

**LONG BEACH BAR ASSOCIATION
MANDATORY FEE ARBITRATION PROGRAM
Rules of Procedure for Fee Arbitrations**

**ARTICLE I.
DEFINITIONS**

RULE 1.0 Definitions

- 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 Mandatory Fee Arbitration Program.
- 1.3 AWARD:** The decision of the arbitrator or arbitrators in a fee arbitration proceeding.
- 1.4 CLIENT:** A person who directly or through an authorized representative consults, retains or secures legal services or advice from an attorney in the attorney's professional capacity.
- 1.5 COMMITTEE CHAIR:** The person on the Mandatory Fee Arbitration Committee responsible for supervising the program's fee arbitrators and for ruling on matters as set forth in these rules.
- 1.6 DECLARATION:** A declaration is a document in compliance with the requirements of Code of Civil Procedure Section 2015.5, or an affidavit.
- 1.7 FILE:** Fee arbitration records and papers in a specific fee arbitration case.
- 1.8 HEARING PANEL:** Three arbitrators assigned to hear the fee dispute and to issue the award.
- 1.9 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.
- 1.10 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, attorney's fees.
- 1.12 PROGRAM:** Unless indicated otherwise, reference to the program means the Mandatory Fee Arbitration Program of the Long Beach Bar Association.
- 1.13 STATE BAR:** The State Bar of California. Unless indicated otherwise, reference to the State Bar means the State Bar's Office of Mandatory Fee Arbitration.

**ARTICLE II.
ARBITRATION GENERALLY**

RULE 2.0 Arbitration Mandatory for Attorneys

- 2.1 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, but mandatory for an attorney if commenced by a client.

RULE 3.0 Party's Failure to Respond or Participate

- 3.1 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.

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 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,
- 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 and any party may request a trial after arbitration in a civil court pursuant to Business and Professions Code Section 6204 within 30 days after the non-binding arbitration award has been served. If a trial after arbitration is not requested, the non-binding award automatically becomes binding 30 days after it is served. If any party willfully fails to appear at the hearing as provided for under these rules, that party shall not be entitled to a trial after arbitration. The decision as to whether the non-appearance was willful is made by the court.

The party who failed to appear at the hearing shall have the burden of proving that the

failure to appear was not willful. An award may be corrected, vacated or confirmed pursuant to Code of Civil Procedure Section 1285 et seq.

- 5.2** If all parties agree in writing, after the fee dispute arises, that the arbitration is binding, the award is binding and there can be no trial after arbitration in a civil court on the issue of fees and costs. A binding award may be corrected, vacated or confirmed pursuant to Code of Civil Procedure Section 1285 et seq.

Rule 6.0 Withdrawal of Binding Arbitration Election

- 6.1** If the parties agree in writing, after the fee dispute arises, to binding arbitration, the arbitration shall proceed as binding. The parties may request binding arbitration as provided on the Program forms. In the absence of a written agreement made after the fee dispute arises to submit to binding arbitration, the arbitration shall be non-binding.
- 6.2** A party who has requested binding arbitration may withdraw that request and request a change to non-binding arbitration in writing to the Program and the other parties, so long as the other parties have not already agreed to binding arbitration.
- 6.3** If the party who initially requests arbitration requests that the arbitration 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 10 days of that party's receipt of the Reply.
- 6.4** Except as provided above, if the parties have already agreed to binding arbitration after the dispute arose, the binding election may be changed to non-binding arbitration only by written agreement signed by all parties and sent to the Program.

RULE 7.0 Right to Counsel

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

RULE 8.0 Waiver of Right to Request or Maintain Arbitration

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

- 8.1** answers a complaint in a civil action or files another equivalent response to the civil action before filing a request for arbitration, after the required form entitled "Notice of Client's Right to Arbitration" was given to the client 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 seeking affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct, or
- 8.3** fails to deliver to the Program a request for arbitration on the approved Program form that is postmarked or received on or before the 30th day from the date of the client's

receipt of the form entitled "Notice of Client's Right to Arbitration" given pursuant to Business and Professions Code Section 6201, subdivision (a). Should the fee dispute be transferred 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

- 9.1** 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 fee arbitration program approved by the State Bar. 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 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 the notice of automatic stay to the party.

ARTICLE III. PROGRAM

RULE 10.0 Determination of Jurisdiction

- 10.1** 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 Section 6200 have not been met or the matter is time barred under Business and Professions Code Section 6206. Where the existence of an attorney-client relationship is in dispute, the parties may stipulate to submit the issue for a determination by the Program, which otherwise lacks jurisdiction to determine that issue.
- 10.2** The Committee Chair may request that the parties submit written statements supporting their respective positions on the issue of whether the Program has jurisdiction over their fee dispute or whether the dispute is time barred. For good cause, the Committee Chair may assign the matter to a hearing panel to take evidence and make a determination of whether jurisdiction should be accepted.
- 10.3** Within 15 days from service of notice of a ruling on a challenge to jurisdiction, 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 Committee Chair is final.
- 10.5** If the parties consent in writing to submit to such jurisdiction, the Program may assume jurisdiction over a matter even if the Program does not have original jurisdiction.

RULE 11.0 Jurisdiction of the Program

The Program shall have jurisdiction over a fee dispute:

11.1 The Program shall have jurisdiction over a fee dispute if a substantial portion of the services were performed in Los Angeles 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 maintained an office in Los Angeles County at the times the services were rendered, or where the majority of legal services were provided.

11.2 In the event of a dispute between the parties as to which program should hear the matter, the program where the arbitration request was first filed shall determine that the arbitration will be conducted in the county where “the majority of legal services were provided,” and such ruling is final and not appealable to the State Bar. Should the fee dispute transfer to a different fee arbitration program after the request for arbitration is filed, the original date of postmark or receipt of the arbitration request will be preserved for purposes of determining whether jurisdiction exists.

RULE 12.0 Removal to the State Bar of California

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

- a) the parties 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 is been a final ruling by the State Bar’s Presiding Arbitrator granting removal to the State Bar.
- b) the State Bar shall serve the request for removal and supporting declaration on the other parties and the Program. Any written responses must be received by the State Bar within 15 days of service of the request for removal and declaration for consideration by the State Bar’s Presiding Arbitrator.
- c) the party seeking removal must provide all additional information requested by the State Bar within the time limits set by the State Bar.
- d) a request for removal to the State Bar will be decided by the State Bar’s Presiding Arbitrator under the applicable rules of procedure of the State Bar. Upon service of an order granting a request for removal, the party who paid the filing fee to the Program shall receive a refund of the filing fee from the Program.

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 arbitration or the Program itself would be prejudiced by removal and such prejudice outweighs the allegations by the party seeking removal that a fair hearing through the Program cannot be obtained, or
- b) the conduct of the party seeking removal during the course of the arbitration proceedings before the Program is clearly inconsistent with a bona fide belief by

that party that he or she cannot obtain a fair hearing in the Program, or

- c) the party seeking removal has waived any claim that the party cannot obtain a fair hearing before the Program.

RULE 13.0 Effect of Failure to Adhere to Time Requirements

- 13.1** The Program shall not lose jurisdiction, no arbitrator shall be dismissed, and no award shall be invalidated or modified in any way, solely because of the Program's or the hearing panel's failure to comply with time requirements as set forth in these rules.

ARTICLE IV. INITIATION OF ARBITRATION PROCEEDING

RULE 14.0 Request For Arbitration

- 14.1** Arbitration may be initiated by a client, an attorney or a third-party entitled to request mandatory fee arbitration,
- 14.2** An arbitration is initiated by filing a written "Request For Arbitration" with the Program on the approved Program form and paying the appropriate filing fee as established by the Program. Service of the request on the other party with whom there is a fee dispute named on the request form shall be made by the Program.
- 14.3** At the time of service of a request on an attorney, the Program shall serve with it a copy of the approved "Notice of Attorney Responsibility" form.
- 14.4** the party requesting arbitration may amend the request up to 15 days after mailing it to the Program, unless you 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:
 - a) 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
 - b) 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 professional judgment on behalf of the client, or the protection of the client's 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 attorneys 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 shall pay a filing fee with the request form. The arbitrator may, 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 stated in the Award.
- 15.2** The joining of additional parties as petitioner or respondent shall not increase the filing fee.
- 15.3** The filing fee shall be:
- a) for amounts in dispute up to \$10,000 – \$50.00 administrative fee plus 4% of the amount in dispute,
 - b) for amounts in dispute between \$10,001 and \$20,000 – \$50.00 administrative fee plus 5% of the amount in dispute,
 - c) for amounts in dispute of \$20,001 or more – \$50.00 administrative fee plus 6% of the amount in dispute.

The maximum fee shall not exceed \$5,000.00 including the administrative fee.

RULE 16.0 Request for Filing Fee Waiver

- 16.1** Any person seeking arbitration may file with the Program an application for a filing fee waiver on the approved form. A person seeking waiver of the filing fee, who may be liable for or entitled to a refund of attorney's fees, may be required to submit supporting documents regarding his or her own financial status to the Program to support the application for a filing fee waiver. If a non-client party subsequently notifies the program that he or she is no longer interested in the outcome of the arbitration, the arbitration 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 reduce the fee. The decision 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 any other party.

RULE 17.0 Response to Request for Arbitration

- 17.1** The respondent party's reply to a Request for Arbitration, together with any response respecting the issue of the attorney's responsibility for any award that refunds fees or costs or both to a party, shall be submitted to the Program on its approved form within 30 days of the service of the request, unless an extension of time to reply is obtained from the Program.
- 17.2** If the attorney seeks arbitration, and there is no written agreement between the parties that fee disputes be submitted to fee arbitration, arbitration shall proceed only if the client consents in writing on the approved form within 30 days of service of the request, unless the attorney is seeking removal from the Program under rule 10.2 of an

arbitration 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

- 18.1** Parties filing or responding to a Request for Arbitration shall file one original and three copies of all forms and supporting documentation with the Program. Copies of materials filed with the Program will be forwarded to the other party, to the arbitrator assigned to hear the arbitration and to the Committee Chair. The original Request shall be maintained by the Program administrator.
- 18.2** In arbitrations where the amount in dispute is \$10,000 or more, the parties filing or responding to a Request for Arbitration shall file one original and six copies of all forms and supporting documentation with the Program.

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

- 19.1** Upon confirmation by the parties, the arbitrator, or the hearing panel, if one has been assigned, that the dispute has been settled in a writing signed by all parties, the arbitration shall be dismissed by the Program if no hearing panel has been assigned, or by the panel chair if a notice of assignment of a hearing panel has been served on the parties.
- 19.2** If any party wishes to withdraw from a binding arbitration which has not been settled, all other parties must agree to the arbitration being withdrawn.
- 19.3** If there is a written agreement between the parties requiring arbitration. A fee dispute through the Mandatory Fee Arbitration Program, all other parties must consent before the arbitration is dismissed.
- 19.4** If the arbitration has been requested by the attorney, the arbitration may only be dismissed with the agreement of the other parties.
- 19.5** If the arbitration is settled or dismissed based on withdrawal before the arbitrator or arbitration panel has been assigned, 75 percent of the filing fee shall be refunded, exclusive of the administrative fee which is not refundable, to the party who paid it.

After the arbitrator or arbitrator panel hearing panel has been assigned and no less than 15 days before the hearing, 25 percent shall be refunded, exclusive of the administrative fee which is not refundable, to the party who paid it.

Thereafter there shall be no refund of filing fees.

- 19.6** 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 a 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.

RULE 20.0 Consolidations

- 20.1** A party may request in writing that two or more arbitrations be consolidated for hearing. The Program will serve the other parties 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 decision 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.

ARTICLE V. PANELS

RULE 21.0 Appointment of Panel

- 21.1** For each dispute, the Program shall assign an arbitrator or a hearing panel from its roster. If the amount in dispute is \$15,000.00 or more, a hearing panel shall be assigned, consisting of two attorney arbitrators and a third arbitrator who shall be a non-lawyer lay person. An attorney arbitrator shall be designated as Panel Chair. 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 predominant area of practice is either 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 form is submitted to the Program.
- 21.3** If a fee dispute involves \$1,000.00 or less, the arbitration shall be decided by the Committee Chair or designee without a hearing. 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 arbitration request, which will be reflected in a proof of service, to make these submissions.

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 30 days.

If the amount in controversy is greater than \$1,000.00, the parties shall be entitled to a hearing. Any party may appear at the hearing either in person, or telephonically providing telephonic arrangements can be arranged. 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. In no event shall the arbitration proceed with only two arbitrators.

RULE 22.0 Notice of Appointment of Panel

- 22.1** 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 arbitration request is

received, or as soon thereafter as reasonably possible. If no reply is received, the notice of appointment of assignment of the arbitrator, or panel, shall be served within 60 days of the date on which the time to file the response expired, or as soon thereafter as is reasonably possible.

RULE 23.0 Challenges - Disqualification of Arbitrator(s)

23.1 Each party may disqualify one arbitrator without cause and shall have unlimited challenges for cause. Any disqualification without cause of an arbitrator shall be ineffective unless made in writing and served on the Program within 10 days of the service of a notice of assignment of panel or substitute arbitrator(s) if there is a disqualification or successful challenge. Arbitrators who believe that they cannot render a fair and impartial decision or that there is an appearance that they cannot render a fair and impartial decision, shall disqualify themselves. If a party challenges an arbitrator for cause, and the arbitrator does not agree to be disqualified, the challenge shall be decided by the Committee Chair.

RULE 24.0 Discharge of Arbitrator or Panel

24.1 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

25.1 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, or
- b) in writing with a copy to all other parties, or their respective counsel, if any, and the Program, or
- c) for the sole purpose of scheduling a hearing date or other administrative procedures with notice of same to the other parties, or
- 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 arbitrator or hearing panel and in the absence of any objections by the parties, witnesses may be present during the hearing.

- 26.2** The arbitrator or 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 award is public, but the arbitration case file, including the request, reply, exhibits and transcripts, remains confidential.

RULE 27.0 Waiver of Personal Appearance

- 27.1** Upon advance approval of the Panel Chair, any party may waive personal appearance and submit to the hearing panel testimony and exhibits by written declaration under penalty of perjury.
- 27.2** Any party unable to attend a hearing may designate a lawyer or non-lawyer representative.
- 27.3** Any party may request to appear by telephone, if telephonic arrangements can be made, subject to the advance approval of the Panel Chair and served on all parties at least days prior to the hearing.
- 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 at least 10 days prior to the hearing.

RULE 28.0 Death or Incompetence of a Party

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

RULE 29.0 Discovery

- 29.1** No discovery is allowable except as specifically set forth in these rules.

RULE 30.0 Subpoenas

- 30.1** The Committee Chair arbitrator or Panel Chair arbitrator may issue subpoenas and/or subpoenas duces tecum at the request of a party. The party requesting the subpoena shall provide a written statement in support of the request for the issuance of the subpoena or subpoenas to the assigned arbitrator or Panel Chair. The Committee Chair, arbitrator or Panel Chair arbitrator shall then decide whether the subpoena should be issued. The requesting party shall be responsible for service of the subpoena. The party requesting a subpoena shall also be responsible for any witness fees and costs of service of the subpoena.

RULE 31.0 Commencement of Hearing - Notice and Attendance

- 31.1** 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." A disqualification or allowed challenge of an assigned arbitrator will result in a 15 day

extension from the date of the assignment of replacement arbitrator(s). Upon stipulation or application to the arbitrator or Panel Chair, the matter may be continued for good cause shown except that a continuance for 30 days or more, in which case is a continuance must be approved by the Committee Chair.

- 31.2 The panel shall serve written notice of hearing on each party at the address in the "Notice of Assignment of Panel" and the Program within 15 days of its assignment and at least 15 days prior to the hearing date. Appearance by a party at a scheduled hearing shall constitute waiver by said party of any deficiency with respect to the giving of "Notice of Hearing." Notwithstanding the failure of either party to attend, the hearing shall proceed as scheduled and a decision be 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 a waiver of personal appearance, the panel may terminate the arbitration by making an award that neither party is entitled to any relief.
- 31.5 If one of the panel members fails to appear, upon written stipulation of the parties, the hearing may proceed with the Panel Chair acting as the sole arbitrator. Under no circumstances will the hearing proceed with two arbitrators or with one lay arbitrator.
- 31.6 If all parties so stipulate, the sole arbitrator or hearing panel shall decide all matters without a hearing based upon the Petition, Reply and any other written materials provided by the parties. All such written materials shall be filed with the hearing panel and served on all other parties.

RULE 32.0. Stipulations Encouraged

- 32.1 Agreements between the parties respecting any issues are encouraged. The Program anticipates and expects the voluntary exchange of documents prior to the hearing.

RULE 33.0. Oaths

- 33.1 All testimony may be given under oath or affirmation administered by the sole arbitrator or Panel Chair. All testimony shall be given under oath at the request of any party.

RULE 34.0 Evidence

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

RULE 35.0 Clarification of Issues and Exchange of Documents

- 35.1 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 of the hearing but were not.

RULE 36.0 Order of Proof

36.1 The parties shall present their proof in a manner determined by the sole arbitrator or Panel Chair.

RULE 37.0 Interpreter

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

RULE 38.0 Transcripts or Recordings

38.1 No stenographic, audio or video recording is permissible.

RULE 39.0 Compensation of Arbitrators; Administrative Charges

39.1 No arbitrator shall be entitled to compensation for services provided to the Program.

39.2 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 any arbitrator or by the Program, without charge to the parties.

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

**ARTICLE VII.
AWARD**

RULE 40.0 Award

40.1 The award shall be submitted to the Program within 15 days of the close of the hearing in any arbitration heard by a sole arbitrator and within 21 days of the close of the hearing in any arbitration heard by a panel. The award shall be reviewed by the Committee Chair pursuant to rule 40.9 and then served on the parties forthwith by the Program.

40.2 The award shall be in writing. The award shall indicate whether the arbitration is binding or non-binding. It shall include a determination of all questions submitted to the panel and the decisions necessary 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 a non-binding arbitration, the award should also include the circumstances bearing on the willfulness of any party's nonappearance at the hearing.

40.3 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 petitioner is found to have paid: \$ _____

Additionally, the fee arbitration filing fee of \$ _____ paid by _____ shall be allocated:

Petitioner: \$ _____

Respondent: \$ _____

Accordingly, the following award is made:

a) Petitioner, (name) , shall pay
Respondent, (name) : \$ _____

OR

b) Respondent, (name) , shall pay
Petitioner, (name) : \$ _____

OR

c) Nothing further shall be paid by either petitioner or respondent.

Interest shall accrue in the amount of ten percent per annum from the 30th day after service of this award.

40.4 The award may include a refund of unearned fees, or costs, or both, previously paid to the attorney.

40.5 Whenever there is a panel, a majority vote shall be sufficient for all decisions of the arbitrators, including the award. Any dissent from the award shall be in writing and shall be served with the award.

40.6 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, offset or injuries underlying any such claim.

40.7 The award shall be signed by all arbitrators concurring with it.

40.8 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 attorney's fees resulting from the arbitration proceeding notwithstanding any contract between the parties providing for such an award of costs or attorneys fees.

40.9 The panel shall forward the original of the signed award to the Program. The Program

shall, after the Committee Chair reviews and approves it, 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, if not previously served on the parties.

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 its procedural compliance and form, the Program shall serve a copy of the award by mail on each party. Any party who has submitted exhibits or documents to the panel shall, upon service of the award, make arrangements within 10 days to retrieve them. In the event that a party fails to make arrangements within 10 days, the exhibits or documents may be destroyed.

RULE 41.0 Correction of Award by Hearing Panel

- 41.1** The Hearing Panel or arbitrator, may correct a binding or non-binding 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 such a correction 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 30 days after it is served on the parties.
- 41.2** A party requesting correction or amendment under this rule must file a request in writing to the Program and serve a copy on the other party within 10 days after service of the award. Any party to the arbitration may make a written objection to such request. Such request does not toll the time period for filing a civil action to challenge the award.
- 41.3** Any corrected or amended award will be served by the Program. The time for filing a civil action to challenge the award begins from the time of service of the amended or corrected award, or the date that a request for correction or amendment of the award is deemed denied under Code of Civil Procedure Section 1284, whichever date is earlier.
- 41.4** The hearing panel shall either deny the application or correct the award in writing signed by the arbitrator(s) concurring therein. Any jurisdiction on the part of the hearing panel to amend or supplement an award expires upon entry of judgment.

ARTICLE VIII. SERVICE, ADDRESS

RULE 42.0 Service

- 42.1** 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.

- 42.2** 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.
- 42.3** If either party is represented by an attorney, service shall be on the party and on the attorney at the latest address shown on the official membership records of the State Bar.
- 42.4** 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.
- 42.5** Where a facsimile or e-mail transmission is used to communicate with the Program or to file any document, it will not be considered received unless the Program also receives within 5 days of the date of the transmission, the original of the faxed document together with written proof that it was sent to the other parties.
- 42.6** In the event that the client fails to keep the Program advised of his or her current address, the Program may close the arbitration request, if it is made by the client, after 30 days from the date that the Program learns of the invalid address.

[rev MAR 2014]