

State Bar of California Model Santa Clara County Bar Association
Rules of Procedure for Attorney-Client Fee Arbitrations

(Approved November 17, 2006; rev. July 11, 2008; rev. Nov. 24, 2009; rev. Mar. 10, 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 person responsible for administering the ~~local bar association's~~ Santa Clara County Bar Association's Mandatory Fee Arbitration Program.
- 1.3 AWARD:** The decision of the arbitrator or arbitrators in the fee arbitration proceeding.
- 1.4 BAR ASSOCIATION:** The Santa Clara County Bar Association.
- 1.5 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.
- 1.5-6 ~~COMMITTEE CHAIR:~~** ~~The person on the~~ Santa Clara County Bar Association's Mandatory Fee Arbitration ~~program responsible for supervising the program's fee arbitrators and for ruling on matters as set forth in these rules.~~ Executive Committee.
- 1.6-7 COMMITTEE CHAIR:** The chairperson of the Santa Clara County Bar Association's Mandatory Fee Arbitration Executive Committee.
- 1.8 DECLARATION:** A declaration is a document in compliance with the requirements of Code of Civil Procedure section 2015.5, or an affidavit.
- 1.7-9 FILE:** Fee arbitration records and papers in a specific fee arbitration case.
- 1.8-10 HEARING PANEL:** One or three arbitrators assigned to hear the fee dispute and to issue the award.
- 1.9-11 NON-LAWYER ARBITRATOR:** A laynon-lawyer 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~~non-lawyer arbitrators.

1.10—12 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—12 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—13 PROGRAM: Unless indicated otherwise, reference to the program means the Mandatory Fee Arbitration Program of the _____Santa Clara County Bar Association.

1.13—14 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—15 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 2.15 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~~To Respond ~~or~~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 thirty (30) calendar 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 thirty (30) calendar 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. ~~If a trial after arbitration is not requested, the non-binding award automatically becomes binding 30 days after the award is served.~~—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-~~ Change of 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 (10) calendar 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.
- 6.5** Notwithstanding any provision of these rules, a party may not change their election of either binding or non-binding arbitration without providing written notice of the change to the opposing party in such a manner that provides the opposing party with a reasonable opportunity to respond.

RULE 7.0 ~~Right to~~ To Counsel.

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

RULE 8.0 ~~Waiver of~~ 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 calendar 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, 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 fifteen (15) calendar 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 at least one of the attorneys involved in the dispute has an office in Santa Clara County or maintained an office in Santa Clara 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 existsexits.

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 fifteen (15) calendar 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~~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~~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 shall 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 fifteen (15) calendar 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.

RULE 15.0 Filing Fee.

15.1 The party requesting fee arbitration or mediation 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.

RULE 15.3 Filing Fee Schedule.

~~The~~At the time of submission of the request, the party requesting arbitration or mediation must pay the required filing fee is \$ _____ ~~for disputes up~~according to \$ _____ ~~for disputes up~~the following schedule, or obtain a fee waiver pursuant to \$ _____ Rule 16. No request will be processed without the proper fee:
 _____ \$ _____ for disputes up to \$ _____ or
 _____ \$ _____ for disputes over \$ _____

<u>IF THE DISPUTED AMOUNT IS BETWEEN:</u>	<u>THE FILING FEE REQUIRED IS:</u>
\$ 0 - \$ 1,000	\$ 50.00
\$ 1001 - \$ 5,000	\$ 150.00
\$ 5,001 - \$ 10,000	\$ 250.00
\$ 10,001 and above	3% of the amount in dispute with a \$7,500.00 maximum fee

RULE 16.0 Request ~~for~~For Filing Fee Waiver.

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 14.45, 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~~To Request ~~for~~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 thirty (30) calendar 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 thirty (30) calendar 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 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~~Of Disputes; Withdrawal ~~from~~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 arbitration or mediation filing fee: ~~If the matter is settled or dismissed based on withdrawal before the request case closes for arbitration is served on the attorney by the program, ___ percent of any reason (i.e. settlement, bankruptcy, withdrawal), the filing fee shall will be refunded to the party who paid it as follows: If the matter is settled after the request for arbitration has been served on the respondent party by the program but before case closes prior to the assignment of a panel, the program shall retain ___ percent the arbitrator(s) or mediator, the party who requested arbitration will be refunded one-half (1/2) of the filing fee paid up to a maximum of \$____. 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 retain ___ percent of the filing fee up to a maximum of \$____. The remaining fee shall be refunded to the party who paid it. After hearing panel assignment and less than 10 days before the hearing, there shall be no refund of filing fee the Bar Association. If the case closes after the arbitrator(s) or mediator has been assigned but before a hearing notice has been sent by the Bar Association, the party who requested arbitration will be refunded one-quarter (1/4) of the filing fee paid to the Bar Association. If the case closes after the hearing notice has been sent by the Bar Association, the issuance of a refund, if any, and the amount, shall be at the sole discretion of the Panel Chair or his or her designee.~~

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 ~~6203~~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 fifteen (15) calendar 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 or less and three arbitrators if the amount in dispute is more than \$15,000, one of which shall be a non-lawyer. An attorney arbitrator shall be designated as Panel Chair. If the amount in dispute is more than \$15,000, 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** If a fee dispute involves \$1,000 or less, the arbitration shall be decided by the Committee Chair or designee. Each party shall submit all supporting documents and a complete written statement of the reasons for the dispute, a response, or both, under penalty of perjury. The parties have thirty (30) calendar days from the service by the program of the reply to the arbitration request, which will be reflected in a proof of service. The record shall thereafter be forwarded to the Committee Chair or designee for action, who may require either or both parties to submit additional information within thirty (30) calendar days. However, if the amount in controversy is less than \$1,000 but greater than \$500, the parties upon the request of any party, may appear at a hearing, either in person or telephonically, before the Committee Chair or designee assigned to the matter, in addition to providing the written information required by this section. The parties shall be informed of this rule at the time of the program's service of a completed arbitration request form.

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 by either first class mail, fax or email within sixty (60) calendar 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~~shall be served within sixty (60) calendar 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 by either first class mail, fax or email within fifteen (15) calendar 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 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; 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.~~

26.4 Nothing in this Rule shall be interpreted as a prohibition against any arbitrator or the SCCBA Fee Arbitration Program from referring a matter to the State Bar Office of the Chief Trial Counsel when possible misconduct by an attorney is disclosed in an arbitration proceeding (see Cal. State Bar “Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs”, Rule 6 (July 20, 2007)).

RULE 27.0 Waiver ~~of~~ 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 unable to attend a hearing 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 ~~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 by either first class mail, fax or email at least ten (10) calendar days prior to the hearing.

27.5 A request for telephonic appearance shall consist of substantially the following language, as appropriate:

I, [name], declare:

1. I am a party in the present action. I submit this declaration in support of my request for permission to appear by telephone at the fee arbitration hearing on [date of hearing].

2. I am requesting the Hearing Panel to waive my personal appearance at the hearing.

3. There is good cause for my appearing by telephone, in that [state reasons for requesting waiver of personal appearance].

4. I understand and agree that the Panel Chair must approve my request to appear by telephone before I may be allowed to do so.

5. I understand and agree that a condition of my being permitted to appear by telephone is that all participants be able to clearly hear me.

6. I understand and agree that the statements I will make over the telephone for purpose of the hearing will be made under penalty of perjury under the laws of the State of California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at [City], [State]

Dated: _____

Name of Party

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; Continuances; Attendance.

31.1 The hearing shall commence ~~within not later than forty-five (45) calendar~~ days for a single arbitrator or ~~ninety (90) calendar~~ 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 fifteen (15-) calendar 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.~~

The hearing may be continued as determined by the Panel Chair. However, once the hearing date has been set and the notice of hearing served, continuances will only be granted upon a showing of good cause, to be determined by the Panel Chair. During the seventy-two (72) hour period preceding a noticed hearing, good cause shall be presumed not to exist except in cases of emergency. If a continuance is granted, the Panel Chair shall give notice to all parties to the arbitration and the Bar Association offices. The Bar Association shall send a written notice, but such notice may arrive after the continued hearing date without affecting the rights of the parties

31.2 The panel shall serve written notice of hearing on each party by either first class mail, fax or email at the address in the “Notice of Assignment of Panel” and the program within fifteen (15) calendar days of its assignment and at least fifteen (15) calendar 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~~non-attorney 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~~are encouraged.

RULE 33.0 Oaths.

All testimony ~~may~~shall 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 ~~up~~on 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. Stipulations and admissions dispensing with formal proof or of facts not in dispute are encouraged

RULE 34.15 Clarification of Issues and Exchange ~~of~~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.

All materials must be delivered or mailed to the arbitrator(s) with a copy to the opposing party. Parties must deliver or mail to the Bar Association, with appropriate postage for delivery, any written evidence they wish to be considered as part of the arbitration so they are received by the arbitrator(s) and the opposing party no later than fifteen (15) calendar days prior to the arbitration date. The Panel Chair/Sole Arbitrator may waive this requirement at his/her discretion.

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 unless the hearings extend beyond four hours. Unless waived in writing, each arbitrator will be compensated at the rate of \$150 for each additional hour after a four hour hearing. The compensation shall be paid equally by each party to the program 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 extending beyond four hours. Any disputes concerning compensation of the arbitrators will be determined by the Committee Chair, and its determination shall be binding on the parties, including the arbitrators.
- 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 fifteen (15) calendar days of the close of the hearing in any matter heard by a sole arbitrator and within twenty-five (25) calendar 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 nonappearance 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 serve a copy of the award by mail on each party together with a Notice of ~~Your~~ Rights After Arbitration form approved by the State Bar Board of Governors. No award is final or is to be ~~served~~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~~ 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 civil trial after a non-binding award is rendered, and a non-binding award will automatically become binding thirty (30) calendar 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~~all other ~~party~~parties within ten (10) calendar days after service of the award. Any party to the arbitration may make a written objection to such request. no later than ten (10) calendar days after the request for correction is served upon the party. Any objection must be made in writing filed with the Program, with proof of service, with a copy served on all other parties. Any correction of the award by the Hearing Panel must be made within thirty (30) calendar days after service of the ~~award~~award. If no denial of the request or correction of the award is served within the thirty (30) day period provided by this Rule, the request for correction shall be deemed denied on the last day thereof.

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~~all other ~~party~~parties 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. 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.
- 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 email 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 thirty (30) calendar days from the date that the program learns of the invalid address.

**ARTICLE IX,
REFERRAL OF ATTORNEY TO STATE BAR**

42.0 — Referral of Attorney to State Bar.

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.

RIGHT TO TRIAL AFTER ARBITRATION

RULE 42.0 Right to Trial After Arbitration.

42.1 Unless both attorney and client agreed to binding arbitration after the dispute arose under Rule 5.2, the arbitration is non-binding. Both the attorney and client have the right to request a trial after arbitration within thirty (30) calendar days after mailing of the notice of the Award, unless a party has, within the thirty (30) calendar days, sought a trial under Business and Professions Code Section 6204.

42.2 As provided in Business and Professions Code Section 6203(b), even if the parties have not agreed in writing to be bound by the Award of the arbitrator(s), the Award becomes binding upon the passage of thirty (30) calendar days after mailing of the notice of the Award, unless a party has, within thirty (30) calendar days, sought a trial under Business and Professions Code Section 6204.

**ARTICLE X,
COMPLAINT PROCEDURE**

RULE 43.0 Complaint Procedure.

If any party to an arbitration has a complaint about any aspect of the arbitration procedure or program, the following procedure shall be followed:

- a) All complaints must be in writing;
- b) All complaints must be directed to the Presiding Arbitrator of the Fee Arbitration Executive Committee, Santa Clara County Bar Association, 31 North Second Street, Suite 400, San Jose, California 95113;
- c) Each complaint will be investigated by the Presiding Arbitrator of the Fee Arbitration Executive Committee of the Santa Clara County Bar Association and/or his or her designee;
- d) The complaining party will be notified of the results of the investigation by Santa Clara County Bar Association staff; and
- e) Information gathered in the scope of any investigation will remain confidential.

ARTICLE XI.
NON-STATUTORY ARBITRATION

The Bar Association administers a program for attorney fee disputes not within the scope of the State Bar Mandatory Fee Arbitration Program. Examples are disputes between an insurer and an attorney retained by an insured to represent the insured where the insurer has reserved the right to disclaim liability for any judgment which may be rendered against the insured (Cumis counsel), attorney fee disputes between attorneys (for example, attorneys who have represented the plaintiff successively in a contingency fee case), and fee disputes between a third party and an attorney where the third party is claimed to be responsible for the fees for the benefit of the client, and the client has not made a request for mandatory fee arbitration which included the third party.

Details concerning the Santa Clara County Bar Association's Non-Statutory Fee Arbitration program may be obtained from the Bar Association Administrator.

ARTICLE XII.
MEDIATION OF FEE DISPUTES

Mediation is a process by which those who have a dispute, misunderstanding, or conflict come together, and with the assistance of a trained mediator, to resolve the issues and problems in a way that meets the needs and interests of the parties. Fee mediation is an alternative to fee arbitration. Mediation often enhances communication and preserves ongoing relationships, thereby benefiting both the attorney and the client.

RULE 46.0 Jurisdiction.

The jurisdiction for Fee Mediation is the same as it is for Fee Arbitration. If a settlement agreement is not reached through mediation, the parties shall proceed to Fee Arbitration.

RULE 47.0 Appointment and Qualifications of Mediators.

The Committee shall appoint a pool of qualified mediators, who may be lawyers or non-lawyers. Qualified mediators shall have completed a minimum of thirty-five (35) hours of an approved mediation training, shall have completed the fee dispute orientation training program as established by the Fee Arbitration Executive Committee, and shall be fee arbitrators in good standing. The Committee shall establish and publish guidelines for the continuing qualifications of mediators.

RULE 48.0 Commencement of Mediation.

Mediation shall commence on the receipt by the Committee or its designee of the signed Agreement To Mediate approved by the State Bar from the parties. The steps toward commencing the mediation are as follows:

- a) A party files a Request For Fee Arbitration/Mediation and a signed Agreement To Mediate.

- b) Within five (5) calendar days after receipt by the Committee or its designee of both forms, it shall transmit to the other named parties the Request For Mediation and the Agreement To Mediate, together with a copy of these rules.
- c) If the requesting party's signed Agreement To Mediate is returned with the other named parties' signatures within fifteen (15) calendar days of the transmittal, the mediation commences. If not returned, the Committee or its designee shall notify the requester that the other parties have not agreed to mediate, and this dispute shall proceed to Fee Arbitration.
- d) The State Bar approved Agreement To Mediate form shall contain a clause delineating the confidentiality of the process.

RULE 49.0 Selection of Mediators.

49.1 Within fifteen (15) calendar days after the receipt of the executed Agreement To Mediate from the parties, the Committee or its designee shall transmit to the parties a Notice Of Appointment Of Mediator. The mediator shall be selected from the pool of qualified mediators.

49.1 A mediator having any personal bias regarding a party or the subject matter of the dispute, a financial interest in the subject matter of the dispute, or a financial relationship with a party to the dispute shall not serve as a mediator in the dispute.

49.2 A mediator shall disclose any information providing a basis for recusal of a judge under Code of Civil Procedure Section 170.1.

49.3 Any party may disqualify one appointed mediator without cause, and shall have an unlimited number of challenges for cause. The challenge must be made in writing no later than seven (7) calendar days after the transmittal of the Notice Of Appointment Of Mediator, and be addressed to the Committee or its designee with copies to the appointed mediator and to the other parties. Challenges for cause shall be resolved by the Committee or its designee.

49.4 Within ten (10) calendar days after the withdrawal or disqualification of the appointed mediator, the Committee or its designee shall transmit to the parties a new Notice Of Appointment Of Mediator.

RULE 50.0 Mediation Date.

Within fifteen (15) calendar days after the date of the transmittal of the Notice Of Appointment Of Mediator, the mediator shall schedule the mediation date, which shall be scheduled to take place within thirty (30) calendar days after the date of transmittal of the Notice. As soon as is reasonably practicable, but within not more than seventy-two (72) hours, the mediator shall notify the Committee or its designee of the place, date and time of the mediation. Upon receipt

of the mediation date, the Committee or its designee shall serve a Notice Of Mediation on the parties.

RULE 51.0 The Mediation.

51.1 The Mediation shall be scheduled for a maximum four-hour session. The mediation may be extended beyond four (4) hours if:

- a) the parties agree in writing;
- b) the parties agree to pay the mediator a rate of no less than \$150 per hour for the extended mediation; and
- c) the parties agree that payment to the mediator is divided equally among the parties.

51.2 Only the parties to the mediation, their representatives, if any, and the mediator shall be present during the mediation, but the mediator shall have authority to determine if others may be present during the mediation process.

51.3 If a party fails to appear, the mediator shall have the option of rescheduling or terminating the mediation.

51.4 Upon any agreement of the parties, the parties shall reduce said agreement to writing. If the agreement states that the client shall receive a refund of fees or costs, the agreement shall state the name(s) of the individual attorney(s) responsible for making the refund. The agreement shall be signed by the client(s) and the attorney(s) responsible for making any refund of fees and/or costs to the client. The parties shall sign as many originals as there are parties to the mediation, plus one for the Committee. Once an agreement is reached, the Committee or its designee shall provide the parties with the Notice Of Rights After Mediation, as approved by the State Bar.

51.5 Each mediated agreement shall include the following language:

The following agreement is made:

1. Client, _____, shall pay Attorney, _____, \$ _____
2. Attorney, _____, shall refund to Client, _____, \$ _____
3. Nothing further shall be paid by either Attorney or Client.

The parties have considered the allocation of the filing fee in making this agreement.

51.6 The mediator shall report to the Committee or its designee, on the Post-Mediation Report form, within fifteen (15) calendar days after the conclusion of the mediation, whether or not the parties reached an agreement.

51.7 If no agreement is reached by the parties, or if the mediation is terminated, then the dispute shall proceed to Fee Arbitration.

RULE 52.0 Confidentiality.

All communications, negotiations, or settlement discussions by and between participants or by and between participants and the mediator during the mediation shall remain confidential,

pursuant to the Agreement To Mediate (See Rule 48(d), above). Information reported to Bar Association under Rules 51.6 and 53.0 are deemed not to violate the confidentiality provisions of the Agreement To Mediate.

RULE 53.0 Record Keeping.

The Committee shall maintain the following statistics on a monthly basis:

- a) The total number of requests for mediation;
- b) The number of mediation requests initiated by lawyers;
- c) The number of mediation requests initiated by clients; and
- d) The total number of matters in which the parties reached an agreement.