

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

**ARTICLE I  
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 Long Beach Bar Association's ["LBBA"] Mandatory Fee Arbitration Program.
- 1.3 **ASSIGNEE:** A person to whom a claim, right or property is transferred.
- 1.4 **AWARD:** The decision of the arbitrator(s) in an arbitration conducted by the LBBA Mandatory Fee Arbitration Program.
- 1.5 **CLIENT:** A person who directly, or through an authorized representative consults, retains or secures legal services or advice from an attorney in that attorney's professional capacity.
- 1.6 **COMMITTEE CHAIR:** The person on the LBBA Mandatory Fee Arbitration Committee responsible for supervising the Program's arbitrators and for ruling on matters as set forth in these rules.
- 1.7 **DECLARATION:** A document that is based on personal knowledge and signed under penalty of perjury and otherwise in compliance with the requirements of Code of Civil Procedure section 2015.5.
- 1.8 **FILE:** Records, documents and other papers in a specific mandatory fee arbitration case.
- 1.9 **HEARING PANEL:** One or three arbitrators assigned to hear the fee dispute and to issue the award.
- 1.10 **NON-LAWYER ARBITRATOR:** A non-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 of 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 non-lawyer arbitrators.
- 1.11 **PANEL CHAIR:** Refers to either the sole arbitrator or the Chairperson of a three-member hearing panel assigned to hear and rule in a mandatory fee arbitration. The Panel Chair is responsible for ruling on matters pertaining to the individual case assigned to the hearing panel as set forth in these rules.

- 1.12 **PARTY:** A person who initiates or is named in an arbitration proceeding under these rules, including an attorney, a client or other person who may be liable for payment of, or entitled to a refund of, attorney’s fees, costs, or both.
- 1.13 **PROGRAM:** Unless indicated otherwise, reference to the Program means the LBBA Mandatory Fee Arbitration Program.
- 1.14 **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.
- 1.15 **TRIAL AFTER NON-BINDING ARBITRATION:** Either an action in a civil court having jurisdiction over the amount in controversy or a private arbitration pursuant to the parties’ pre-existing written private 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, but mandatory for an attorney if commenced by a client.

### **RULE 2.1 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 Code sections 6200-6206, forward to the client a written “Notice of Client’s Right to Arbitration” using the State Bar approved form. Failure to give this notice shall be a ground for the dismissal of the lawsuit or other proceeding.

### **RULE 3.0 Party’s Failure to Respond or Participate**

- 3.1 In a mandatory fee arbitration, if a party fails to respond to a request for arbitration or refuses to participate, the 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 factual findings on the subject of a party’s failure to appear at the hearing.

### **RULE 4.0 Disputes Covered**

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

- a) 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;
- 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;
- f) Claims between attorneys for division of fees.

#### **RULE 5.0 Binding Arbitration**

- 5.1 Mandatory Fee Arbitration under these rules 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 reject the award and request a trial after non-binding arbitration pursuant to Business and Professions Code section 6204 within 30 days after the award has been served. If a trial after non-binding arbitration is not requested, the 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 non-binding arbitration. The decision as to whether the nonappearance was willful is made by the trial court or private arbitrator in the trial after non-binding arbitration. The party who failed to appear at the hearing shall have the burden of proving that the failure to appear was not willful.
- 5.2 If all parties agree in writing, after the fee dispute arises, that the arbitration is binding, the award is final and there can be no subsequent trial in a civil court or private arbitration on the issues of fees and/or 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 or her 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 before the taking of evidence.

#### **RULE 7.0 Right to Counsel**

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

#### **RULE 8.0 Waiver of Right to Request or Maintain Arbitration**

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

- a) answers a complaint in a civil action or files another equivalent response to the civil action before filing a request for mandatory fee arbitration, after the required form entitled "Notice of Client's Right to Arbitration" was sent to the client pursuant to Business and Professions Code section 6201(a); or
- b) 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
- c) fails to deliver to the Program a Request for Arbitration of a Fee Dispute ["Request"] on the approved Program form that is postmarked or received on or before the 30<sup>th</sup> 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(a). Should the fee dispute be transferred to a different fee arbitration program after the Request is filed, the original data postmarked 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 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. 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 reject any Request when it is clear from the face of the Request that the provisions of Business and 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. 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**

- 11.1 The Program shall have jurisdiction over a fee dispute:
  - a) if at least one of the attorneys involved presently maintains an office in the County of Los Angeles,
  - b) if at least one of the attorneys involved maintained an office in the County of Los Angeles at the time services were performed, or:
  - c) if a substantial amount of services were performed in the County of Los Angeles.

- 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 shall be preserved for purposes of determining whether jurisdiction exists.

**RULE 12.0 Removal to the State Bar of California**

- 12.1 If a Request has been filed with the Program and a party to the arbitration seeks removal to the State Bar Program,
- a) the party seeking removal from the Program must submit to the State Bar a declaration signed under penalty of perjury asserting the factual basis for the request for 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 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 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 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 that forum; 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**

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 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 Arbitration is initiated by filing a completed and signed Request with the Program and paying the appropriate filing fee established by the Program. Service of the Request on any other party with whom there is a fee dispute 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 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 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, 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 hearing panel may allocate the entire amount of the filing fee, or a portion thereof, to one or both 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) \$50 filing fee for any amount in dispute equal to or less than \$1,499.99;
- b) For amounts in dispute between \$1,500.00 and \$14,999.99 – 4% of the entire amount in dispute;
- c) For amounts in dispute of \$15,000 or more – 5% of the entire amount in dispute.

The maximum filing fee shall not exceed \$5,000.00.

#### **RULE 16.0 Request for Filing Fee Waiver**

16.1 A party seeking fee 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 attorneys 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.

16.2 For good cause shown, the Committee Chair may grant or deny the filing fee waiver or reduce the filing fee. The decision of the Committee Chair shall be final.

16.3 The financial statement filed in support of a request for a filing 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, together with any response concerning the issue of an 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 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 shall file one original and an appropriate 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 to the hearing panel assigned to hear the matter. The original Request shall be maintained by the Program administrator.

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

- 19.1 Upon confirmation by the parties that a fee dispute has been settled in a writing signed by all parties, the matter shall be dismissed without prejudice by the Program if no hearing panel has been assigned, or by the Panel Chair if a notice of assignment of the hearing panel has been served on the parties.
- 19.2 If the parties agreed in writing to binding arbitration, and the matter has not been settled, no party may individually withdraw from the mandatory fee arbitration unless all parties agree in writing to the mandatory fee arbitration being withdrawn. If the parties have not agreed to binding arbitration after the dispute has arisen and there is no prior written agreement between the parties requiring them to participate in mandatory fee arbitration, then the party who requested the mandatory fee arbitration may withdraw the Request and the matter shall be dismissed.
- 19.3 If the matter is settled or dismissed before the Request is served by the Program, 90% of the filing fee shall be refunded to the party who paid it. If the matter is settled or dismissed after the Request has been served by the Program but before the assignment of the hearing panel is served, 75% of the filing fee shall be refunded to the party who paid it. If written notice of the settlement or dismissal is received by the Program at least 10 days prior to the date of the first scheduled hearing, 50% of the filing fee shall be refunded to the party who paid it. If written notice of the settlement or dismissal is received by the Program less than 10 days before the first scheduled hearing, 25% of the filing fee shall be refunded to the party who paid it. If written notice of the settlement or dismissal is received by the Program after the date of the first scheduled hearing, no refund of any filing fee shall be paid.
- 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(d).

## **RULE 20.0 Consolidations**

A party may request in writing that two or more mandatory fee 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 request 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.

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 its roster of fee arbitrators. A hearing panel shall consist of one attorney arbitrator if the amount in dispute is \$15,000.00 or less and three arbitrators if the amount in dispute is more than \$15,000.00, one of which shall be a non-lawyer arbitrator. An attorney arbitrator shall be designated as Panel Chair. If the amount in dispute is more than \$15,000.00, the parties may agree, in writing, to have the matter heard by a single attorney arbitrator.
- 21.2 Upon the client's request, the Program shall assign a sole arbitrator or, in the case of a hearing panel, one of the attorney arbitrators, whose 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(e) must be submitted by the client at the time the written Request 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 30 days from the service by the Program of the Reply to the 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 30 days. However, if the amount in controversy is less than \$1,000 but greater than \$500.00, 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 Request.
- 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.
- 21.5 A retired judge cannot serve as an attorney arbitrator unless they are an active licensee of the State Bar of California.

## **RULE 22.0 Notice of Assignment of Arbitrator(s)**

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 is received, or as soon thereafter as reasonably possible. If no reply is received, the notice of appointment of assignment of the hearing 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)**

Each party may disqualify one arbitrator without cause and shall have unlimited challenges for cause. Any disqualification without cause of an arbitrator shall be ineffective unless made in writing and served on the Program within 15 days of the service of a notice of assignment of arbitrator(s) or substitute arbitrator(s). 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, 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**

A party or an attorney or representative acting for a party shall not directly or indirectly communicate with an arbitrator regarding the matter pending before any 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 hearing panel and in the absence of any objections by the parties, witnesses may be present during the hearing.
- 26.2 The hearing panel, upon request of the client, shall permit the client to be accompanied by another person and may also permit additional persons to attend. Any such person shall be subject to the confidentiality of the arbitration proceedings.
- 26.3 The arbitration case file, including the Request, reply, exhibits and transcripts, as well as the award itself, are to remain confidential. Absent a court order compelling disclosure of the award, the Program may not disclose the award to any individual or entity that was not a party to the arbitration proceeding. An award shall remain confidential except as may be necessary in connection with a judicial challenge to, confirmation or enforcement of, the award, or as otherwise required by law or judicial decision.

### **RULE 27.0 Waiver of Personal Appearance**

- 27.1 Upon advance approval of the Panel Chair, any party may waive personal appearance and submit to the hearing panel testimony and exhibits by written declaration under penalty of perjury.
- 27.2 Any party unable to attend a hearing may designate a lawyer or non-lawyer representative.
- 27.3 Any party may request to appear by telephone or videoconference, subject to the advance approval of the Panel Chair.
- 27.4 A request for waiver of appearance or designation of a representative and the submission of testimony by written declaration or request for a telephone or videoconference appearance pursuant to this rule shall be filed with the hearing panel at least 15 days prior to the first scheduled hearing.

### **RULE 28.0 Death or Incompetence of a Party**

In the event of the 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**

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

- 29.2 Nothing in these rules deprives a client of the right to inspect and obtain the client's file kept by the attorney. This provision does not apply to a non-client [a person other than a client who may be liable for, or entitled to a refund of, attorney's fees, costs, or both].

### **RULE 30.0 Subpoenas**

- 30.1 The Committee Chair may issue subpoenas and/or subpoena 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 arbitrator or Panel Chair shall then decide whether the subpoena(s) should be issued. The requesting party shall be responsible for service of the subpoenas. The party requesting subpoenas shall also be responsible for any witness fees and costs of service of the subpoenas. In this rule, "subpoena" includes a subpoena duces tecum. A party seeking to have a subpoena issued shall submit a completed but unsigned Judicial Council subpoena form to the Committee Chair, or Panel Chair if one has been appointed, with proof of service on all parties. Upon showing of good cause, the Committee Chair or Panel Chair 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 any 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.

### **RULE 31.0 Commencement of Hearing; Notice; Attendance**

- 31.1 The hearing shall commence within 45 days for a single arbitrator or 90 days for a three-member hearing panel, after the date of service of the "Notice of Assignment of Arbitrators." A disqualification or allowed challenge of an assigned arbitrator will result in a 15-day extension from the date of the assignment of replacement member(s). Upon stipulation or application to the hearing panel, the matter may be continued for good cause shown except that a continuance for 30 days or more must be approved by the Committee Chair.
- 31.2 The Panel Chair shall serve written notice of hearing on each party at the address in the "Notice of Assignment of Arbitrator(s)" and the Program within 15 days of their assignment and at least 15 days prior to the hearing date. Appearance by a party at a scheduled hearing shall constitute a waiver by said party of any deficiency with respect to the giving the "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 hearing panel shall require the party who was 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 was absent if the evidence so warrants. If neither party appears and the Panel Chair has not approved waiver of personal appearance, the hearing panel will issue an award based on the evidence submitted.
- 31.5 If one of the hearing panel members fails to appear, upon written stipulation of the parties, the hearing may proceed with one of the two attorney arbitrators acting as the sole arbitrator. Under no circumstances will the hearing proceed with two arbitrators or with one non-attorney arbitrator.
- 31.6 If all parties so stipulate, the hearing panel shall decide all matters without a hearing based upon the Request, 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 concerning any issues are encouraged. The Program anticipates and expects the voluntary exchange of documents prior to the hearing.

### **RULE 33.0 Oaths**

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

### **RULE 34.0 Evidence**

Any relevant evidence shall be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely on 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**

The hearing panel may require that the parties clarify the issues, submit additional documentation, and exchange documents in advance of the hearing. The hearing panel in its discretion, may 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**

The parties shall present their proof in a manner determined by the hearing panel.

### **RULE 37.0 Interpreter**

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**

No audio recording, video recording, or transcription of any kind is permissible.

### **RULE 39.0 Compensation of Arbitrators; Administrative Charges**

- 39.1 No arbitrator shall be entitled to compensation for services.
- 39.2 Except for the prescribed filing fee, no charges will be made by the Program, nor by any arbitrator, for administrative or clerical services. A hearing room will be provided by the hearing panel or by the Program, without charge to the parties.
- 39.3 All parties will bear their own costs, including the cost 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 matter heard by a sole arbitrator and within 25 days of the close of the hearing in any matter heard by a hearing panel. The award shall be reviewed by the Committee Chair and then served on the parties forthwith by the Program.
- 40.2 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 and the decision necessary to determine the controversy, including the name of the responsible attorney(s). Arbitrators are encouraged, where appropriate, to include findings of fact in their award. Where appropriate, the award should also include the circumstances bearing on the willfulness of any party's nonappearance at the scheduled hearing.
- 40.3 The award shall include substantially the following language, on a separate but consecutively numbered page:

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

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

Subtotal: \$ \_\_\_\_\_

Additionally, the arbitration filing fee of \$ \_\_\_\_\_ 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.

40.4 The award may include a refund of unearned fees, or cost, or both, previously paid to the attorney. The award may include either pre-award or post-award interest, or both.

40.5 Whenever there is a hearing panel assigned, 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 arbitrator(s) shall not award affirmative relief in the form of damages or offset.

- 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 attorneys fee's resulting from the arbitration proceeding.
- 40.9 The arbitrator(s) shall forward the original of the signed award to the Program. 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. No award is final or is to be issued until approved for procedural compliance and as to the form of the award by the Program or such person as the Committee 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 together with the Notice of Rights after Arbitration form. Any party who has submitted exhibits or documents to the hearing panel shall, upon service of the award, make arrangements within 60 days to retrieve them. In the event that a party fails to make arrangements within 60 days, the exhibits or documents may be destroyed.

**RULE 41.0 Correction of Award by the Arbitrator(s)**

- 41.1 The hearing panel may correct a binding or non-binding award only on the grounds set forth in Code of Civil Procedure section 1286.6(a) [evident miscalculation of figures or evident mistake in the description of a person, thing or property referred to in the award] or Code of Civil Procedure section 1286.6(c) [that 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 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 under this rule must file a request in writing to the Program, with a proof of service, and serve a copy on the other party within 10 days after service of the award. Any party to the arbitration may make a written objection to such request. Any correction of the award by the hearing panel must be made within 30 days after service of the award.
- 41.3 A party may request amendment of the award. A party must file a request to amend the award in writing to the Program, with a proof of service, and serve a copy on the other party at any time prior to judicial confirmation of the award. Any party to the arbitration may make a written objection to such request. 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 40.9.

**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)(3), 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 mandatory fee 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 licensee records of the State Bar.
- 42.3 If either party is represented by counsel, service shall be on the party and on the counsel at the latest address shown on the official licensee 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 transmission or, e-mail 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.
- 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.
- 42.7 In addition to the methods of service provided for in Rules 42.1-42.3, the parties may consent to electronic service of documents upon each other pursuant to Code of Civil Procedure section 1010.6(a)(1)(A)-(C).
- 42.8 The parties 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.

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

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