

**BEVERLY HILLS BAR ASSOCIATION
MANDATORY FEE ARBITRATION PROGRAM
Rules of Procedure for Fee Arbitrations**

**ARTICLE I.
PURPOSE AND INTENT OF MANDATORY FEE ARBITRATION**

Rule 1.0 Application and Interpretation of These Rules.

California law entitles a Client to Mandatory Fee Arbitration of a dispute regarding an attorney's fees for legal services. It is the intent of these rules to provide for a fair, speedy, economical, and impartial Hearing and Award, and these rules shall be applied, interpreted, and construed consistent with that intent.

**ARTICLE II.
DEFINITIONS**

RULE 2.0. Definitions.

Each of the following terms appearing herein are defined as indicated:

- 2.1 Action:** A civil judicial proceeding or an arbitration brought to enforce, redress or protect a right.
- 2.2 Administrator:** The staff person responsible for administering the Program.
- 2.3 Attorney Arbitrator:** An active licensee in good standing with the State Bar for at least five years or a retired judge who is an active licensee of the State Bar.
- 2.4 Award:** The decision of the arbitrator or arbitrators in the fee arbitration proceeding, including any award entered by stipulation or request of the Parties.
- 2.5 Client:** A person who directly, or through an authorized representative, consults with, retains, or secures legal services or advice from an attorney in the attorney's professional capacity.
- 2.6 Committee Chair:** The person on the Mandatory Fee Arbitration Program responsible for supervising the Program's fee arbitrators and for ruling on matters as set forth in these rules.
- 2.7 Declaration:** A declaration is a document in compliance with the requirements of Code of Civil Procedure section 2015.5, or an affidavit.
- 2.8 Fees:** Attorney fees, costs, or both.

- 2.9 File:** Fee arbitration records and papers in a specific fee arbitration case.
- 2.10 Hearing:** A fee arbitration hearing conducted by the Program.
- 2.11 Hearing Panel:** One or three arbitrators assigned to hear the fee dispute and to issue the Award.
- 2.12 Lay Arbitrator:** A non-lawyer who has not been admitted to practice law in any jurisdiction; who has never worked regularly for a court or a law practice of any kind as a paralegal, law clerk, or in any other capacity; or who has never attended law school.
- 2.13 Mandatory Fee Arbitration:** The arbitration of disputes concerning Fees under California Business & Professions Code §§ 6200 - 6206.
- 2.14 Non-Client:** A person who is not the Client of an attorney but who may be liable for, or entitled to a refund of, the attorney's Fees; references to "client" also apply to a "Non-Client."
- 2.15 Notice Of Client's Right to Fee Arbitration:** The State Bar approved form an attorney is required to provide to a Client before or at the time of service of summons in a lawsuit against the Client for the recovery of Fees, for professional services rendered, to notify Client of their right to arbitrate a fee dispute under Business and Professions Code §§ 6200-6206.
- 2.16 Panel Chair:** Either the sole arbitrator or panel chair of a three-member panel assigned to hear a matter. The three-member panel chair is responsible for ruling on matters pertaining to the individual case assigned as set forth in these rules.
- 2.17 Party:** A person who initiates or is named in an arbitration proceeding under these rules, including an attorney, a Client, or other person who may be liable for payment of, or entitled to a refund of Fees.
- 2.18 Program:** Unless indicated otherwise, reference to the Program means the Mandatory Fee Arbitration program of the Beverly Hills Bar Association.
- 2.19 Receipt, Received, Receives:** The day on which a mailed Request for Arbitration or a mailed Notice of Client's Right to Fee Arbitration is postmarked, or the day on which a Request for Arbitration or any other submission is received by the Program by mail or electronically.
- 2.20 Request for Arbitration:** The initiating submission made by a Party requesting fee arbitration using the form approved by the Program and paying the appropriate filing fee as established by the Program.

- 2.21 State Bar:** Unless indicated otherwise, reference to the State Bar means the State Bar's Mandatory Fee Arbitration Program.
- 2.22 Trial:** A formal legal proceeding occurring if any Party timely rejects the Award, either in a court having jurisdiction over the amount in controversy or, if the Parties have a pre-existing arbitration agreement, in arbitration.
- 2.23 Tribunal:** A Court or a private arbitrator presiding over a dispute between a lawyer and a Client.

ARBITRATION GENERALLY

RULE 3.0 Arbitration is Mandatory for Attorneys.

California law entitles a Client to arbitration of a dispute regarding an attorney's Fees for legal services. If initiated by Client, fee arbitration is mandatory for an attorney. Fee arbitration is voluntary for a Client unless the Parties have agreed in writing to submit their fee disputes to Mandatory Fee Arbitration.

RULE 4.0 Party's Failure To Respond Or Participate.

- 4.1** If a Party fails to respond to a Request for Arbitration or refuses to participate, the Mandatory Fee Arbitration Hearing 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 concerning a Party's failure to participate or to appear at the Hearing.
- 4.2** A Party who willfully fails to appear at a Hearing is not entitled to request a Trial after non-binding Mandatory Fee Arbitration. The Party that failed to appear has the burden of proving their non-appearance was not willful. The Tribunal shall determine whether the Party's non-appearance was willful and it may consider any findings made by the Hearing Panel.

RULE 5.0 Disputes Covered.

Disputes concerning Fees charged for professional services by an attorney are subject to Mandatory Fee Arbitration under these rules, except for:

- a) disputes where the attorney is admitted to practice only in another jurisdiction, where the attorney maintains no office in the State of California, and no material portion of the services was rendered in the State of California;

- b) claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct;
- c) 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;
- d) 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;
- e) disputes where the claim has been assigned by the Client; or
- f) claims between attorneys for division of fees.

RULE 6.0 Non-Binding and Binding Arbitration; Withdrawal of Binding Election.

- 6.1** Mandatory Fee Arbitration is non-binding. If, after the fee dispute arises, the Parties agree in writing to binding arbitration, the arbitration shall proceed as a binding arbitration. The Parties may request binding arbitration as provided on the Program forms. In the absence of a written agreement for binding arbitration made after the fee dispute arises, the arbitration shall be non-binding.
- 6.2** Unless a Party requests a Trial within 30 days of the date of service of a non-binding arbitration Award, the non-binding Award shall automatically become binding.
- 6.3** A Party who requested a binding Award may withdraw their request for binding arbitration by submitting a written request, if the respondent:
- a) has not replied;
 - b) has not agreed to binding arbitration in the reply; or
 - c) has replied and agreed to binding arbitration, but sought to materially increase the amount in dispute, provided the election is sent to the Program within ten days of receipt of the reply.
- 6.4** In the event a Party submits a written request to withdraw its consent to binding arbitration, the Program shall provide a copy of the written request to the arbitrator and the other Parties within 10 days of receipt. The Program shall provide a copy of the written request within ten days of the Program's receipt of that Party's Reply.
- 6.5** 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 and delivered to the Program.

- 6.6** Any Award that is or has become binding may be corrected, vacated or confirmed pursuant to Code of Civil Procedure section 1285 et seq.

RULE 7.0 Right to Counsel.

All Parties, at their own expense, may be represented by an attorney. The Party or the Party's attorney shall notify the Program in writing of the name, address, and telephone number of the attorney. Thereafter, notices and other communications from the Program, including notices from the Hearing Panel, shall be sent to counsel. In the absence of such written notification, all notices will be sent to the Parties.

RULE 8.0 Waiver of Right to Request or Maintain Arbitration.

- 8.1** A Client's right to request or maintain a Mandatory Fee Arbitration is waived if the Client:
- a) answers a complaint in a civil Action or files an equivalent response to the civil Action before filing a Request for Arbitration, after receiving the Notice of Client's Right to Arbitration;
 - b) commences a legal Action or files any pleading seeking judicial resolution of a fee or cost dispute or seeking affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct; or
 - c) fails to 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 mailing of the Notice of Client's Right to Arbitration.
- 8.2** 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.
- 8.3** If the Client waives the right to Mandatory Fee Arbitration, the Parties may agree in writing to set aside the waiver and to proceed with Mandatory Fee Arbitration.

RULE 9.0 Stay of Proceedings.

- 9.1** If an attorney, or the attorney's assignee, commences an Action to collect Fees 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 the Program.

- 9.2** The Party who requested Mandatory Fee Arbitration has a duty to notify the Tribunal of the stay and attach a copy of the Request for Arbitration. 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 IV. PROGRAM

RULE 10.0 Jurisdiction.

- 10.1** The Program has jurisdiction over disputes concerning Fees, as set forth in Rule 5.0.
- 10.2** The Program shall have jurisdiction over a fee dispute if a substantial portion of the services were performed in the county where the Program is located, or at least one of the attorneys involved in the dispute has an office in Los Angeles County or Ventura County or maintained an office in Los Angeles County or Ventura County at the times the services were rendered, or where the majority of legal services were provided.
- 10.3** Where the existence of an attorney-client relationship is in dispute, the Parties may agree in writing to submit the issue for a determination by the Program, which otherwise lacks jurisdiction to determine that issue.
- 10.4** The Program may, but is not required to, accept jurisdiction pursuant to a written agreement of the Parties to submit to the Program's jurisdiction, if the Program does not have original jurisdiction.
- 10.5** The Program shall reject any Request for Arbitration when it is clear from the face of the request that the provisions of Business & Professions Code § 6200 have not been met or the matter is time barred under Business & Professions Code § 6201(a).
- 10.6** If the Program believes the Request for Arbitration was not timely submitted or that the Mandatory Fee Arbitration does not meet statutory requirements, the Program must 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.

- 10.7** 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. For good cause, the Committee Chair may assign the matter to a Hearing Panel to take evidence and determine whether jurisdiction should be accepted. There is no appeal of the Committee Chair's decision or an assigned a panel's decision. A ruling on request for reconsideration by either the Committee Chair or an assigned panel is final and not appealable to the Program or the State Bar.
- 10.8** In the event of a dispute between the Parties as to whether the Program or another Mandatory Fee Arbitration program should hear the matter, the Mandatory Fee Arbitration provider 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 either to the Program or to the State Bar. Should the fee dispute transfer to a different Mandatory Fee Arbitration provider 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 11.0 Removal to the State Bar of California

- 11.1** If a Request for Arbitration has been filed with the Program and a Party to the arbitration believes they cannot obtain a fair or impartial hearing before the Program, that Party may request removal to the State Bar:
- 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.

11.2 The State Bar's Presiding Arbitrator shall deny a request for removal if they determine:

- 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 they 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 12.0 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 V.
INITIATION OF ARBITRATION PROCEEDING**

RULE 13.0 Request for Arbitration

- 13.1** The Request for Arbitration may be filed by (i) the Client, (ii) a Non-Client but who may be liable for or entitled to a refund of Fee, or (iii) the attorney claiming entitlement to Fees against a Non-Client.
- 13.2** An arbitration is deemed filed when the Program Receives a written Request for Arbitration on the form approved by the Program and the initiating Party either pays the appropriate filing fee as established by the Program or applies for a waiver of the filing fee under Rule 15.0. In the event the manner of submitting a written Request for Arbitration does not allow for the immediate payment of the filing fee, then the filing fee must be paid promptly by the initiating Party as directed by the Program.
- 13.3** If the attorney files a Request for Arbitration, and there is no written agreement between the Parties that fee disputes be submitted to Mandatory Fee

Arbitration, arbitration shall proceed only if the Client consents in writing on the Program's approved form within 30 days of service on the Client of the Request for Arbitration.

- 13.4** The Program will cause the Request for Arbitration to be served on the other Party or Parties identified therein. At the time of service of a request on an attorney, the Program shall serve with it a copy of the approved Notice of Attorney Responsibility form.
- 13.5** The Party requesting arbitration may amend its Request for Arbitration within 15 days of its initial submission by mailing or electronically submitting the amendment to the Program. Thereafter, the Request for Arbitration 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. At any time, the Program or the Panel Chair may request clarification of the Request for Arbitration that requires amendment of the Request for Arbitration.

RULE 14.0 Filing Fee.

- 14.1** The Party requesting fee arbitration shall either pay a filing fee or apply for a waiver of the filing fee at the time of initiating the Mandatory Fee Arbitration. In the event the Program does not grant an application for a fee waiver, then the Party initiating the Mandatory Fee Arbitration shall pay a filing fee as directed by the Program.
- 14.2** Within the Award, the Panel may, in its 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.
- 14.3** The joining of additional Parties as petitioner or respondent shall not increase the filing fee.
- 14.4** The filing fee for arbitration is 5% of the amount in dispute, with a maximum filing fee of \$5,000.

RULE 15.0 Request for Fee Waiver.

- 15.1** A Party seeking arbitration may file with the Program an application for a filing fee waiver on the approved Program form. The Program may require that a request be supported by a statement of status or other documentation. A Party who fails or refuses to provide any requested information in a timely fashion shall be deemed to have withdrawn its request for a filing fee waiver.

- 15.2** 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 and is not appealable.
- 15.3** The financial statement or other information filed in support of a request for a fee waiver shall not be disclosed by the Program to any other Party or to the arbitrators.

RULE 16.0 Response to Request for Arbitration.

- 16.1** The responding Party's reply to a Request for Arbitration 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. If the responding Party is an attorney, any response concerning the issue of the attorney's responsibility for any Award that refunds Fees to the Client, shall be filed at the same time as the reply.
- 16.2** As reflected in Rule 13.3, If the attorney files a Request for Arbitration, and there is no written agreement between the Parties that fee disputes be submitted to Mandatory Fee Arbitration, arbitration shall proceed only if the Client consents in writing on the approved form within 30 days of service on the Client of the Request for Arbitration.

RULE 17.0 Requests and Responses to Requests for Arbitration.

Parties filing or responding to a Request for Arbitration by mail 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 18.0 Settlement Of Disputes; Withdrawal From Arbitration; Refund Schedule.

- 18.1** Upon confirmation by the Parties or the Hearing Panel if one has been assigned that a 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.
- 18.2** Procedures to withdraw a Request for Arbitration:
- 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.

18.3 The refund of Program fees shall be on the following terms:

- a) The Program will retain a \$50 non-refundable fee on all cases filed. No refund is available for filing fees of \$50 or less.
- b) If a case closes prior to the assignment of a mediator or arbitrator(s), the Program shall retain 50% of the total filing fee with a \$50 minimum.
- c) In cases closed after the assignment of a mediator or arbitrator(s), and written notice is Received at least ten (10) days prior to the date of the scheduled Hearing, the Program shall retain 75% of the total filing fee with a \$50 minimum.
- d) After mediator or Hearing Panel assignment and less than ten (10) days before the Hearing, there shall be no refund of filing fees.
- e) If a mediation session or arbitration Hearing has commenced, no refund will be made.

18.4 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 Award as prescribed elsewhere in these rules.

RULE 19.0 Consolidations.

19.1 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.

- 19.2** 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 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 VI. PANELS AND ARBITRATORS

RULE 20.0 Appointment of Panel.

- 20.1** 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 \$25,000 or less and three arbitrators if the amount in dispute is more than \$25,000, one of whom shall be a non-lawyer. An Attorney Arbitrator shall be designated as Panel Chair. If the amount in dispute is more than \$25,000, the Parties may agree, in writing, to have the matter heard by a single Attorney Arbitrator.
- 20.2** A Client is entitled to appointment of an Attorney Arbitrator whose area of practice is civil law if the fee dispute relates to civil law, or criminal law if the dispute relates to criminal law, if the Client has elected such an appointment in the Request for Arbitration.
- 20.3** All appointed arbitrators must have basic technological proficiency, including the ability to operate videoconferencing systems.
- 20.4** 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 30 days from the service by the Program of the reply to the Request for Arbitration, which will be reflected in a proof of service. The record shall thereafter be forwarded for action to the Committee Chair or designee, who may require either or both Parties to submit additional information within 30 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, telephonically or videoconference, before the Committee Chair or designee assigned to the matter, in addition to providing the written information required by this section. The Program shall keep a permanent record of the number of fee disputes in

which the amount in controversy is between \$500 and \$1,000 and of that number, the number of fee disputes in which any Party requested a Hearing. The Parties shall be informed of this Rule 20.4 at the time of the Program's service of the Request for Arbitration.

- 20.5** 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.

RULE 21.0 Notice of Appointment of Panel.

A notice identifying the arbitrator(s) who will hear the dispute shall be served on the Parties within 60 days of the date on which the reply to the Request for Arbitration 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 22.0 Challenge, Disqualification, and Recusal of Arbitrator(s).

22.1 A Party may disqualify one arbitrator without cause. A Party is entitled to unlimited challenges of an arbitrator for cause. The Program must be notified of the request for disqualification within fifteen days of serving the Notice of Arbitrator Assignment.

22.2 No person appointed as an arbitrator shall arbitrate a dispute if they have any financial or personal interest in the result of the arbitration or if they determine that they are not qualified to act as to that dispute for any other reason. An arbitrator who believes he or she cannot render a fair and impartial decision or who believes there is an appearance that he or she cannot render a fair and impartial decision must disqualify himself or herself or accede to a Party's challenge for cause. If the arbitrator believes there are insufficient grounds to accede to a challenge for cause, the Committee Chair shall decide the challenge. The Committee Chair's decision is final and non-appealable.

RULE 23.0 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 their sole discretion, determines that there has been an unreasonable delay in performing duties under these rules, or for other good cause shown.

RULE 24.0 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 VII. THE HEARING

RULE 25.0 Confidentiality.

- 25.1** Mandatory Fee Arbitrations are confidential proceedings. Pursuant to California Business & Professions Code § 6202, disclosure of privileged communications, attorney work product, or other confidential information during the Mandatory Fee Arbitration process, including at or during the Hearing, shall not be deemed to be a waiver of the confidential character of such matters for any other purpose.
- 25.2** Mandatory Fee Arbitration Hearings shall be closed to the public.
- 25.3** In the discretion of the Panel Chair and in the absence of any objections by the Parties, witnesses may be present during the Hearing.
- 25.4** 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. In the event a Party objects to the attendance of such an individual, the challenge will be determined by the Panel Chair.
- 25.5** As a condition of attending the Hearing, any person permitted to attend under Rule 25.3 or Rule 25.4, shall be advised that the proceedings are confidential and must agree to preserve the confidential nature of any information to which they are exposed during their participation.
- 25.6** The arbitration case file, including the request, reply, and exhibits, 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.

- 25.7** 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.
- 25.8** No arbitrator appointed under these Rules shall be competent to testify in any subsequent civil proceeding, as to any statement or conduct occurring during the course of the arbitration proceeding, except as permitted by California Evidence Code § 703.5.

RULE 26.0 Waiver of Personal Appearance.

- 26.1** 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 or such other means approved by the Panel Chair.
- 26.2** Any Party unable to attend a Hearing may designate a lawyer or non-lawyer representative.
- 26.3** Any Party may request to appear by telephone or videoconference, subject to the advance approval of the Panel Chair.
- 26.4** A request for waiver of appearance or designation of a representative and the submission of testimony by written Declaration or request for telephonic or videoconference 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 27.0 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 Party may be substituted.

RULE 28.0 Discovery.

- 28.1** No discovery is allowable except as specifically set forth in these rules.
- 28.2** Nothing in these rules deprives a Client of the right to inspect and obtain the Client's file kept by the attorney. A Non-Client Party does not have the right to inspect the Client's or attorney's file.

RULE 29.0 Compelling Production of Witnesses and Documents at the Hearing By Subpoena or Notice.

- 29.1** A Party seeking to compel the attendance of a person at the Hearing or the production of documents, books or records, may request a subpoena for such purposes. A Party seeking to have a subpoena issued shall submit a completed but unsigned Judicial Council subpoena form to the Committee Chair, prior to the appointment of a panel, or, after the appointment of a panel, to the Panel Chair, with proof of service on all Parties. Upon showing of good cause, the Committee Chair or Panel Chair, as appropriate, may issue a subpoena requested by a Party. In the event the Committee Chair or Panel Chair approves the issuance of a subpoena, the Committee Chair or Panel Chair shall sign the submitted subpoena and provide any executed subpoena to the requesting Party, who shall be responsible for service of the subpoena. The Party requesting a subpoena will be responsible for any witness fees and costs of service of the subpoena. No subpoena may be served on any Party or third Party unless it has been approved and signed by the Committee Chair or Panel Chair pursuant to this rule.
- 29.2** Any Party may require another Party to bring to the Hearing books, documents , electronically stored information, or other things in their possession, by serving a written request on the other Party 10 days in advance of the Hearing. The request shall state the exact materials or things desired.

RULE 30.0 Commencement of Hearing; Notice; Attendance.

- 30.1** The Panel Chair 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.
- 30.2** The Hearing shall commence within 45 days for a single arbitrator panel or 90 days for a three- member panel after the date of service of the Notice of Assignment of Panel.
- 30.3** The Panel Chair shall have sole discretion to determine whether the Hearing will be held in person, via videoconference, telephonically, or any combination thereof. Within the Notice of Hearing, the Parties shall be advised of the physical location, the telephone number, or the videoconference service and credentials that will be necessary to attend Hearing.

- 30.4** 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).
- 30.5** Upon stipulation or application to the Panel Chair, the Hearing may be continued for good cause shown.
- 30.6** Notwithstanding the failure of either Party to attend, the Hearing shall proceed as scheduled and a decision made on the basis of evidence submitted. 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. 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.
- 30.7** 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 only a lay arbitrator. If all Parties agree in writing, 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 31.0 Agreements Encouraged.

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

RULE 32.0 Hearing Procedure.

- 32.1** The Panel Chair shall preside at the Hearing.
- 32.2** The Parties shall present their proof in a manner determined by the Panel Chair.
- 32.3** The Parties to the arbitration are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at the Hearing, but the rules of evidence and rules of judicial procedure applicable in the courts of California need not be observed. Upon request of any Party to the arbitration or upon request of any arbitrator, the testimony of witnesses shall be given under oath. The Panel Chair may administer oaths to witnesses appearing or testifying at the Hearing. The sole arbitrator or panel shall have the power to limit and regulate the number, timing, form and length of the Parties' written or oral presentation.

32.4 The Panel Chair shall rule on the admission and exclusion of evidence and on questions of procedure, and shall exercise all powers relating to the conduct of the Hearing.

32.5 The Panel Chair has the power to preserve and enforce order in the proceedings and to provide for the orderly conduct of the proceedings.

RULE 33.0 Evidence.

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

33.2 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 to which the attorney is entitled.

33.3 The Parties may object to the introduction of information or evidence that is privileged under any applicable law, unless there has been a waiver of any applicable privilege.

RULE 34.0 Clarification of Issues And Exchange of Documents.

The Panel Chair may within a reasonable time in advance of the Hearing date 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 Interpreter.

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

RULE 36.0 Transcripts or Recordings.

No stenographic, audio, video, or other form of recording is permissible.

RULE 37.0 Compensation of Arbitrators; Administrative Charges

- 37.1** No arbitrator shall be entitled to compensation for services unless the Hearing extends 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. A Hearing of four hours or less in one day will be considered as a one-half day hearing. A Hearing of more than four hours in one day will be considered as a one-day hearing. The compensation shall be paid equally by each Party, to each arbitrator, for each day of the 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.
- 37.2** 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.
- 37.3** All Parties will bear their own costs, including the costs of interpreters and expert witnesses.

ARTICLE VIII. AWARD

RULE 38.0 Award.

- 38.1** 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 38.11 and then served on the Parties forthwith by the Program.
- 38.2** 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 Hearing 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.
- 38.3** The Award shall include substantially the following language, as appropriate:

The Hearing Panel finds that the total amount of fees or costs that should have been charged in this matter are: \$ _____

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

Subtotal \$ _____

Pre-award interest [check box]: ☐ is not awarded.
☐ is awarded in the amount of \$ _____

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) : \$ _____

OR

b) Attorney, (name) , shall pay
client, (name) : \$ _____

OR

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

38.4 The Award may include a refund of unearned Fees previously paid to the attorney. In the event a refund is determined to be owed to the Client and where questions are raised as to who the responsible attorney(s) in the arbitration is, the Panel shall make that determination and shall include in the award the name of the attorney(s) and, if appropriate, the law firm(s).

38.5 The Award shall provide for interest to accrue on the award 30 days after the service of the award.

38.6 Whenever there are three arbitrators, a majority vote shall be sufficient for all decisions of the arbitrators, including the Award. The Award shall be signed by all arbitrators concurring with it. Any dissent from the Award shall be served with the Award.

38.7 The Hearing Panel shall not award affirmative relief in the form of damages or offset or otherwise, on the basis of a claim for malpractice or professional

misconduct. Nothing herein shall be construed to prevent the Hearing Panel from awarding a refund of unearned Fees previously paid by the Client

- 38.8** The Award may include an allocation of the filing fee. The absence of such allocation in the Award will be deemed to mean each Party is responsible for the fee arbitration filing fee paid by that Party.
- 38.9** The Award shall not include an award for any other costs of the arbitration, including attorneys' fees resulting from the arbitration proceeding notwithstanding any contact between the Parties providing for such an award of costs or attorney's fees.
- 38.10** The Hearing Panel shall forward the original of the signed Award to the Program, which shall serve a copy of the Award by mail on each Party together with a Notice of Rights After Arbitration form approved by the State Bar Board of Governors.
- 38.11** 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 Trustees. Any Party who has submitted exhibits or documents to the panel shall, upon service of the Award, arrange to retrieve them.

RULE 39.0. Correction or Amendment of Award by Hearing Panel.

- 39.1** An Award may be corrected or amended by the sole arbitrator or at least two concurring members of panel. Correction is permitted only for an evident mistake in calculation or description of a person, thing, or property, or for defect of form not affecting the merits of the dispute. Amendment is permitted when an Award is inadvertently incomplete and amendment does not substantially prejudice the legitimate interests of a Party. Unless requested by Panel Chair, no additional testimony or documentary evidence may be submitted
- 39.2** Any Party may submit to the Panel Chair a written request for a correction of an Award. The requesting Party must submit the request to the Panel Chair with proof of service and serve a copy on each Party within ten days after service of the Award. Any correction or denial of the request will be made by the Panel Chair within thirty days of service of the Award.
- 39.3** A written request to correct an Award does not extend the thirty-day deadline to request a Trial or arbitration after a non-binding Award has been issued.

- 39.4** Any Party may submit a written request to the Panel Chair for the amendment of an Award. The requesting Party must submit the request to the Panel Chair with proof of service and serve a copy on any other Party at the time prior to judicial confirmation of the Award.
- 39.5** Any Party may submit to the Panel Chair a written objection to a request for correction or amendment of an Award.
- 39.6** The Program must serve all Parties with a corrected or amended Award or denial of a request for correction or amendment.

ARTICLE IX. SERVICE; ADDRESS

RULE 40.0 Service.

- 40.1** Unless otherwise specifically stated in these rules, service on the Client shall be by electronic means, 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 their address as last given, on any document which has been filed in the arbitration. The Client and the Client's attorney shall keep the Program advised of their current address.
- 40.2** 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 40.1 above.
- 40.3** If either Party is represented by counsel, service shall be on the Party as indicated in subsections 40.1 and 40.2 of this rule, and on the counsel at the latest address shown on the official membership records of the State Bar.
- 40.4** 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.
- 40.5** In the event that the Client fails to keep the Program advised of their 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.
- 40.6** Electronic Service

- a) In addition to the methods of service provided for in subdivision (A) of this rule, the Parties to an arbitration may consent to electronic service of documents upon each other pursuant to Code of Civil Procedure section 1010.6(a)(1)(A)-(C).
- e) The Parties to an arbitration may consent to receive electronic service of documents from the Program in lieu of service by mail by providing to the Program written consent to receive electronic service of documents from the Program at the Party's designated electronic address.
- f) Service pursuant to this subsection is complete upon transmission.

ARTICLE X. ENFORCEMENT

RULE 41.0 Enforcement Authority.

- 41.1** Upon request, the State Bar may assist in enforcing a final and binding arbitration Award, judgment, stipulated Award, or mediation settlement requiring the attorney to refund Fees previously paid to the attorney if the attorney has not timely complied with the terms of the final and binding arbitration award, judgment, stipulated Award, or mediation settlement.

Rule 42.0 Request for State Bar Enforcement.

- 42.1** Unless otherwise directed by the State Bar, a Party submitting an Award for enforcement must comply with the following procedures:
- a) A Client may submit a written request for enforcement no earlier than 100 days and no later than four years from the date of service of a final and binding arbitration Award, judgment, stipulated Award, or mediation settlement. The request must be in writing on the State Bar Request for Enforcement form. The request may include any other Party who was awarded or who is liable for a refund of attorney Fees. An Award is not enforceable by the State Bar if it refunds the Client only some or all of the arbitration filing fee and does not include a refund of Fees.
 - b) Before submitting a Request for State Bar Enforcement, a Client must make a reasonable effort to obtain payment, including at a minimum a written request to the attorney for payment. The State Bar may require proof of such an effort before accepting the request.
 - c) The State Bar must serve the Request for State Bar Enforcement on the attorney.

- d) If a Client has filed a petition in a civil court to confirm the Award, the State Bar may proceed with enforcement proceedings or, abate enforcement until the court enters a judgment confirming the Award.

ARTICLE XI. REFERRAL OF ATTORNEY TO STATE BAR

43.0 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 proceedings to the State Bar for possible disciplinary investigation without violating the confidentiality surrounding these proceeding.