to the other party and the hearing panel assigned to hear the matter.

RULE 19.0 Settlement of Disputes; Withdrawal from Arbitration; Refund Schedule.

19.1 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 without prejudice 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.

19.2 a) 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.

b) 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.

c) If arbitration has been requested by the attorney, the matter may only be dismissed with the agreement of the other parties.

d) In all other cases, the party who requested arbitration may withdraw from the arbitration proceeding without the consent of other parties at any time before evidence is taken.

19.3 Refund of the filing fee. If the matter is settled or dismissed based on withdrawal before the request for arbitration is served on the attorney by the program, 100% (one hundred percent) of the filing fee shall be refunded to the party who paid it. If the matter is settled after the request for arbitration has been served on the respondent party by the program, but before assignment of a panel, the program shall refund 50% (fifty percent) in excess of \$200.00 (two hundred dollars) to the party who paid it. After assignment of a hearing panel, if written notice of the settlement is received by the program at least 10 days prior to the date of the scheduled hearing, the program shall refund 40% (forty percent) of a filing fee in excess of \$300.00 (three hundred dollars) for a one-person panel, or \$600.00 (six hundred dollars) for a three-person panel.

19.4 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 panel chair, 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. A stipulated award can be enforced by the State Bar on behalf of the client in the same manner as an award after arbitration as provided by Business and Professions Code section 6204(d).

RULE 20.0 Consolidations.

A party may request, in writing, that two or more arbitration matters be consolidated for hearing. The program will serve the other party with a copy of the request. A written reply may be filed with the program within 15 days of service of the request for consolidation. The committee chair shall rule on all written requests to consolidate. The order of the committee chair shall be final. Consolidation will not result in a refund of filing fees paid or reduction of filing fees owed to the program.

If a client requests fee arbitration against an attorney who is already a party in a non-client fee arbitration relating to the client's matter, or joins a fee arbitration as a party in a fee dispute between the client's attorney and a non-client, consolidation of the arbitration matters is automatic absent a showing of good cause to the contrary.

ARTICLE V

PANELS

RULE 21.0 Appointment of Panel.

21.1 For each dispute, the program shall assign a hearing panel from the program's roster of fee arbitrators. A hearing panel shall consist of one attorney arbitrator if the amount in dispute is \$15,000.00 or less, and three arbitrators if the amount in dispute is more than \$15,000.00, one of whom shall be a non-lawyer. An attorney arbitrator shall be designated as the panel chair. If the amount in dispute is more than \$15,000.00, the parties may agree, in writing, to have the matter heard by a single attorney arbitrator.

21.2 Upon the client's request, the program shall assign a sole arbitrator (or, in the case of a three-person panel, one of the attorney arbitrators) whose area of practice is civil or criminal law. Any such designation made by the client shall be of an arbitrator who practices in the same area of law as was involved in the matter for which the attorney was retained by the client. Any such request made pursuant to Business and Professions Code section 6200, subdivision (e) must be submitted by the client at the time the written "Request for Arbitration" on the approved program form is submitted to the program.

21.3 Matters Where Dispute is \$1,000.00 or less: By Declaration Only.

If a fee dispute involves \$1,000.00 or less, the arbitration shall be decided by a presiding arbitrator appointed by the vice-chair or administrator 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.

21.4 Any vacancy of an arbitrator, by way of disqualification or inability to serve, may be filled by the program but in no event shall the arbitration proceed with only two arbitrators.

21.5 A retired judge cannot serve as an attorney arbitrator unless he or she is an active member of the State Bar of California.

RULE 22.0 Notice of Appointment of Panel.

A notice identifying the arbitrator(s) who will hear the dispute shall be served on the parties within 45 days of the date on which the reply to the arbitration request is received, or as soon thereafter as is reasonably possible. If no reply is received, the notice of appointment of panel will be served within 60 days of the date on which the time to file the response expired, or as soon thereafter as is reasonably possible.

RULE 23.0 Challenge to Arbitrator(s).

Each party may disqualify one arbitrator without cause and shall have unlimited challenges for cause. Any disqualification without cause of an arbitrator shall be ineffective unless made in writing and served on the program within 15 days of the service of a notice of assignment of panel or substitute arbitrator(s) if there is a disqualification or successful challenge. An arbitrator who believes that he or she cannot render a fair and impartial decision or who believes that there is an appearance that he or she cannot render a fair and impartial decision shall disqualify himself or herself, or shall accede to a party's challenge for cause. If an arbitrator does not agree to be disqualified, the challenge shall be decided by the committee chair.

RULE 24.0 Discharge of Arbitrator or Panel.

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

RULE 25.0 Prohibited Contact 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; or
- e) In an emergency.

ARTICLE VI

THE HEARING

RULE 26.0 Confidentiality.

- 26.1** All hearings shall be closed to the public. However, in the discretion of the hearing panel and in the absence of any objections by the parties, witnesses may be present during the hearing.
- 26.2** The hearing panel, upon request of the client, shall permit the client to be accompanied by another person and may also permit additional persons to attend. Any such person shall be subject to the confidentiality of the arbitration proceedings.
- 26.3** 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, the 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.

RULE 27.0 Waiver of Personal Appearance.

- 27.1** Upon advance approval of the panel chair, any party may waive personal appearance and submit to the hearing panel testimony and exhibits by written declaration under penalty of perjury.
- 27.2** Any party may designate a lawyer or non-lawyer representative.
- 27.3** Any party unable to attend a hearing may request to appear by telephone, subject to the advance approval of the panel chair.
- 27.4** A request for waiver of appearance or designation of a representative and the submission of testimony by written declaration or request for telephonic appearance pursuant to this rule shall be filed with the panel chair and served on all parties at least 10 days prior to the hearing.

RULE 28.0 Death or Incompetence of a Party.

In the event of death or incompetence of a party, the personal representative of the deceased party or the guardian or conservator of the incompetent may be substituted.

RULE 29.0 Discovery.

No discovery is allowable except as specifically set forth in these rules. Nothing in these rules deprives the client of the right to inspect and obtain the client's file kept by the attorney.

RULE 30.0 Subpoenas.

The committee chair may issue subpoenas and/or subpoenas duces tecum at the request of a party. The committee chair or panel chair shall provide signed, blank subpoenas to the requesting party who shall be responsible for service of the subpoenas. The party requesting subpoenas will be responsible for any witness fees and any costs of service of the subpoenas.

RULE 31.0 Commencement of Hearing; Notice; Attendance.

- 31.1** The hearing shall commence within 45 days for a single arbitrator or 90 days for a three-member panel after the date of service of the “Notice of Assignment of Panel.” A disqualification or allowed challenge of an assigned arbitrator will result in a 15-day extension from the date of the assignment of replacement member(s). Upon stipulation or application to the panel chair, the matter may be continued for good cause shown except in the instance where the continuance is for 30 days or more in which case the continuance must be approved by the committee chair.
- 31.2** The panel shall serve written notice of hearing on each party at the address in the “Notice of Assignment of Panel” and the program within 15 days of its assignment and at least 15 days prior to the hearing date. Appearance by a party at a scheduled hearing shall constitute waiver by said party of any deficiency with respect to the giving of “Notice of Hearing.” Notwithstanding the failure of either party to attend, the hearing shall proceed as scheduled and a decision made on the basis of evidence submitted.
- 31.3** An award shall not be made against a party solely because of the party's absence. The panel shall require the party who is present to submit such evidence as may be required to support the making of an award.
- 31.4** An award may be made in favor of a party who is absent if the evidence so warrants. If neither party appears, and the panel chair has not approved waiver of personal appearance, the panel will issue an award based on the evidence submitted.
- 31.5** If one of the panel members fails to appear, upon written stipulation of the parties, the hearing may proceed with either of the attorney arbitrators acting as the sole arbitrator. Under no circumstances will the hearing proceed with two arbitrators or with one lay arbitrator.
- 31.6** If all parties so stipulate, the sole arbitrator or hearing panel shall decide all matters without a hearing based upon the petition, reply and any other written materials provided by the parties. All such written materials shall be filed with the hearing panel and served on all other parties.

RULE 32.0 Stipulations Encouraged.

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

RULE 33.0 Oaths.

All testimony may be given under oath or affirmation administered by the sole arbitrator or panel chair.

RULE 34.0 Evidence.

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

RULE 34.5 Clarification of Issues and Exchange of Documents

The panel chair may require that the parties clarify the issues, submit additional documentation, and exchange documents in advance of the hearing. The hearing panel may, in its discretion, decline to admit into evidence documents that were required to be exchanged in advance but were not.

RULE 35.0 Order of Proof.

The parties shall present their proof in a manner determined by the sole arbitrator or panel chair.

RULE 36.0 Interpreter.

Any party may provide and pay for the attendance of a person to interpret at that party's expense.

RULE 37.0 Transcripts or Recordings.

No stenographic, audio, or video recording is permissible.

RULE 38.0 Compensation of Arbitrators; Administrative Charges

38.1 No arbitrator shall be entitled to compensation for services.

38.2 Except for the prescribed filing fees, no charges will be made by the program, nor by any arbitrator, for administrative or clerical services. A hearing room will be provided by an arbitrator or by the program without charge to the parties.

38.3 All parties will bear their own costs, including the costs of interpreters and expert witnesses.

ARTICLE VII

AWARD

RULE 39.0 Award.

39.1 The award shall be submitted to the program within 15 days of the close of the hearing in any matter heard by a sole arbitrator, and within 25 days of the close of the hearing in any matter heard by a three-member panel. The award shall be reviewed pursuant to rule 39.9 and then served on the parties forthwith by the program.

39.2 The award shall be in writing. The award shall indicate whether it is binding or non-binding. It shall include a determination of all questions submitted to the panel, the decision of which is necessary in order to determine the controversy including the name of the responsible attorney(s). Arbitrators are encouraged, where appropriate, to include findings of fact. If a party failed to appear for non-binding arbitration, the award should also include the circumstances bearing on the willfulness of any party's non-appearance at the hearing.

39.3 The award shall include substantially the following language:

The hearing panel finds that the total amount of fees and/or costs which should have been charged in this matter are: \$ _____

of which client is found to have paid: \$ _____

Subtotal \$ _____

In addition, the fee arbitration filing fee of \$ _____ as paid by _____ shall be allocated:

Client: \$ _____

Attorney: \$ _____

For a net amount of: \$ _____

Accordingly, the following award is made:

a) Client, _____ (name) _____, shall pay attorney, _____ (name) _____:
\$ _____ plus interest in the amount of ten percent per annum from the 30th day after the date of service of this award

OR

b) Attorney, _____ (name) _____, shall pay client, _____ (name) _____:
\$ _____ plus interest in the amount of ten percent per annum from the 30th day after the date of service of this award

OR

c) Nothing further shall be paid by either attorney or client.

- 39.4** The award may include a refund of unearned fees, costs, or both previously paid to the attorney.
- 39.5** Whenever there are three arbitrators, a majority vote shall be sufficient for all decisions of the arbitrators including the award. Any dissent from the award shall be served with the award.
- 39.6** Evidence relating to claims of malpractice or professional misconduct, whether or not the client was actually harmed, shall be admissible but only to the extent that those claims bear upon the fees and/or costs to which the attorney is entitled. The panel shall not award affirmative relief in the form of damages or offset or otherwise, for injuries underlying any such claim.
- 39.7** The award shall be signed by all arbitrators concurring with it.
- 39.8** The award may include an allocation of the filing fee; however, it shall not include an award for any other costs of the arbitration including attorneys' fees resulting from the arbitration proceeding notwithstanding any contract between the parties providing for such an award of costs or attorney's fees.
- 39.9** The hearing panel shall deliver the original of the signed award to the program which shall then 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.

RULE 40.0. Correction or Amendment of Award by Hearing Panel.

- 40.1** The hearing panel may correct an award only on the grounds set forth in Code of Civil Procedure section 1286.6, subdivision (a) [evident miscalculation of figures or evident mistake in the description of a person, thing or property referred to in the award] and subdivision (c) [the award is imperfect in a matter of form, not affecting the merits of the controversy] under the procedures set forth in Code of Civil Procedure section 1284. An application for correction of the award does not extend the deadline for seeking a trial after a non-binding award is rendered, and a non-binding award will automatically become binding 30 days after it is served on the parties.
- 40.2** A party requesting correction under this rule must file a request in writing to the program, with a proof of service, and serve a copy on the other party within 10 days after service of the award. Any party to the arbitration may make a written objection to such request. Any correction of the award by the hearing panel must be made within 30 days after service of the award.

- 40.3** A party may request amendment of the award. A party must file a request to amend the award in writing to the program, with a proof of service, and serve a copy on the other party at any time prior to judicial confirmation of the award. Any party to the arbitration may make a written objection to such request.
- 40.4** Any corrected or amended award, or denial of application to correct or amend the award, shall be served by the program in the same manner as provided by rule 39.9.

ARTICLE VIII

SERVICE; ADDRESS

RULE 41.0 Service.

- 41.1** Unless otherwise specifically stated in these rules, service on the client shall be by personal delivery, by deposit in the United States mail, or by deposit in a business facility used for collection and processing of correspondence for mailing with the United States Postal Service pursuant to Code of Civil Procedure section 1013(a), postage paid, addressed to the person on whom it is to be served, at his or her address as last given, on any document which has been filed in the arbitration. The client shall keep the program advised of his or her current address.
- 41.2** Unless otherwise specifically stated in these rules, service on an individual attorney shall be at the latest address shown on the official membership records of the State Bar of California. Service shall be in accordance with subsection 41.1 above.
- 41.3** If either party is represented by counsel, service shall be on the party as indicated in subsections 41.1 and 41.2 of this rule, and on the counsel at the latest address shown on the official membership records of the State Bar of California.
- 41.4** The service is complete at the time of deposit. The time for performing any act shall commence on the date service is complete and shall not be extended by reason of service by mail.
- 41.5** Where a facsimile or e-mail transmission is used to communicate with the program or to file any document, it will not be considered received unless the program also receives, within five days of the date of the transmission, the original of the faxed document.
- 41.6** In the event that the client fails to keep the program advised of his or her current address, the program may close the arbitration request, if it is made by the client, after 30 days from the date that the program learns of the invalid address.

ARTICLE IX

REFERRAL OF ATTORNEY TO STATE BAR

RULE 42.0 The hearing panel or the program may, in its discretion, refer an attorney's conduct disclosed in the arbitration proceeding to the State Bar for possible disciplinary investigation without violating the confidentiality surrounding these proceedings.

ARTICLE X

MEDIATION

RULE 43.0 Voluntary Mediation.

43.1 Mediation is voluntary for attorney and client. No party to the dispute shall be required to mediate, and any party may terminate the mediation at any time. In the event a Request for Arbitration has been filed with the mediation option being elected, if any party declines to proceed with mediation, or the mediator determines that mediation will be unsuccessful, the matter will then proceed to arbitration and arbitrators appointed.

43.2 Jurisdiction to Mediate.

The committee shall have jurisdiction to mediate any fee dispute in which a Request for Arbitration has been accepted for filing by the committee, the appropriate filing fee has been paid or waived, all parties have agreed to mediate, and have signed the Mediation Agreement prepared by the committee.

43.3 Appointment and Qualification of Mediators.

Mediators shall be appointed by the committee. Both lawyers and non-lawyers shall be qualified to mediate so long as they have completed at least twenty-five (25) hours of mediation training acceptable to the committee and have attended the committee's Attorney-Client Mediation Orientation Program.

43.4 Initiation of Mediation. If a Request for Arbitration is filed with the committee, the requesting party pays the appropriate filing fee and elects to have the matter resolved by mediation, the committee shall serve a copy of the request and the Mediation Agreement to the other party who shall have fifteen (15) days from the date of service to return the signed mediation agreement and pay the appropriate filing fee to the committee. In the event the other party does not return a signed Mediation Agreement and pay the appropriate filing fee within fifteen (15) days, the matter shall proceed to arbitration.

43.5. Agreement to Mediate. The Mediation Agreement shall be in writing and will substantially conform with the Agreement to Mediate an Attorney-Client Fee Dispute pursuant to Business & Professions Code Section 6200-6206 approved by the State Bar of California.

43.6. Notice of Attorney Responsibility. The client shall state the name of the individual attorney with whom the client has a dispute regarding fees or costs. Upon receipt of the appropriate filing fees and signed Mediation Agreement by both attorney designated by client and the client, and no later than the appointment of the mediator, the committee shall serve the State Bar-approved Notice of Attorney Responsibility form on the attorney designated by the client.

43.7 Assignment of a Mediator. Within fifteen (15) days after receipt of the signed Mediation Agreement by all parties, the committee shall assign one mediator and shall notify the parties of the assignment.

43.8 Disclosure by Mediator. A mediator shall disclose in writing to both parties any information providing a basis for recusal of a judge under California Code of Civil Procedure §170.1.

44.0 MEDIATION SESSION

44.1 Scheduling Mediation Session. Within ten (10) days after the mailing of the Notice of Mediator Assignment, the mediator shall contact the parties and arrange for a date for the mediation. The mediation shall be held no later than thirty (30) days from the date the Notice of Assignment of Mediator was served unless all parties and the mediator agree in writing to a later mediation session. The mediator shall immediately mail notice of the mediation to the parties and the committee which includes the location, date, and time of the session. Mediation shall be scheduled for a session of up to three (3) hours.

44.2 Documents. Prior to the mediation session, the attorney will provide copies of the relevant detailed billing records to the mediator and the other party. The parties may agree to exchange other documents containing information relevant to the dispute. All parties may provide the mediator with a brief written statement outlining any pertinent information not contained in the Request for Arbitration and/or response. Any parties submitting such a statement shall also provide copies to all other parties.

44.3 Attendance at Session. Only the parties in mediation, their attorneys, or other advisors, if any, and the mediator shall be present during the mediation unless all parties agree to have others present during the process. If a party fails to appear, the mediator shall have the option of rescheduling or terminating the mediation. The mediator shall report any such action to the committee. 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.

44.4 Resolution. If the dispute is resolved by the parties, the points of agreement shall be immediately reduced to writing at the session. The agreement shall be signed by all parties, and duplicate originals distributed to each party who signed it. If the agreement includes a refund by an attorney of paid fees or costs to the client, the agreement shall state the name of the attorney responsible for making the refund. The agreement shall include substantially the following language:

The following agreement is made:

- (a) **Client**, [name] _____ **shall pay attorney**, [name] _____;
- (b) **Attorney**, [name] _____ **shall refund to client**, [name], _____;
- (c) **Nothing further shall paid by either attorney or client.**

The parties have considered the allocation of the filing fee in making this agreement. The mediator shall not draft any release or provide legal advice to any party concerning the terms of the agreement. If the parties are unable to reach a resolution of the fee dispute through mediation, the mediator shall immediately notify the committee and the matter shall proceed to arbitration under these rules.

44.5 Notice of Rights after Mediation. If the dispute is resolved by the parties, the mediator shall notify the committee in writing. After receipt of the written notification of resolution by the mediator(s), the committee shall serve both parties with the “Notice of Rights after Mediation” form which substantially conforms with the notice approved by the State Bar of California.

44.6 Confidentiality. Except as otherwise set forth in these Rules, all communications, negotiations, or settlement discussions by and between participants and/or mediator shall remain confidential and shall not be used in any subsequent arbitration or other proceeding. All or part of a communication or document which may be otherwise privileged or confidential may be disclosed if all parties to the mediation so consent. By signing the written agreement setting forth the points of agreement and resolving the dispute, the parties have agreed that the Resolution Agreement may be disclosed for the purposes of enforcement of that agreement. The existence and contents of the written Mediation Agreement may be disclosed in any dispute resolution forum involving the committee, association, mediator, or one or more of the parties to a requested mediation herein which arises out of or relates to that requested mediation.