

SACRAMENTO COUNTY BAR ASSOCIATION

FEE ARBITRATION RULES

I. APPLICABLE LAWS AND REGULATIONS

A. Legal Basis for Rules of Procedure – The basic statutory law pertaining to Arbitration of Attorney’s Fees is contained in Sections 6200 – 6206 of the California Business and Professions Code (The State Bar Act), effective January 1, 1979. Section 6200 provides for arbitration conducted by local bar associations. The State Bar of California has issued Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs by local bar associations. These Rules have been developed and adopted to comply with the state law and State Bar Guidelines and to reflect the needs and desires of the Association. Consequently, these Rules are to be observed in all arbitrations conducted by the Committee.

B. Matters not Provided for in these Rules – In the event that a matter in issue arises during the course of an arbitration conducted by the Committee which is not dealt with by these Rules, the provisions of Section 1282 – 1284.2 of the California Code of Civil Procedure shall apply. In the event of any conflict between these Rules and the above-mentioned sections of the Code of Civil Procedure, these Rules shall govern.

C. Rules Concerning Enforcement of Awards – Except as specifically provided for in these Rules, judicial and/or administrative enforcement of any arbitration awards issued by the Committee shall be governed by provisions of Sections 1285 – 1288.8 of the California Code of Civil Procedure and/or Business and Professions Code Section 6200 – 6206.

II. DISPUTES WHICH MAY BE ARBITRATED BY THE COMMITTEE

A. Jurisdiction over the Parties

1. The Committee shall have jurisdiction over an attorney if:
 - a. At least one of the attorneys involved in the dispute has an office in Sacramento; or
 - b. At least one of the attorneys involved in the dispute maintained an office in Sacramento at the time the services were rendered; or
 - c. There is no local county bar association arbitration available in the county in which the attorney practices and the client resides in Sacramento and upon a showing of good cause does not wish to submit the dispute to the State Bar of California; or
 - d. There is a local bar association arbitration program available in the county in which the attorney practices but the parties for good cause desire to arbitrate the matter in Sacramento and the local bar association agrees to transfer the jurisdiction to Sacramento county; or

- e. Upon request made to the Chair of the Committee on Arbitration of Fee Disputes.

2. In no event, however, shall the Committee have jurisdiction over disputes involving attorneys who are also admitted to practice in another state, who maintain no offices in California and in which no portion of the services were rendered in California.

3. The Committee shall have jurisdiction over a dispute initiated by an attorney only with the consent of the client.

4. Under these Rules, the Committee shall have no jurisdiction over a dispute between two attorneys related to division of fees or any related matter.

III. MANDATORY OR VOLUNTARY ARBITRATION

A. Voluntary Arbitration

1. **Client can not be Compelled to Arbitrate** – Exception –A client may not be compelled to arbitrate any fee dispute with his/her attorney. If any attorney requests arbitration of a fee dispute with the client, the committee has jurisdiction only if the client timely executes an agreement to arbitrate. However, in all cases, once the agreement to arbitrate has been executed by both parties, it is a binding contract which dos not permit either party to withdraw from arbitration.

2. **Date of Services** – An attorney can only be compelled to arbitrate disputes over fees for services performed on or after January 1, 1979. Consequently, to the extent that any dispute is based upon services performed prior to that date, arbitration as to that prior portion of the dispute is voluntary and the Committee obtains jurisdiction only upon execution by both parties of an agreement to submit the matter to binding arbitration relating to fees for services performed prior to January 1, 1979.

B. Mandatory Arbitration

1. **Mandatory for Attorneys** – Arbitration of fee disputes stemming from services performed on or after January 1, 1979, is mandatory for attorneys if requested by the client.

2. Stay of Lawsuit brought by the Attorney

a. **Notice** – An attorney seeking to bring a civil action to recover attorney’s fees in any court must notify the client of the clients right to have such fee dispute submitted to arbitration by the Committee. Such notice must be served upon the client personally or by first class mail not later than when Summons and Complaint in the civil action is served. Such notice must conform with the State Bar’s “Notice of Client’s Right to Arbitrate” form. The client has thirty (30) days from receipt of said

notice to file a completed REQUEST FOR ARBITRATION AND AGREEMENT TO ARBITRATE form with the Association. The petitioner must pay the filing fee to the Bar Association of Sacramento at the time of the filing of the request unless other arrangements with the staff of the Committee have been made pursuant to Rule XV B of these Rules of Procedure.

b. Obtaining Stay – Any client who has been sued by their attorney for attorney’s fees in any court, wishes to submit the dispute to arbitration, may file a Request for Arbitration with the Committee. The staff of the Committee, upon receipt of a copy of the complaint in the civil action, will assist the client in obtaining a stay of the court proceedings. If filing fees are required by the Court to be paid to file the stay, the fee must be advanced to the staff of the Committee so that the stay can be filed. However in the discretion of the arbitrator, the respondent may be directed, as part of the award, to reimburse the petitioner, in whole or in part, for such costs.

3. Waiver by Client of Right to Mandatory Arbitration – While a client has a right to compel arbitration of certain disputes with her/her attorney, the client will be considered to have waived that right if the client:

- a. Files any civil action seeking judicial resolution of the fee dispute; or
- b. Submits any pleading to a lawsuit filed by the attorney which seeks resolution of the fee dispute; or
- c. Fails, within 30 days after service of notice by the attorney of the clients right to arbitrate, to file a completed Request for Arbitration Agreement to Arbitrate and the filing fee; or
- d. Seeks affirmative relief against the attorney for damages based upon alleged malpractice or professional misconduct.

4. Failure to Pay Filing Fee or to Submit Completed REQUEST FOR ARBITRATION AND AGREEMENT TO ARBITRATE FORMS. The Committee shall decline jurisdiction within 30 days after giving notice to a petitioner for arbitration by first class mail at the petitioner’s last known address that the petitioner has a) failed to pay the filing fee in full; or b) failed to comply with the terms of any filing fee payment schedule agreed to by the Committee; or c) failed to complete the REQUEST FOR ARBITRATION AND AGREEMENT TO ARBITRATE. Jurisdiction shall be retained only if the petitioner pays the filing fee in full and completes the necessary Request for Arbitration and Agreement to Arbitrate form within said 30 day period.

5. Failure of the Attorney to Notify Client of Right to Arbitration – If an attorney fails to notify the client of the client’s right to arbitration prior to or at the time of filing a lawsuit in a court to recover attorney’s fees (and the client either answers the lawsuit or the attorney obtains a default judgment against the client), the attorney shall be stopped from claiming that the client has waived the right to arbitration. An attorney must give written notice of the clients right to arbitrate to a client prior to or at the time of service of summons in a lawsuit for recovery of attorney’s fees and failure to give notice would be a ground for dismissal of any action filed.

IV. BINDING OR ADVISORY – EFFECT OF ARBITRATION

A. Definitions

1. Binding Arbitration Award – A binding arbitration award is not subject to appeal. A binding arbitration award may be vacated or corrected by a court only if one or more of the grounds listed in Code of Civil Procedure Section 1286-2 existed. Those grounds are:

- a. The award was procured by corruption, fraud or undue means;
- b. There was corruption in any of the arbitrators;
- c. The rights of a party were substantially prejudiced by misconduct of an arbitrator;
- d. The arbitrators exceeded their powers; or
- e. The rights of the party were substantially prejudiced by refusal of the arbitrators to hear material evidence or to postpone the hearing upon a showing of just cause.

2. Advisory Arbitration Award – An advisory arbitration is the type of arbitration which results in an award that is not binding on the parties and that entitles both parties to have a trial after arbitration on the issues which were the subject of the arbitration. Such a trial after arbitration must be applied for within thirty (30) days after mailing of the award, as shown on the Proof of Service attached to the award. The 30 days runs from the date of mailing, not from the date of receipt of the award. If a civil action has already been filed, the party seeking a trial after arbitration should file in that court a Rejection of Award and Request for Trial. If no action has been filed at the time the advisory award was rendered, either party may initiate the trial by filing a Complaint in the proper court and filing and serving in that action a Notice of Rejection of Award and Request for Trial. A rejection of the award is not to be filed with the Bar Association. If a party does not seek trial after arbitration within 30 days from the mailing of the award by the staff to the parties, the award becomes binding by operation of law. See Business & Professions Code Section 6203 (b).

B. Which Awards are Binding – The awards of the Committee shall be binding in the following cases:

1. Awards resulting from a disputed attorney fee for professional services rendered before January 1, 1979, are binding;
2. Awards are binding in all other cases if both parties consent in writing to a binding award.
3. Awards are binding at the sole option of client if the attorney with whom client has a fee dispute was referred to client by the Lawyer Referral Service of the Sacramento County Bar Association.

C. Advisory Awards – The awards of the Committee shall be advisory in the case of all arbitrators with regard to services performed on or after January 1, 1979, unless the parties agree to binding arbitration.

D. Election of Binding Arbitration – A party who has requested or consented to binding arbitration may withdraw that request or consent so long as the other party has not also requested or consented to binding arbitration. However neither party may withdraw his request or consent 10 days prior to the date of arbitration. In no event shall a withdrawal of request or consent be effective until written notice thereof is received by the Bar Association. If both parties have requested or consented in writing to binding arbitration, neither party may thereafter unilaterally withdraw that request or consent.

V. INITIATION OF MANDATORY ARBITRATION PROCEEDINGS

A. Petition for Mandatory Arbitration by Client – Mandatory arbitration is initiated when the client files a written “Petition for Arbitration” on the approved form with the Sacramento County Bar Association, and pays the appropriate filing fee, or applies for waiver of the filing fee under Rule XV B. When mandatory arbitration is initiated, the attorney shall be given notice thereof. The notice of the initiation of the arbitration shall include service on the attorney of a ‘Notice of Attorney Responsibility’ form.

B. Response by Attorney – Any response by the attorney to a Petition for Arbitration shall be filed within 30 days of the service of the Petition. If in the event the attorney fails to respond to a petition for arbitration or refuses to participate in the arbitration, the hearing will proceed as scheduled, and a decision made on the basis of the evidence. If attorney believes that he/she would not be personally responsible for any award that might order a refund to client, the attorney must immediately notify the Sacramento County Bar Association Fee Arbitration Committee, in writing, and provide the name and current address of the persons whom attorney believes might be personally responsible should be a refund to client be order in the award.

VI. INITIATION OF VOLUNTARY ARBITRATION PROCEEDINGS

A. Parties to an existing dispute may commence a voluntary arbitration under these rules by filing with the Sacramento County Bar Association copies of a Petition for Arbitration and Response thereto signed by the parties, or by demanding arbitration in writing. The Petition and Response or the written demand and cross demand shall contain a statement of the matter in dispute, the amount of money involved, if any, the issues to be resolved, and the remedy sought. If the arbitration commences by reason of a written demand pursuant to a prior written agreement to arbitrate under these Rules, the demand shall be accompanied by a copy of the written contract which includes the agreement to arbitrate pursuant to these Rules.

B. The Petition or demand shall be accompanied by the appropriate filing fee, which shall not be waived or reduced.

VII. TIME SCHEDULE FOR ARBITRATION

A. The following time schedule should be adhered to in all cases, except where emergencies or circumstances beyond the control of the arbitrator(s), or the parties, require short extensions. The “At-Issue Date” is the date on which the Petition and Response, signed by all parties, or the demand for arbitration under a prior agreement to arbitrate, and any applicable filing fee have all been received by the Sacramento County Bar Association; provided, that if a Petition has been filed but no Response is filed, then the “At-Issue Date” is the date on which the time for filing the Response expires.

B. Time Schedule for Sole Arbitrator Proceedings:

1. The sole arbitrator should be appointed within six weeks of the At-Issue Date.
2. The Notice of Hearing should be served on the parties within two weeks after appointment of the sole arbitrator.
3. The hearing should be held within four weeks of service of the Notice of Hearing
4. The preparation of the award and transmittal thereof to the Bar Association office should be completed within two weeks of completion of the hearing
5. The award should be served on the parties by the Bar Association office within two weeks from receipt of the award from the arbitrator.

C. Time Schedule for Three Member Panel Arbitrations:

1. Appointment of the panel of arbitrators should be completed within six weeks from receipt of the Request for Arbitration by the arbitrator.
2. The Notice of Hearing should be served on the parties by the panel chairperson within two weeks after appointment of the panel.
3. The hearing should be held within four weeks of service of the Notice of Hearing
4. The preparation of the award by the panel and transmittal thereof to the Bar Association office should be completed within two weeks of completion of the hearing.
5. The award should be served on the parties by the Bar Association office within two weeks from receipt of the award from the panel.

VIII. FAILURE TO ADHERE TO TIME SCHEDULE FOR ARBITRATION

A. The failure of any person or party to adhere to the time schedules for arbitration set forth in the foregoing rule shall not invalidate any award rendered in the arbitration. However, the Chairperson may discharge an arbitrator or panel from further proceedings whenever the Chairperson in his/her sole discretion, determines that there has been unreasonable delay by the arbitrator or panel in performing their duties under these Rules.

IX. NUMBER OF ARBITRATORS

A. **Binding Arbitration** – In all cases in which the amount in controversy is less than \$5,000, and the parties have agreed to binding arbitration, one arbitrator shall be assigned to hear the case. That arbitrator shall be an attorney member of the Committee. In all cases which the amount in controversy is \$10,000 or more, and the parties have agreed to binding arbitration, a panel of three arbitrators shall be appointed to hear the case, one of whom is not an attorney. However, notwithstanding the amount in controversy, the parties may agree to have the matter heard by one arbitrator. At the option of the client, the area of practice of one of the members of a three arbitrator panel, or in the case of a sole arbitrator, the sole arbitrator will be either civil or criminal. However, in exercising this option, the specification of a civil or criminal practitioner must relate to the underlying case.

B. **Non-binding Arbitration** – In all cases in which the amount in controversy is less than \$10,000, and the parties have NOT agreed to binding arbitration, the case will be heard by one arbitrator. That arbitrator shall be an attorney member of the committee. In all cases in which the amount in controversy is \$10,000 or more, and the parties have agreed to binding arbitration, a panel of three arbitrators shall be appointed to hear the case, one of whom is not an attorney. Notwithstanding the amount in dispute, the parties may agree to have the matter heard by one arbitrator.

X. PREHEARING PROCEDURES

A. **Notice of Hearing** – It is the goal of these Rules that all hearings be completed within thirty (30) days from assignment of the matters to the panels, that all post-hearing submissions be completed within twenty (20) days after close of the hearings, and that final awards be submitted by the arbitrators to the chairperson of the Committee within fifty (50) days of assignment. When the Chair of a panel receives a case file, it shall be the duty of the Chair to arrange a time and place for the arbitration hearing and to notify the parties, other panel members and the staff of the Committee of that hearing. The Chair of the panel is encouraged to communicate informally with the parties to the dispute and the other arbitrators in order to arrive at a mutually agreeable time and place for the hearing. Except upon application to the Chairperson of the Committee for additional time, disputes referred to arbitration panels should be submitted for decision to the panel within thirty (30) days from the date of assignment. While failure to submit the matter within thirty (30) days shall not be grounds for setting aside

the award, the Chairperson of the Committee may reassign the matter to avoid undue delay. It is therefore, advisable to schedule a hearing for a date within twenty (20) days of assignment to allow for the possibility of one continuance, postponement, more than one hearing or submission of rehearing briefs or arguments, if such are permitted by the panel. Once set, no hearing should be postponed more than twice without the prior consent of the Chairperson of the Committee. Failure to comply with the time periods suggested above shall not constitute a grounds for vacating of the award, nor shall said failure operate to deprive the committee of jurisdiction over any proceeding. Notice of the hearing must be sent by first class mail to both the petitioner and respondent at the last address given to the Committee by each party, when a party has not been contacted by phone and the date has been arbitrarily selected by the Chair. The Notice should also be sent, by first class mail, to the other arbitrators and the staff of the Committee. Notice shall be sent no later than ten (10) days prior to the date of the scheduled hearing, if at all possible. A party who does not provide current addresses to the Committee or otherwise fails to make himself/herself available for notice of a hearing shall have no grounds to object to the hearing and decision of a dispute in their absence if notice has been properly given. The Notice shall contain the following information:

1. Date, time and place of the hearing;
2. Notice in writing of the right of either party to be represented by an attorney, at that party's expense;
3. Notice in writing of the party's right to present witnesses or documentary evidence in support of that party's position;
4. Notice in writing that, in the event the party chooses to call witnesses, the staff of the Committee, the arbitrator(s) and the opposing parties must be notified of the names of those witnesses and the estimated time in direct examination at least five (5) days prior to the hearing;
5. Notice in writing that either party may employ a Certified Shorthand Reporter, at that party's own expense, to record the hearing. If either party chooses to employ such a reporter, the staff of the committee, the opposing party and the arbitrators must be notified of such fact at least five (5) days prior to the hearing. Each party's expenses for a reporter are covered under Section X E of these Rules;
6. Notice in writing that, if necessary, either party may arrange for the presence of an interpreter at his/her own expense, provided that the staff of the committee, the opposing party and the arbitrators are given written notice of the name of the interpreter five (5) days prior to the hearing;
7. Notice that, in the event that a party who has been properly served fails to appear at the hearing, the case may be heard and decided in the absence of that party on the basis of available evidence;

8. The arbitrator or panel must make a finding as to the allocation of the filing fee—i.e., if it is to be split or to be borne entirely by the petitioner. In the absence of such a finding, the Chairperson shall have the authority to make this allocation part of the award.

The Committee has prepared a form notice which shall be sent to the Chair of the panel at the time of case assignment.

B. Discovery – It is the purpose of the committee to conduct arbitrations in a thorough manner but with a minimum of formality and expense. Consequently, no prehearing discovery shall be permitted, except upon written application to the Chairperson of the Committee. Such written application shall set forth the specific discovery requested and the reasons which compel such discovery. In determining whether to permit such discovery, the Chairperson of the Committee will consider the nature and complexity of the case, the need for the discovery and the burden which would be imposed on the other party by such discovery. The decision of the Chairperson of the committee shall be final.

C. Subpoenas – The Chairperson of the committee, upon written application and for good cause shown, may issue subpoenas directing the attendance of witnesses or production of relevant documents at the hearing. Upon issuance of a subpoena by the Chair of the Committee, it is the responsibility of the party obtaining the subpoena to serve it on the other side with a tender of witness fees in the amount of \$35.00 for each witness. The application to the Chair must be in writing, should explain the reasons why the particular evidence or witness are required at the hearing, show good cause, and be delivered to the committee at the Bar Association of Sacramento at least fourteen (14) days prior to the hearing. The party or documents being subpoenaed should be received at least five (5) days notice. The original Proof of Service of the subpoena shall be delivered to the SCBA staff with copies to the arbitrator(s).

D. Witnesses – In the event that either party wishes to have witnesses appear on his/her behalf without subpoena, the party desiring such witnesses shall submit their names and the expected time involved in direct examination in writing to the opposing party, the staff of the committee and the arbitrator(s) at least five (5) days prior to the hearing.

E. Stenographic Record – Any party may have the hearing reported by a Certified Shorthand Reporter, at his/her own expense, subject to the following conditions:

1. The staff of the Committee, the arbitrators and all parties must be notified in writing at least five (5) days prior to the hearing. It shall be the responsibility of the parties requesting this to arrange for a stenographer.

F. Interpreter – Any party may bring to the hearing an interpreter to assist that party, if necessary. Arrangement for such an interpreter must be made by the party and will be at the expense of the party. The staff of the Committee, the opposing party and

the arbitrators must be notified in writing of the name of the interpreter five (5) days prior to the hearing.

G. Enumeration of Issues – If the issues to be arbitrated are not clearly set forth in the Request, Reply, or any accompanying documents, the arbitrator or panel may request the parties to clarify the issues. The arbitrator or panel may, in their discretion, decline to determine any issues not set forth in said documents.

H. Continuances – Continuances are not favored and should not be granted, in the absence of good cause, once the hearing date has been set and the Notice of Hearing mailed. Once set, no hearing should be postponed or continued for further hearing more than twice without the consent of the Chairperson of the committee. Application for a continuance must be made in writing to the Chair of the panel upon five (5) days notice except for good cause shown. It shall be the responsibility of the party requesting the continuance to arrange for a new hearing date at a time convenient for the panel and notify the panel and other party of the new date. The Chairperson of the panel shall have the final say on the date chosen for a hearing. In the event that the Chairperson of the panel grants a continuance, it should be reset for a hearing to be held not later than thirty (30) days from date of continuance.

I. Challenge-Disqualification of Arbitrator(s) – Each party may disqualify any arbitrator for cause. Any disqualification or challenge of an arbitrator shall be ineffective unless made in writing and served on the County Bar within fifteen (15) days of the service of the “Notice of Assignment of Panel” or substitute arbitrator(s) if there is a disqualification or allowed challenge. An arbitrator who believes that (s)he cannot render a fair and impartial decision or who believes that there is an appearance that (s)he cannot render a fair and impartial decision, shall disqualify him/herself or shall accede to a reasonable challenge. If an arbitrator does not disqualify her/himself, the challenge shall be heard and decided by the chairperson of the fee arbitration committee. Each party may disqualify one arbitrator without cause.

XI. AWARD WITHOUT HEARING

A. If all parties so stipulate in writing or upon the record in a recorded or reported hearing, the sole arbitrator or panel shall decide all matters before them without a hearing, based upon the petition, response and any other written materials provided by the parties. All such written materials shall be filed with the sole arbitrator or panel and served on all other parties.

XII. HEARING PROCEDURES

A. Attendance of Parties – Parties who have been properly served with a Notice of hearing shall be required to attend the hearing. In the event that one of the parties fails to appear at the hearing, the Chairperson of the panel may elect to proceed with the hearing and the controversy may then be determined based upon the evidence produced, notwithstanding such failure to appear. In the alternative, the Chairperson of the panel

may elect in his/her sole discretion, to delay submission of the matter. In any event, the facts with regard to the failure to appear shall be stated in the award. In the event that one of the parties fails to appear and a party who is present requests a continuance so that the presence of the absent party may be compelled by subpoena or otherwise for examination, such continuance shall be granted within the time limits of these rules.

In the event that a party fails to appear at a hearing and later becomes the prevailing party in a trial after arbitration, such party will not be entitled to costs or attorney's fees in connection with the trial after arbitration, notwithstanding the fact that he/she is the prevailing party.

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 will be 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. The arbitrators are encouraged to include in their award any findings as to the willfulness of any parties non-attendance at the hearing.

B. Waiver of Personal Appearance – Any party who lives 150 miles or more from the site of the hearing, may waive personal appearance and submit to the panel testimony and exhibits by written declaration under penalty of perjury.

C. Attendance of Arbitrators – If at the time set for the hearing, all three members of the panel are not present, the panel shall immediately notify the staff of the Committee and the staff shall attempt to find a replacement. In the event a replacement cannot be found, the chairperson of the panel, in his/her sole discretion, shall decide either to postpone the hearing or, with the consent of the parties, to proceed with the hearing and act as sole arbitrator. In the event that the chairperson of a panel is not present, the Chairperson of the committee, in his/her sole discretion, shall determine either to postpone the hearing or to proceed with the hearing. In no event shall a hearing be conducted by or proceed with two arbitrators.

D. Attorneys – A party desiring representation by counsel shall submit a written request to the arbitrator within five (5) days of receiving notice of the date scheduled for arbitration. Notice of the request shall be provided to the other party at the same time. Additionally, any party may be represented by a non-attorney spokesperson if (s)he desires. Representation shall be at the expense of the party.

E. Hearing Procedure: Rules of Evidence

1. The sole arbitrator or panel chairperson shall preside at the hearing. The sole arbitrator, or the panel by majority vote, shall rule on the admission and exclusion of evidence and on questions of procedure, and shall exercise all powers relating to the conduct of the hearing. (Code of Civil Procedure Section 1282.2).)

2. The parties to the arbitration are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing but the rules of evidence and rules of judicial procedure applicable in the courts of California need not be observed. Upon request of any party to the arbitration or upon request of any arbitrator, the testimony of witnesses shall be given under oath. (Code of Civil Procedure Section 1282.2 (d).) The sole arbitrator or panel Chairperson may administer oaths to witnesses appearing or testifying at the hearing. (Code of Civil Procedure Section 1282.8). The sole arbitrator or panel shall have the power to limit and regulate the number, timing, form and length of the parties written presentation.

3. Any relevant attorney-client communications or attorney work product may be disclosed in connection with an arbitration hearing, a trial after arbitration, or judicial confirmation, correction, or vacation of an arbitration award, but in no event shall the disclosure be deemed a waiver of the confidential character of such matters for any other purpose. (Business and Professions Code, Section 6202).

4. The sole arbitrator or panel chair has the power to preserve and enforce order in their immediate presence, to enforce order in the proceedings before them and to provide for the orderly conduct of proceedings before them. When confronted with a discourteous, unruly or uncooperative party or witness, the sole arbitrator or panel chair may, among other things, adjourn the proceedings, take only written evidence and testimony, serve the party or witness with a subpoena or subpoena duces tecum, requiring his/her attendance at an adjourned hearing under penalty of contempt, exclude the witness, or if the offending party is the petitioner, and in an extreme case only, dismiss the proceedings with prejudice.

5. If the arbitrator or panel intends to base an award upon information not obtained at the hearing, such information shall be disclosed to all parties to the arbitration and the parties given an opportunity to meet it. (Code of Civil Procedure Section 1282.2 (g).)

6. The sole arbitrator or arbitrators shall receive evidence relating to claims of malpractice and professional misconduct, but only to the extent that those claims bear upon the fees to which the attorney is entitled. The sole arbitrator or arbitrators shall not award affirmative relief, in the form of damages or offset or otherwise, for injuries underlying such claim. Nothing herein shall be construed to prevent the sole arbitrator or arbitrators from awarding a refund of unearned fees previously paid (Business and Professions Code Section 6203 (a).)

F. Stipulations – Stipulations and admissions which narrow issues or foreclose the need for formal testimony are encouraged.

G. Oaths – The Chairperson of the Panel is empowered to administer oaths. Testimony need to be given under oath to be considered and the decision whether to administer oaths shall be made by the Chairperson of the panel.

H. Confidentiality – Hearings shall be closed to the public, except for witnesses while testifying and others who are directly participating in the proceeding. The parties may, however, agree to permit others to view the proceedings. The arbitration files shall be confidential and shall be preserved by the Committee in such a manner as to assure protection from unauthorized dissemination of attorney/client and work-product disclosure made during the course of the arbitration. If evidence is adduced at the hearing which, in the opinion of the panel of arbitrators, constitutes substantial evidence of a violation of the Rules of Conduct, the Chairperson of the Committee may in his/her discretion report the findings of fact supporting the conclusion with respect to such violation to the Chief Trial Counsel of the State Bar of California for disposition as the State Bar deems appropriate.

I. Adjournments – The Chairperson of the panel may adjourn the hearing from time to time as may be necessary.

J. Submission – At the close of the hearing, the matter shall be deemed submitted. However, if the Chairperson of the panel wishes to hold the matter open, within the time limits set by these rules, for later submission of briefs, argument, or other evidence, he/she may do so but shall assure that both parties are provided an equal opportunity to submit such materials and shall submit a date certain for final submission of the matter. Other than as directed by the Chairperson of the panel, no evidence may be received by any panel member following completion of the hearing itself. In the event that either party fails to appear at the hearing, the Chairperson of the panel, in his/her discretion, may hold the matter open, with the time limits set by these Rules, for later submission of documentary evidence by the non-appearing party. The Chair of the panel shall not be obligated to delay submission in this manner but may consider whether or not such a course is merited by the circumstances which resulted in the non-appearance of the party or is necessary to assure both parties receive a fair hearing. In the event that the Chairperson of the panel elects to delay submission, they shall notify both parties of this decision in writing and shall set a date certain for submissions of any documentation. Once that documentation or other evidence has been received, the appearing party shall be furnished a copy of that evidence and shall be permitted an opportunity to rebut any written materials submitted. The weight accorded to such written documentation provided after the close of the hearing shall be determined solely by the arbitrator(s).

XIII. AWARD

A. Manner of Arriving at Decision – After the matter has been submitted, the arbitrators shall consider all of the evidence and material relevant to the fee dispute and shall determine all issues necessary to resolve the dispute.

1. Illegal or Unconscionable Fees – The arbitrator first must determine if the fee claimed by the attorney is legal or unconscionable. Under California Rule of Professional Conduct 4-200, “a member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee.” To make this determination, the panel must consider the evidence in light of paragraph (B) of Rule 4-200 which states:

(B) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. Among the factors to be considered, where appropriate, in determining the conscionability of a fee are the following:

- 1) The amount of the fee in proportion to the value of the services performed.
- 2) The relative sophistication of the member and the client.
- 3) The novelty and difficulty of the question involved and the skill requisite to perform the legal service properly.
- 4) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the member.
- 5) The amount involved and the results obtained.
- 6) The time limitations imposed by the client or by the circumstances.
- 7) The nature and length of the professional relationship with the client.
- 8) The experience, reputation, and ability of the member or members performing the services.
- 9) Whether the fee is fixed or contingent.
- 10) The time and labor required.
- 11) The informed consent of the client to the fee.

If the arbitrators find the fee to be illegal or unconscionable, they shall not award that fee to the attorney. However, to the extent the attorney provided services to the client, at the client's request, which benefited the client, the attorney may be permitted to recover a fee equal to the reasonable value of the services under the quantum meruit analysis.

2. Legal and Conscionable Fees – If the fee claimed by the attorney is legal and conscionable, the panel shall resolve the dispute between the parties based upon all evidence presented by the parties which is relevant to the dispute. The panel may consider factors including but not limited to:

- a) The nature of the fee arrangement, if any, and the parties understanding of the fee arrangement;
- b) The reasonable value of the services rendered;
- c) The experience of the attorney;
- d) The complexity of the matter for which the attorney was retained;
- e) The diligence of the attorney in pursuing the matter;
- f) The result obtained.

Such factors may be considered to the extent that they have a direct bearing on the fee dispute. It is not within the power of the arbitrators to modify the fee agreement which is not unreasonable and which was entered into knowingly and voluntarily by the parties.

B. Majority Vote – If the panel consists of three (3) members, the decision shall be by majority vote.

C. Written Award – The findings of the panel shall be in the form of a written award. No specific format of such an award is mandatory but the award must and shall contain at least the following language:

1. The arbitrators find that the total amount of fees and/or costs which should have been charged in this matter are : \$
of which client is found to have paid : \$

In addition, the fee arbitration filing fee shall be allocated:

Client : \$

Attorney : \$

For a net amount of : \$

Accordingly, the following award is made:

(A) Client (Name) shall pay attorney (Name) : \$

-Or-

(B) Attorney (Name) shall refund to client (Name) : \$

-Or-

* Nothing further shall be paid by either attorney or client

2. Identity of those who were present at the hearing;

3. Whether the arbitration is voluntary or mandatory;

4. Whether the award is binding or advisory;

5. The amount which the attorney claims the services were worth;

6. The amount which the client claims the services were worth;

7. The amount which had previously been paid to the attorney;

8. A clear statement of the award, to include what action must be taken by the parties. (e.g., the arbitrators hereby award to the respondent the sum of \$500, less one-half petitioner's filing fee of \$50, for a total of \$475, which sum shall be paid forthwith by the petitioner);

9. The date of the award;

10. It is required that the panel set forth a statement of the reasoning which caused the panel to arrive at its conclusions.

11. In the event that the arbitrator or panel determines that client is entitled to a refund of all or any part of the fee in controversy, the arbitrator or panel must specifically identify the attorney (not law firm) who is personally responsible for payment of the refund ordered.

D. Processing of the Award – The award shall be signed by all members of the panel and mailed to the staff of the Committee within ten (10) days following submission of the matter unless additional time is granted by the Chairperson of the Committee for good cause. The Staff of the committee shall have ten (10) days in which to process the award after its receipt from the panel. In no case shall more than twenty (20) days elapse between the date of submission of the matter and the date of the award unless additional time is granted by the Chairperson of the Committee. An original and five (5) copies shall be sent to the staff. The staff shall serve a copy of the award on the parties by first class mail.

E. Stipulated Awards – Should the parties agree at any time to a stipulated arbitration award, the arbitrators shall have the power to enter such an award and should obtain the written affirmation of said stipulation by both parties.

F. Notice of Post Arbitration Rights – Each party shall be served with a copy of a “Notice of Your Right After Fee Arbitration” in the form attached to these rules (Appendix A) at the time that the award is served.”

XIV. ENFORCEMENT OF THE AWARD

A. Any award which orders the refund of all or any part of fees and/or costs to client may be enforced administratively through the California State Bar, pursuant to the provisions of California Business and Professions Code Sections 5203 (d)(1) through (5), inclusive.

XV. FEES AND COSTS

A. Fees – The filing fee schedule is based on the amount in dispute and is five percent (5%) of the amount in dispute with a minimum of \$25 and a maximum of \$3,500.

1. The amount in dispute is the difference between the fee charged or claimed by the attorney and the amount, if any, which the client has indicated to be the reasonable value of the legal services received as set forth in the Request for Arbitration form.

2. The filing fee shall be paid by the party, whether client or attorney, who files the Request for Arbitration. This fee is to be paid at the time of filing the Request for Arbitration. All filing fees are nonrefundable except as otherwise provided in these Rules. However, in the discretion of the arbitrators, the respondent may be directed, as part of the award, to reimburse the petitioner, in whole or in part, for such filing fees.

3. No matter may be referred to a panel of arbitrators or a sole arbitrator without payment of such filing fee. Failure to pay within thirty (30) days of filing the Request for Arbitration shall be deemed abandonment of the petition and the petition will be dismissed without prejudice.

4. All checks should be made payable to the Bar Association of Sacramento.

5. If the parties settle the dispute and so advise the Bar Association of Sacramento in writing no later than ten (10) days before the arbitration hearing, the Chair may refund up to one-half of the filing fee.

B. Waiver of Filing Fee

1. Any party requesting arbitration who is financially unable to pay the filing fee may apply for a waiver of the fee.

2. An application can be made by calling the staff of the Bar Association of Sacramento and obtaining the necessary forms.

3. The application shall be reviewed by the staff of the Bar Association of Sacramento and be granted or denied based on California Rules of Court, 985.

4. An adverse decision of the waiver may be appealed to the Chair of the Committee for review. Said appeal must be made in writing and state good cause why the waiver should be granted. The processing of the Request for Arbitration will be stayed pending determination by the Chair. No party shall be required to reply until the application for waiver is approved.

5. A request for arbitration must be filed with the Bar Association of Sacramento before a waiver will be considered.

6. For the purpose of a stay in any pending court proceeding, the arbitration shall be deemed pending from the date the Request is filed.

7. If a waiver is not granted, arrangements can be made to pay the filing fee in installments. The hearing will be stayed pending receipt of the entire fee. Failure to make payments in a timely manner will result in a dismissal of the proceeding and a dissolution of any stay of court proceedings and a refund of fees previously paid.

C. Costs – The Arbitration of Fee Dispute Program is a service provided by the Association, members of the Committee serve without compensation. Consequently, no costs are generally to be assessed in connection with an arbitration, but if excessive costs for photocopying, telephone calls, transportation, and the like are incurred or an arbitration hearing takes more than one full day, the Chairperson of the Committee may, in his/her discretion, charge the parties costs to compensate the arbitrators and/or the Sacramento County Bar Association. The amount of such costs shall be determined with regard to the amount of time spent and the ability of the parties to pay. In no case will the cost assessed exceed ten percent (10%) of the amount in controversy. Any costs so assessed shall become part of the arbitration award and be enforceable as a part, thereof.

XVI. IMMUNITY

A. In any arbitration conducted by the Sacramento County Bar Association, the arbitrator(s), the Sacramento County Bar Association, its officers, directors, and employees shall have the same immunity which attaches in judicial proceedings. (Business and Professions Code Section 6200(e).)

XVII. SERVICE

A. Unless expressly stated in these Rules to the contrary, service of any notice or other paper shall be by personal delivery or by deposit in the United States mail, first class postage prepaid, addressed to the person on whom it is to be served, at his/her office address as last given, on making service by mail; otherwise at his/her place of residence. The service is complete at the time of deposit in the mail. (Code of Civil Procedure Section 10139a.) 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.

B. All notices permitted or required to be given to a party by mail shall be deemed duly given if mailed to the party's address appearing in the party's petition, demand for arbitration or response or in any other document lodged or filed with the arbitrator(s), or in a subsequent notice given to the arbitrator(s) and all other parties designating a new or different address. It is the responsibility of each party to keep arbitrator(s), the Sacramento County Bar Association and all parties informed of his/her current address.

Revised 02/09/94