

# Santa Barbara County Bar Association Rules 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 Santa Barbara County Bar Association's 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 or arbitrators in the fee arbitration proceeding.

1.5 CLIENT: A person who directly or through an authorized representative consults, retains or secures legal services or advice from an attorney in the attorney's professional capacity.

1.6 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.

1.7 DECLARATION: A Declaration is a document in compliance with the requirements of Code of Civil Procedure section 2015.5, or an affidavit.

1.8 FILE: Fee arbitration records and papers in a specific fee arbitration case.

1.9 HEARING PANEL: One or three arbitrators assigned to hear the fee dispute and to issue the Award.

1.10 PANEL CHAIR: Refers to either the sole arbitrator or Panel Chair of a three-member panel assigned to hear a matter. The Panel Chair is responsible for ruling on matters pertaining to the individual case assigned as set forth in these rules.

1.11 PARTY: A person who initiates or is named in an arbitration proceeding under these rules, including an attorney, a Client or other person who 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 Santa Barbara County Bar Association.

1.13 PROGRAM ADDRESS: The address at which all requests for arbitration, responses to requests for arbitration, challenges to arbitrators and other documents referenced in these rules (but not documents requested by a Panel Chair) shall be filed. The address is:

Administrator, MFA Program Santa Barbara County Bar Assn. 15 W. Carrillo Street, Suite 106 Santa Barbara, CA 93101 (Phone: (805) 569-5511; e-mail: sblawdirector@gmail.com)

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.

## 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, However, it is mandatory, if the parties agreed in writing to submit their fee disputes to arbitration, and for an attorney if commenced by a Client.

#### RULE 3.0 Party's Failure to Respond or Participate.

In a mandatory fee arbitration, if a Party fails to respond to a request for arbitration or refuses to participate, the arbitration will proceed as scheduled and an Award will be made on the basis of the evidence presented to the hearing panel. The Award may include findings on the subject of a Party's failure to appear at the arbitration.

#### 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 not admitted to practice in another jurisdiction, or where the attorney is only admitted to practice in another jurisdiction, and he or she maintains no office in the State of California, and no material portion of the services was rendered in the State of California;

4.2 claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct;

4.3 disputes where the fees or costs to be paid by the Client or on the Client's behalf have been determined or are determinable pursuant to statute or court order;

4.4 disputes where the request for arbitration is made by a person who is not liable for nor entitled to a refund of attorney's fees or costs; or

4.5 disputes where the claim has been assigned by the Client.

#### RULE 5.0 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 arbitration Award has been served. If a trial after arbitration is not requested, the Award automatically becomes binding 30 days after the Award is served, except that 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.

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. In the absence of a written agreement made after the fee dispute arises to submit to binding arbitration, the arbitration shall be non-binding.

6.2 A Party who has requested binding arbitration may withdraw that request and request a change to non-binding arbitration in writing to the Program and the other parties, so long as the other parties have not already agreed to binding arbitration.

6.3 If the Party who initially requests arbitration requests that the arbitration will be binding, and the respondent Party's Reply agrees to binding arbitration but also seeks to materially increase the amount in dispute, then the Party who requested arbitration may withdraw his request that the arbitration be binding. Such withdrawal of consent to binding arbitration, by the initiating Party, must be communicated in writing to the Program within ten days of that Party's receipt of the Reply.

6.4 Except as provided above, if the parties have already agreed to binding arbitration, the binding election may be changed to non-binding arbitration only by written agreement signed by all parties and sent to the Program.

#### RULE 7.0 Right to Counsel.

Any Party, at that Party's own expense, may be represented by counsel.

#### 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 makes other 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 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;

8.3 fails to deliver to the Program a request for arbitration on the approved Program form that is postmarked or received on or before the 30th day from the date of the Client's receipt of the

form entitled “Notice of Client's Right to Arbitration” given pursuant to Business and Professions Code section 6201, subdivision (a). Should the fee dispute transfer to a different fee arbitration Program after the request for arbitration is filed, the original date of postmark or receipt of the arbitration request will be preserved for purposes of determining whether jurisdiction exists.

#### RULE 9.0 Stay of Proceedings.

If an attorney, or the attorney's Assignee, commences an Action to collect fees or costs in any court or other proceeding, with limited exceptions including provisional remedies, the court Action or other proceeding is automatically stayed upon filing a request for fee arbitration with a State Bar approved fee arbitration Program. The Party who requested fee arbitration has a duty to notify the court of the stay and attach a copy of the arbitration request form. If the person who requested or caused the stay has not appeared, or is not subject to the jurisdiction of the court, the plaintiff must immediately file a notice of stay and attach a copy of the arbitration request form showing that the proceeding is stayed. Upon request, the Program may provide a copy of a notice of automatic stay to the Party.

### ARTICLE III. PROGRAM

#### RULE 10.0 Determination of Jurisdiction.

10.1 The Program shall reject any request for arbitration when it is clear from the face of the request that the provisions of Business & Professions Code section 6200 have not been met or the matter is time barred under Business & Professions Code section 6206. Where the existence of an attorney-client relationship is in dispute, the parties may stipulate to submit the issue for a determination by the Program, which otherwise lacks jurisdiction to determine that issue.

10.2 The Committee Chair may request that the parties submit written statements supporting their respective positions on the issue of whether the Program has jurisdiction over their fee dispute or whether the dispute is time barred. For good cause, Committee Chair may assign the matter to a hearing panel to take evidence and make a determination of whether jurisdiction should be accepted.

10.3 Within 15 days from service of notice of a ruling on a challenge to jurisdiction or claim that the matter is time barred, a Party may file a written request for reconsideration based on new evidence. The Committee Chair shall rule on the request for reconsideration.

10.4 There is no appeal of the Committee Chair's decision following reconsideration. Any ruling on reconsideration by the Program is final.

10.5 If the parties consent in writing to submit to jurisdiction, the Program may assume jurisdiction over a matter even if the Program does not have original jurisdiction.

#### RULE 11.0 Geographic Jurisdiction of the Program

The Program shall have jurisdiction over a fee dispute if: 1) at least one of the attorneys involved in the dispute maintains an office in Santa Barbara County; or 2) at least one of the attorneys involved in the dispute maintained an office in Santa Barbara County at the time the services were rendered; or 3) the dispute relates to or arises from substantial legal services performed by at least one of the attorneys involved in the dispute on behalf of the client in the County of Santa Barbara. The Program shall reject a request for arbitration if it appears on the face of the request that the Program does not have geographic jurisdiction over the dispute. A Party may raise lack of geographic jurisdiction with the Hearing Panel within 15 days of service of the request for arbitration by the

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 IV. INITIATION OF ARBITRATION PROCEEDING

#### RULE 13.0 Request for Arbitration.

13.1 Arbitration is initiated by filing the original and one copy of a written "Request for Arbitration" and all supporting documents with the Program on the approved Program form (available at <http://www.sblaw.org/webforms/clients-request-arbitration-fee-dispute> , or upon request from the Administrator) 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.

13.2 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.

13.3 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.

13.4 The request for arbitration may be made by (i) a person who is not the client but who may be liable for or entitled to a refund of the attorney's fees or costs ("non-client"), or (ii) the attorney claiming entitlement to fees against a non-client. A fee arbitration between an attorney and a non-client is not intended to abrogate



the requirement that the attorney exercise independence of professional judgment on behalf of the client or the protection of client confidences and secrets. Absent the client's written consent to disclosure of confidential information, a fee arbitration with a non-client is not intended to abrogate the attorney's duty to maintain client confidences and secrets, unless such disclosure is otherwise permitted by law. Absent the client's signature on the request for arbitration, when an arbitration with a non-client is initiated, notice of the request must be sent to the client by first class mail at the client's last known address.

Nothing in this rule shall permit an attorney claiming a portion or share of a fee paid or to be paid to another attorney to make a request for arbitration of entitlement to a portion or share when the amount to be paid by the client or non-client is not in issue.

### 13.5 Service by Mail

(i) Unless these rules provide otherwise, service is by personal delivery or by mail. If a party is represented by counsel, service is required only upon that party's counsel, except for service of an award, which is served on the party as well as on counsel.

### 13.6 Electronic Service

(i) In addition to the method of service provided in 13.5 (i), 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)

(ii) The parties to an arbitration may consent to receive electronic service of documents from the Santa Barbara County Bar Association in lieu of service by mail by providing the Santa Barbara County Bar Association written consent to receive electronic service of documents from the Santa Barbara County Bar Association at the party's designated electronic address.

## 14.0 Filing Fee

The Party requesting fee arbitration shall pay a filing fee with the request form. Upon Award, the arbitrator shall, at his or her discretion, allocate the entire amount of the filing fee, or a portion thereof, to one or both of the Parties. Such allocation shall be clearly stated in the Award.

### 14.1 Filing Fee Schedule:

- 1) For disputes involving \$2,000 or less – \$100.00, non-refundable;
- 2) For disputes involving more than \$2,000, but less than \$10,000.00 – \$100.00, non-refundable, plus 5% of the amount in dispute in excess of \$2,000.
- 3) For disputes involving \$10,000 or more -- \$500.00, \$100.00 of which is non-refundable, plus 7% of the amount in dispute in excess of \$10,000, but in no case shall the fee arbitration filing fee exceed \$5,000.

## RULE 15.0 Response to Request for Arbitration.

15.1 The respondent Party's reply to a Request for Arbitration, together with any response, if the respondent Party is an attorney, to the issue of the attorney's responsibility for any Award that refunds fees or costs or both to the Client, shall be submitted to the Program on its approved Attorney's Reply to Client's Request for Arbitration form (this form is available at [http://www.sblaw.org/files/Attorneys-arbitration-reply\\_0.pdf](http://www.sblaw.org/files/Attorneys-arbitration-reply_0.pdf) or upon request from the Administrator) within 30 days of the service of the request, unless an extension of time to reply is obtained from the Program.

15.2 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 16.0 Requests and Responses to Requests for Arbitration.

Parties filing or responding to a Request for Arbitration shall file one original and one copy 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 17.0 Removal to the State Bar of California

If a request for arbitration has been filed with the Program and a Party to the arbitration requests removal to the State Bar program, the Party seeking removal from the Program must submit to the State Bar the request for removal and a Declaration signed under penalty of perjury asserting the factual basis for the removal. That Party shall submit a copy of the request for removal to the Program. The Party requesting removal 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. Proceedings on removal shall be governed by the applicable rules of the State Bar. The Program shall stay the fee arbitration pending the State Bar's determination of the removal.

#### RULE 18.0 Settlement of Disputes; Withdrawal from Arbitration.

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 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 (a) A Party may withdraw a matter from the Program only if all other Parties agree in writing where:

- i. The arbitration is binding and has not been settled;
- ii. There is a written agreement between the parties requiring arbitration of the fee dispute through the Mandatory Fee Arbitration Program; or
- iii. The arbitration has been requested by the attorney.

(b) 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 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. Any such settlement agreement must be signed by the Parties, submitted to the Program and be included as an attachment to the Award. The Program will serve the stipulated Award in the same manner as it would serve an arbitration Award as prescribed elsewhere in these rules.

#### RULE 19.0 Consolidations.

A Party may request, in writing, that two or more arbitration matters be consolidated for hearing. One or more Panel Chairs may, on their own request before any hearing has commenced, request that the Committee Chair consolidate two or more arbitration matters. The Program will serve the other Party, or both parties if the request is from a Panel Chair, 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.

## ARTICLE V. PANELS

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

20.3 If a fee dispute involves \$1,000 or less, the arbitration shall be decided by the Committee Chair or designee based on written submissions without a hearing. The Party filing the Request for Arbitration shall submit therewith all supporting documents and a complete written statement of the reasons for the dispute or justification of a particular fee, under penalty of perjury. The

responding Party shall have 30 days from the service by the Program of the arbitration request to file an Attorney's Reply to Client's Request for Arbitration form, if applicable, all supporting documents and a complete written statement of the reasons for the dispute or justification of a particular fee, under penalty of perjury. 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. There shall be no hearing unless the Committee Chair, in his or her sole discretion, calls a hearing. The parties shall be informed of this rule at the time of the Program's service of a completed arbitration request form.

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

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

#### RULE 22.0 Arbitrator Recusal, Disclosure and Disqualification

##### 22.1 Arbitrator Recusal

An arbitrator who believes that he or she cannot render a fair and impartial decision shall recuse himself or herself. An arbitrator who believes that there could be an appearance that he or she cannot render a fair and impartial decision may recuse himself or herself.

If an arbitrator (1) has a financial interest in the fee arbitration (2) has represented any Party to the arbitration, or (3) has practiced with any Party to the arbitration, then such arbitrator shall recuse himself or herself.

## 22.2 Arbitrator Disclosure

An arbitrator who has not voluntarily recused himself or herself should disclose all information that might cause a person aware of the facts to believe that the arbitrator cannot render a fair and impartial decision. An arbitrator should nevertheless disclose any connection, past or present, with the attorney, client, potential witnesses, or any attorney representing the attorney or client in the arbitration.

## 22.3 Party Disqualification of Arbitrator(s)

Each Party may disqualify one arbitrator without cause, and shall have unlimited disqualification challenges for cause. Any disqualification challenge of an arbitrator without cause shall be ineffective unless made in writing and served on the Program and other Parties within 15 days of the service of a notice of assignment of the arbitrator.

Any disqualification challenge of an arbitrator for cause based on information disclosed by the arbitrator shall be ineffective unless made in writing and served on the Program and other Parties within 15 days of the service of the disclosures. If a Party challenges an arbitrator for cause the arbitrator shall accede to the challenge if the arbitrator believes he or she cannot render a fair and impartial decision, or there could be an appearance that he or she cannot render a fair and impartial decision. If the arbitrator does not agree to be disqualified, the challenge shall be decided by the Committee Chair. All decisions of the Committee Chair are final.

## 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 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 24.0 Prohibited Contacts with Arbitrators.

24.1 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;
- b) In writing with a copy to all other Parties, or their respective counsel, if any;
- 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.

### ARTICLE VI. THE HEARING

#### RULE 25.0 Confidentiality.

25.1 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.

25.2 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.



25.3 The arbitration Award is public; the File, including the request, reply, exhibits and transcripts, remains confidential.

#### 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.

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 video-conference, 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 may be substituted.

#### RULE 28.0 Discovery.

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

#### RULE 29.0 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 30.0 Commencement of Hearing; Notice; Attendance.

30.1 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 member(s). Upon stipulation or application to the Panel Chair, the matter may be continued for good cause shown. The Committee Chair may, in her or his discretion, require continuances of 30 days or more to be submitted to the Committee Chair for prior approval.

30.2 The panel shall serve written notice of a hearing on each Party at the address in the “Notice of Assignment of Panel” and the Program within 15 days of its assignment and at least 15 days prior to the hearing date. Appearance by a Party at a scheduled hearing shall constitute waiver by said Party of any deficiency with respect to the giving of “Notice of Hearing.” Notwithstanding the failure of either Party to attend, the hearing shall proceed as scheduled and a decision made on the basis of evidence submitted.

30.3 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.

30.4 An Award may be made in favor of a Party who is absent if the evidence so warrants. If neither Party appears and the Panel Chair has not approved waiver of personal appearance, the panel will issue an Award based on the evidence submitted.

30.5 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.

30.6 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 31.0 Stipulations Encouraged.

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

#### RULE 32.0 Oaths.

All testimony may be given under oath or affirmation administered by the sole arbitrator or Panel Chair.

#### RULE 33.0 Evidence.

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

#### RULE 34 Clarification of Issues and Exchange of Documents

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

#### RULE 35.0 Order of Proof.

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

#### RULE 36.0 Interpreter.

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

#### RULE 37.0 Transcripts or Recordings.

Any Party may provide and pay for the attendance of a certified shorthand reporter at that Party's expense. Every Party to the arbitration shall be entitled to a copy of said reporter's transcript of the testimony upon request and payment of the expense to the reporter. Any transcript shall remain confidential. No audio or video recording is permissible.

#### RULE 38.0 Compensation of Arbitrators; Administrative Charges

38.1 No arbitrator shall be entitled to compensation for services unless the hearings extend beyond four hours. Unless waived in writing, each arbitrator will be compensated at the rate of \$150 for each additional hour after a four-hour hearing. The compensation shall be paid equally by each Party to the Program for each day of hearing on which compensation is payable. No compensation will be paid to arbitrators for services other than during formal hearing sessions extending beyond four hours. Any disputes concerning compensation of the arbitrators will be determined by the Committee Chair, and its determination shall be binding on the Parties, including the arbitrators.

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

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

## ARTICLE VII. AWARD

### RULE 39.0 Award.

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

39.2 The Award shall be in writing. The Award shall indicate whether it is binding or nonbinding. It shall include a determination of all questions submitted to the panel, the decision of which is necessary in order to determine the controversy, including the name of the responsible attorney(s). Arbitrators are encouraged, where appropriate, to include findings of fact in their Awards. Where appropriate, the Award should also include the circumstances bearing on the willfulness of any Party's nonappearance at the hearing.

39.3 The Award shall include substantially the following language, 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: \$\_\_\_\_\_

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.

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

39.5 Whenever there are three arbitrators, a majority vote shall be sufficient for all decisions of the arbitrators, including the Award. Any dissent from the Award shall be served with the Award.

39.6 Evidence relating to claims of malpractice or professional misconduct, whether or not the Client was actually harmed, shall be admissible, but only to the extent that those claims bear upon the fees and/or costs to which the attorney is entitled. The panel shall not award affirmative relief in the form of damages or offset based on claims of malpractice or professional misconduct.

39.7 The Award shall be signed by all arbitrators concurring with it.

39.8 The Award may include an allocation of the filing fee; however, it shall not include an award for any other costs of the

arbitration, including attorneys' fees resulting from the arbitration proceeding.

39.9 The 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. No Award is final or is to be issued until approved for procedural compliance and as to the form of the Award by the Committee Chair or such person as the Chair may designate for this purpose. After approval of the Award as to the procedural compliance and approval as to the form of the Award, the Program shall serve a copy of the Award by mail on each Party together with a Notice of Rights After Arbitration form approved by the State Bar Board of Governors. Any Party who has submitted exhibits or documents to the panel shall, upon service of the Award, make arrangements to retrieve them. Any documents not retrieved within 90 days of service of the Award may be destroyed without further notice.

#### RULE 40.0. Correction of Award by Hearing Panel.

40.1 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, 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, if a trial after arbitration is not requested in a civil court pursuant to Business and Professions Code section 6204.

40.2 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 ten 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.

40.3 Any corrected or amended Award will be served by the Program. The time for filing a petition to confirm, vacate or correct the Award begins from the date of service of the amended or corrected Award, the date of denial of the request for correction or amendment of the Award, or the date that a request for correction of amendment of the Award is deemed denied under Code of Civil Procedure 1284, whichever date is earlier.

40.4 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 41.0 Service.

41.1 Unless otherwise specifically stated in these rules, service on the Client shall be by personal delivery, by deposit in the United States mail, or by deposit in a business facility used for collection and processing of correspondence for mailing with the United States Postal Service pursuant to Code of Civil Procedure section 1013(a)(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 arbitration. The Client shall keep the Program and any Party to the arbitration advised of his or her current address.

41.2 Unless otherwise specifically stated in these rules, service on an individual attorney shall be at the latest address shown on the official membership records of the State Bar. Service shall be in



accordance with subsection 41.1 above. The attorney shall notify the Program and any Party of a change of address occurring while the arbitration proceeding is pending.

41.3 If either Party is represented by counsel, service shall be on the Party as indicated in subsections 41.1 and 41.2 of this rule, and on the counsel at the latest address shown on the official membership records of the State Bar.

41.4 Notwithstanding the foregoing, if any Party or counsel indicates in writing, including by checking the box on the arbitration request or response form, that the Party or counsel will receive service at an e-mail address, service may, at the option of the person serving a document or notice, except an Award or notice thereof, be accomplished by e-mail for all purposes. Service by e-mail shall be complete upon sending the e-mail notice.

41.5 The service is complete at the time of deposit. The time for performing any act shall commence on the date service is complete and shall not be extended by reason of service by mail.

41.6 Where a facsimile or email transmission is used to communicate with the Program or to file any document, it will not be considered received unless the Program also receives within five days of the date of the transmission, the original of the faxed document.

41.7 In the event that the Client fails to keep the Program advised of his or her current address, the Program may close the arbitration request, if it is made by the Client, after 30 days from the date that the Program learns of the invalid address.

## ARTICLE IX EFFECTIVE DATE

42.0 The Effective Date of these Rules shall be the first business day after the date they are formally approved by the State Bar Board of Governors. Upon the Effective Date, these Rules shall

govern and apply to any arbitration under the Program for which evidence has not already been received by an arbitrator or Hearing Panel.

## APPENDIX A

### Arbitrator Disclosure Statutes CCP § 170.1. Grounds for disqualification

(a) A judge shall be disqualified if any one or more of the following is true:

(1)(A) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding.

(B) A judge shall be deemed to have personal knowledge within the meaning of this paragraph if the judge, or the spouse of the judge, or a person within the third degree of relationship to either of them, or the spouse of such a person is to the judge's knowledge likely to be a material witness in the proceeding.

(2)(A) The judge served as a lawyer in the proceeding, or in any other proceeding involving the same issues he or she served as a lawyer for any party in the present proceeding or gave advice to any party in the present proceeding upon any matter involved in the action or proceeding.

(B) A judge shall be deemed to have served as a lawyer in the proceeding if within the past two years:

(i) A party to the proceeding or an officer, director, or trustee of a party was a client of the judge when the judge was in the private practice of law or a client of a lawyer with whom the judge was associated in the private practice of law.

(ii) A lawyer in the proceeding was associated in the private practice of law with the judge.

(C) A judge who served as a lawyer for or officer of a public agency that is a party to the proceeding shall be deemed to have served as a lawyer in the proceeding if he or she personally advised or in any way represented the public agency concerning the factual or legal issues in the proceeding.

(3)(A) The judge has a financial interest in the subject matter in a proceeding or in a party to the proceeding.

(B) A judge shall be deemed to have a financial interest within the meaning of this paragraph if:

(i) A spouse or minor child living in the household has a financial interest.

(ii) The judge or the spouse of the judge is a fiduciary who has a financial interest.

(C) A judge has a duty to make reasonable efforts to inform himself or herself about his or her personal and fiduciary interests and those of his or her spouse and the personal financial interests of children living in the household.

(4) The judge, or the spouse of the judge, or a person within the third degree of relationship to either of them, or the spouse of such a person is a party to the proceeding or an officer, director, or trustee of a party.

(5) A lawyer or a spouse of a lawyer in the proceeding is the spouse, former spouse, child, sibling, or parent of the judge or the judge's spouse or if such a person is associated in the private practice of law with a lawyer in the proceeding.

(6)(A) For any reason:

(i) The judge believes his or her recusal would further the interests of justice.

(ii) The judge believes there is a substantial doubt as to his or her capacity to be impartial.

(iii) A person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.

(B) Bias or prejudice toward a lawyer in the proceeding may be grounds for disqualification.

(7) By reason of permanent or temporary physical impairment, the judge is unable to properly perceive the evidence or is unable to properly conduct the proceeding.

(8)(A) The judge has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years has participated in, discussions regarding prospective employment or service as a dispute resolution neutral, or has been engaged in such employment or service, and any of the following applies:

(i) The arrangement is, or the prior employment or discussion was, with a party to the proceeding.

(ii) The matter before the judge includes issues relating to the enforcement of either an agreement to submit a dispute to an alternative dispute resolution process or an award or other final decision by a dispute resolution neutral.

(iii) The judge directs the parties to participate in an alternative dispute resolution process in which the dispute resolution neutral will be an individual or entity with whom the judge has the arrangement, has previously been employed or served, or is discussing or has discussed the employment or service.

(iv) The judge will select a dispute resolution neutral or entity to conduct an alternative dispute resolution process in the matter before the judge, and among those available for selection is

an individual or entity with whom the judge has the arrangement, with whom the judge has previously been employed or served, or with whom the judge is discussing or has discussed the employment or service.

(B) For the purposes of this paragraph, all of the following apply:

(i) "Participating in discussions" or "has participated in discussion" means that the judge solicited or otherwise indicated an interest in accepting or negotiating possible employment or service as an alternative dispute resolution neutral or responded to an unsolicited statement regarding, or an offer of, such employment or service by expressing an interest in that employment or service, making any inquiry regarding the employment or service, or encouraging the person making the statement or offer to provide additional information about that possible employment or service. If a judge's response to an unsolicited statement regarding, a question about, or offer of, prospective employment or other compensated service as a dispute resolution neutral is limited to responding negatively, declining the offer, or declining to discuss such employment or service, that response does not constitute participating in discussions.

(ii) "Party" includes the parent, subsidiary, or other legal affiliate of any entity that is a party and is involved in the transaction, contract, or facts that gave rise to the issues subject to the proceeding.

(iii) "Dispute resolution neutral" means an arbitrator, mediator, temporary judge appointed under Section 21 of Article VI of the California Constitution, referee appointed under Section 638 or 639, special master, neutral evaluator, settlement officer, or settlement facilitator.