

LOS ANGELES COUNTY BAR ASSOCIATION
ATTORNEY CLIENT MEDIATION & ARBITRATION SERVICES
RULES FOR CONDUCT OF
MANDATORY ARBITRATION OF FEE DISPUTES
PURSUANT TO BUSINESS & PROFESSIONS CODE § 6200 et seq.

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LOS ANGELES COUNTY BAR ASSOCIATION
ATTORNEY CLIENT MEDIATION & ARBITRATION SERVICES

RULES FOR CONDUCT OF

MANDATORY ARBITRATION OF FEE DISPUTES

PURSUANT TO BUSINESS & PROFESSIONS CODE § 6200 ~~et. seq.~~ et seq.

1. INTENT AND GOAL

The intent and goal of these Rules is to provide for a fair, speedy, economical, and impartial hearing and award.

2. GOVERNING LAW

Except as these Rules may otherwise provide, Article 13 of Chapter 4 of Division 3 of the Business & Professions Code shall govern these proceedings.

3. ORGANIZATION AND ADMINISTRATION

- a) The Arbitration Committee shall consist of all persons appointed thereto by the Arbitration Committee staff.
- b) A Committee member may be removed by the Committee Chairperson for good cause.
- c) The arbitration program shall be administered by the Arbitration Executive Committee, consisting of the Chairperson and one or more Vice Chairpersons, all appointed by the President of the Los Angeles County Bar Association. The Chairperson may designate one or more Vice Chairpersons who will act as Deputy Chairs and serve as chairpersons in the absence of the Chairperson. The Arbitration Executive Committee shall set policy and procedure, supervise the Arbitration Committee staff, recommend rule changes to the Trustees, set fees, and otherwise administer and supervise the program established by these Rules.

4. MANDATORY ARBITRATION

- a) Arbitration is mandatory when a client commences arbitration of a dispute between the client and an attorney concerning fees charged by the attorney for professional services rendered or reimbursable costs, or both (Bus. & Prof. Code §§ 6200 (b), 6205). Disputes which are subject to mandatory arbitration are those

disputes between attorneys and clients regarding fees or reimbursable costs, including but not limited to:

- i. The amount or balance of fees or reimbursable costs claimed by the attorney to be owing by the client.
 - ii. The amount of retainers or deposits or payments by the client which are claimed by the client to have been overpaid to the attorney and which are claimed to be subject to refund to the client.
- b) Arbitration is mandatory when a client has signed a fee agreement, which provides for arbitration through the Business & Professions Code § 6200 program to arbitrate.
 - c) If initiated by the attorney, fee arbitrations conducted pursuant to Business and Professions code §6200 et seq are voluntary for the client.
 - d) Arbitration is mandatory if made by (i) a person who is not the client but who may be liable for or entitled to a refund of attorney's fees or costs ("non-client"), or (ii) the attorney claiming entitlement to fees against a non-client.

5. LIMITS ON ARBITRATION

- a) The following disputes are not subject to mandatory arbitration:
 - i. Disputes where the attorney is also admitted to practice in another state, and he or she maintains no office in the State of California, and no material portion of the services were rendered in the State of California (Bus. & Prof. Code § 6200 (b)(1));
 - ii. Disputes where client seeks affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct (Bus. & Prof. Code § 6200 (b)(2)); or,
 - iii. Disputes where the fee to be paid by the client or on his or her behalf has been determined pursuant to statute or Court order (Bus. & Prof. Code § 6200 (b) (3)).
- b) The Arbitration Executive Committee reserves the right to decline to accept any arbitration.

6. NOTICE REQUIREMENT BY ATTORNEY TO CLIENT

An attorney must serve, either personally or by first class mail to the client, the State Bar's "Notice of Client's Right to Arbitrate" form prior to or at the time of serving the

Summons or Claim in an action or other proceeding against the client for recovery of fees which are subject to mandatory arbitration. Forms of the “Notice of Client’s Right to Arbitrate” are available upon request from the Arbitration Committee staff. Failure to give the notice shall be a ground for dismissal of the action (Bus. & Prof. Code § 6201 (a)).

7. STAY OF COURT PROCEEDINGS

If an attorney (or the attorney’s assignee) commences a fee collection action in any court, and that dispute is subject to mandatory arbitration, then the client may seek to stay the court action by initiating mandatory arbitration under these Rules and by filing a copy of the Petition for Arbitration on the approved Los Angeles County Bar Association form with the court, together with the original form entitled “Notice that Action has been Stayed” and by complying with any such additional requirements as the Court may direct (Bus. & Prof. Code § 6201 (c)).

8. WAIVER OF RIGHT BY CLIENT TO REQUEST OR MAINTAIN ARBITRATION

A Client’s right to request or maintain arbitration is waived if:

- a) Before initiating arbitration, the client answers a complaint in a civil action if adequate notice of the right to arbitration has been given (Bus. & Prof. Code § 6201 (d));
- b) The client commences an action or files any pleading seeking judicial resolution of the fee dispute or seeking affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct (Bus. & Prof. Code § 6201 (d));
- c) The client fails to submit a request for arbitration in writing that is either postmarked or actually received by the Los Angeles County Bar Association 30 days or less after the client’s receipt of the “Notice of Client’s Right to Arbitration” (Bus. & Prof. Code § 6201 (a)); or,
- d) The time for filing a civil action requesting the same relief would be barred by the applicable statute of limitation, but that limitation shall not apply if the client requests arbitration after the attorney has filed a civil action covering a dispute that is subject to mandatory arbitration (Bus. & Prof. Code § 6206).

9. REQUESTING HEARING THROUGH THE STATE BAR

A client or an attorney who believes that he or she cannot obtain a fair or impartial hearing under the Committee’s Rules for Conduct of Arbitration of Fee Disputes and Other Related Matters shall be entitled to a hearing through the State Bar of California in

compliance with the State Bar rules. In a matter already pending before the Committee, a written request must be received by the Arbitration Committee Office. LACBA shall release jurisdiction of the matter upon written notification of the State Bar's acceptance of said matter for arbitration.

10. ASSIGNMENT OF ARBITRATORS

- a) Disputes will be assigned to a sole arbitrator if the amount in dispute does not involve more than \$25,000. All other disputes will be assigned to a panel of three arbitrators (panel) unless the parties to the arbitration agree in writing to a sole arbitrator, before or during the proceeding.
- b) All arbitrators will be appointed by the Arbitration Committee staff. Three member panels will include one layperson, but such person may not serve as chairperson; otherwise all arbitrators shall be active licensees of the State Bar of California, in good standing.
- c) If the dispute is assigned to a panel of three arbitrators, the panel shall include one attorney whose area of practice is either civil law or criminal law, as requested by the client; or if the dispute is assigned to a sole arbitrator, such sole arbitrator shall be an attorney whose area of practice is either civil law or criminal law, as requested by the client;
- d) the Arbitration Committee shall request its members who are licensees of the State Bar of California to designate such licensees' area or areas of practice and such designation shall be used for assignment of arbitrators pursuant to the Rule. A licensee may designate both civil and criminal areas of practice.
- e) A lay arbitrator is a person who has not been admitted to practice law in any jurisdiction and has not worked regularly for a public or private law office or practice, court of law or attended law school for any period of time. Paralegal assistants, law firm staff, and law clerks shall not serve as lay arbitrators.
- f) A Vice Chairperson shall be designated to supervise all arbitrations. The supervising Vice Chairperson shall be available to the arbitrator(s) for information, guidance and advice, but the power of decision shall rest with the arbitrator(s). The supervising Vice Chairperson shall also be available to the parties and their counsel for information but shall take care to preserve his or her neutrality at all times. Whenever these Rules provide for reference of a matter to a Vice Chairperson, it shall be referred to the supervising Vice Chairperson designated for that arbitration.

11. NOTICE OF APPOINTMENT OF ARBITRATOR(S)

A notice identifying the arbitrator(s) who have been appointed to hear the particular dispute shall be served on the parties at least 15 days prior to the date of the hearing.

12. DETERMINATION OF JURISDICTION

- a) Once a sole arbitrator or panel has been appointed, all issues not already referred to the Arbitration Executive Committee or a Vice Chairperson shall be decided by the sole arbitrator or panel.
- b) Each sole arbitrator or panel shall have the authority to determine jurisdiction and shall decline to act if it determines that it lacks jurisdiction.
- c) The arbitrator or panel (or if none has been appointed, the Vice Chairperson) may dismiss any arbitration if the attorney does not maintain an office in Los Angeles County or if no substantial legal services were performed in Los Angeles County.

13. INITIATION OF ARBITRATION PROCEEDINGS

- a) Arbitration may be initiated by a client, an attorney or a third party entitled to request mandatory fee arbitration.
- b) An arbitration is initiated by filing a written "Request for Arbitration" on the approved form with the Arbitration Committee, and by paying the appropriate filing fee, or applying for waiver of the filing fee under Rule 14. Service of the Petition for Arbitration on the attorney shall be made by the Arbitration Committee staff. If the initiating party is an attorney, the Arbitration Committee staff shall serve upon the Attorney a copy of the approved State Bar "Notice of Attorney Responsibility" form.
- c) Service shall be effected upon the Attorney at the address provided on the petition and at the latest address shown on the official records of the State Bar, if different.
- d) Any response to a Request for Arbitration, together with any response to the issue of the attorney's responsibility for any award that refunds fees and/or costs to the client, shall be filed within 15 days of the service of the Petition. In the event the attorney or client who has previously agreed in writing to arbitration 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.
- e) The party requesting arbitration may amend the request up to 15 days after mailing it to the Arbitration Committee, unless a request for clarification is made by the Arbitration Committee. Thereafter, it may be amended only with the approval of the Vice Chairperson or by the Arbitrator(s), if a notice of assignment of the arbitrator(s) has been served on the parties.

- f) Initiation of 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 request for arbitration, when an arbitration with a non-client is initiated, the Arbitration Committee shall give notice of the request for arbitration to the client by first class mail at the client's last known address.

14. FEES AND REQUESTS FOR WAIVER OF FILING FEES IN CASES SUBJECT TO ARBITRATION

- a) The Board of Trustees of the Los Angeles County Bar Association establishes the filing fee schedules. The schedules may be obtained by contacting the fee arbitration program staff.
- b) The filing fee schedule for arbitration is based on the amount in dispute as follows:
 - i. Fifty dollars plus five percent (5%) of the amount in dispute when the total amount in dispute is less than \$10,000.
 - ii. Six percent (6%) of the amount in dispute when the total amount in dispute is \$10,000 or more but less than \$20,000.
 - iii. Seven percent (7%) of the amount in dispute when the total amount in dispute is \$20,000 or more, with a \$5,000 maximum filing fee.
- c) Any party requesting mandatory arbitration that is financially unable to pay the filing fee may apply for a waiver of the filing fee. An application for waiver of the filing fee shall be made in writing on the Arbitration Committee's form. Program staff will apply fee waiver criteria to grant or deny the application or reduce the filing fee, and may allow the petitioner additional time in which to pay the filing fee, but that period of time shall not exceed 90 days without consent of all other parties subject to the approval of the Executive Director or his/her designee. The program staff shall communicate the decision in writing to all parties. A fee waiver decision made by the Executive Director or his/her designee may be appealed to the Arbitration Executive Committee on an annual basis. The decision of the Vice Chair shall be final.

- d) An application for waiver of the filing fee shall accompany a completed and executed petition for mandatory arbitration. No party shall be required to respond until the application for waiver of the fees has been decided.
- e) If petitioner is required to pay all or part of the fee and fails to pay the sum in full within the time provided in the Vice Chairperson's decision (or if no time is provided, within 30 days after service of the Vice Chairperson's decision), then the petition shall be dismissed without prejudice.
- f) If the petitioner's request for a fee waiver is granted or the fee is reduced, the petitioner agrees to pay the amount waived or reduced to the extent of any refund awarded.

15. FILING FEE REFUND POLICY

- a) The program will retain a \$50 non-refundable fee on all cases filed. No refund is available for filing fees of \$50 or less.
- b) If a case closes prior to the assignment of a mediator or arbitrator, the program will retain 50% of the total filing fee with a \$50 minimum.
- c) In cases closed after the assignment of a mediator, sole arbitrator or arbitrator panel, the program will retain 75% of the total filing fee with a \$50 minimum.
- d) No refund will be made on a case where an arbitration hearing date has been scheduled by the sole arbitrator or arbitrator panel, or a mediation session date has been scheduled by the mediator, unless LACBA receives written notice of settlement or withdrawal of the arbitration or mediation no later than 10:00 a.m. on the business day preceding the date set for the arbitration hearing or mediation session.
- e) If a *mediation session* or arbitration hearing has commenced, no refund will be made.
- f) In cases closed where the petitioner is a lawyer or law firm and the respondent attorney declines arbitration, or the Arbitration Committee determines it does not have jurisdiction, the Arbitration Committee will retain 10% of the filing fee with a minimum of \$50 dollars.

16. ENUMERATION OF ISSUES

If the issues to be arbitrated are not clearly set forth in the Petition and Response, or in the correspondence or other submitted documents, the sole arbitrator or panel (or Vice Chairperson if the sole arbitrator or panel has not yet been appointed) may request the parties to clarify the issues. The sole arbitrator or panel may decline to determine any

issues not set forth in the Petition and Response, or not clarified in compliance with this Rule.

17. TIME SCHEDULE FOR ARBITRATION

The arbitrator(s) shall endeavor to adhere to the following time schedule, 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 Arbitration Committee; 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.

a) TIME SCHEDULE FOR SOLE ARBITRATOR PROCEEDINGS

- i. The sole arbitrator should be appointed within six weeks of the At-Issue Date.
- ii. The Notice of Hearing should be served on the parties within two weeks after appointment of the sole arbitrator.
- iii. The hearing should be held within four weeks of service of the Notice of Hearing.
- iv. The preparation of the award and transmittal thereof to the Arbitration Committee Office should be completed within two weeks of completion of the hearing.
- v. The award should be served on the parties by the Arbitration Committee Office within two weeks from receipt of the award from the arbitrator.

b) TIME SCHEDULE FOR THREE MEMBER PANEL ARBITRATIONS

- i. Appointment of the panel of arbitrators should be completed within five weeks of the At-Issue Date.
- ii. The Notice of Hearing should be served on the parties by the panel chairperson within three weeks after appointment of the panel.
- iii. The hearing should be held within six weeks of service of the Notice of Hearing.
- iv. The preparation of the award by the panel and transmittal thereof to the Arbitration Committee Office should be completed within four weeks of completion of the hearing.

- v. The award should be served on the parties by the Arbitration Committee Office within two weeks from receipt of the award from the panel.

18. FAILURE TO ADHERE TO TIME SCHEDULE FOR ARBITRATION

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 arbitration. However, the Chairperson may discharge an arbitrator or panel from further proceedings whenever the Chairperson, in his or her sole discretion, determines that there has been unreasonable delay by the arbitrator or panel in performing their duties under these Rules.

19. NOTICE OF HEARING

The sole arbitrator, or the panel chairperson in consultation with the other members of the panel, shall select a time and place for the hearing and cause notice thereof to be served personally or by first-class mail on the parties to the arbitration and on the other members of the panel at least 15 days before the hearing. Appearance at the hearing waives the right to notice. The notice shall advise the parties of their right to present witnesses and documentary evidence in support of their position, to be represented by counsel, and, at their own expense, to have a stenographic record of the proceedings made if proper arrangements are made with the sole arbitrator or panel chairperson.

20. AWARD WITHOUT HEARING

If all parties so stipulate, 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.

21. REPRESENTATION BY COUNSEL

Any party may be represented by counsel. A party intending to be so represented shall notify the sole arbitrator or panel chairperson and the Arbitration Committee staff in writing of the name, address and telephone number of counsel, and thereafter all notices to which such party may be entitled hereunder shall be sent to counsel. In the absence of such written notification, all notices will be sent to the parties.

22. STENOGRAPHIC OR OTHER RECORD

Any party requesting a stenographic record of the arbitration proceedings shall make the necessary arrangements for the taking of that record. The requesting party or parties shall pay the cost of such record. Every party to the arbitration shall be entitled to a copy of the report's transcript upon written request and payment of the expense to the reporter.

23. INTERPRETER

Any party requesting an interpreter shall make the necessary arrangements for the services of the interpreter. The requesting party or parties shall pay the cost of such services.

24. ISSUANCE OF SUBPOENAS

The Arbitration Committee will, upon good cause being shown, issue in blank subpoenas and subpoenas *duces tecum*, signed but otherwise in blank. Subpoenas and subpoenas *duces tecum* shall be served and enforced in accordance with Code of Civil Procedure §§ 1985-1997 (Code Civ. Proc. § 1282.6).

25. NOTICE TO APPEAR AND PRODUCE

Use of a notice to appear and produce with respect to a party, as provided in Code of Civil Procedure § 1987, is authorized, and that section together with any other applicable sections of Chapter 2 of Title 3 of Part 4 of the Code of Civil Procedure (Code Civ. Proc. § 1985 *et seq.*) shall govern such notices, except that a notice requiring production of books, documents or other things (Code Civ. Proc. § 1987 (b)) need only be served at least ten days before the hearing.

26. ORDER FOR PRODUCTION

The sole arbitrator or panel may within a reasonable time in advance of the hearing date or any adjourned hearing date, order any party to produce any books, documents or other things in the party's possession or under his or her control, which the sole arbitrator or panel determines are not privileged and are relevant to the subject matter of the arbitration.

27. POSTPONEMENTS; ADJOURNMENTS

Upon request of a party to the arbitration and for good cause, or upon their own determination, the sole arbitrator or panel may postpone or adjourn the hearing from time-to-time.

28. HEARING PROCEDURE; RULES OF EVIDENCE

- a) 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.
- b) The parties to the arbitration are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at the hearing, but the rules of evidence and rules of judicial procedure applicable in the courts of California need not be observed. Upon request of any party to the arbitration or upon request of any

arbitrator, the testimony of witnesses shall be given under oath. The sole arbitrator or panel chairperson may administer oaths to witnesses appearing or testifying at the hearing. The sole arbitrator or panel shall have the power to limit and regulate the number, timing, form and length of the parties' written presentation.

- c) 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 (Bus. & Prof. Code § 6202).
- d) The sole arbitrator or panel has the power to preserve and 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 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 or 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.
- e) 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.
- f) 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 by the client (Bus. & Prof. Code § 6203 (a)).

29. ARBITRATION IN THE ABSENCE OF A PARTY

The arbitration may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made against a party solely because of the party's absence. The arbitrator or panel shall require the party who is present to submit such evidence as may be required to support the making of an award. An award may be made in favor of a party who is absent if the evidence so warrants.

30. ARBITRATION BY PANEL IN THE ABSENCE OF ONE OF THE MEMBERS

- a) If one of the panel members fails to appear, upon written stipulation of the parties, the hearing may proceed with a sole attorney arbitrator. Under no circumstances will the hearing proceed with two arbitrators.
- b) In the event there is no written stipulation of the parties to have an attorney hear the arbitration as sole arbitrator, the hearing date:
 - i) shall be adjourned and continued, to permit attendance of the absent arbitrator or assignment of a new arbitrator to the panel; or
 - ii) vacated, and the matter returned to the Arbitration committee staff for reassignment.

31. WITNESSES; FEES AND MILEAGE

Except for the parties to the arbitration and their agents, officers and employees, all witnesses appearing pursuant to subpoena or subpoena *duces tecum* are entitled to receive fees and mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in the Superior Court. The fee and mileage of a witness subpoenaed upon the application of a party to the arbitration shall be paid to the witness in advance by such party, and, if demanded and not so paid, the witness shall not be required to attend.

32. INSPECTION

- a) A client petitioning for arbitration is entitled to inspect, during normal business hours, the following documents and records in the possession of the respondent:
 - i. The file relating to the matter in which the dispute arose.
 - ii. All statements or billings, and client ledger cards of similar records kept, relating to the matter in which the fee dispute arose.
- b) A request by the client to inspect any of the items referred to in (a) must be in writing and must be given to the respondent not later than 20 days prior to the arbitration hearing. The respondent shall either allow inspection and copying or shall provide copies of the requested documents without charge to the client no later than five days from receipt of the request. If the respondent does not comply with the client's request, the panel chair may, at his/her discretion disallow the production of those documents at the hearing.
- c) Nothing in these rules shall prohibit the arbitrators from requiring the parties to submit additional information or documents prior to or at the hearing.

- d) Any material protected by applicable law or rule protected from disclosure to the client is exempt from inspection.
- e) Neither depositions for use as evidence nor any discovery whatsoever is permitted under any circumstances when all parties have not agreed in writing to such discovery.

33. MAKING OF AWARD AND OTHER DECISIONS BY PANEL

In an arbitration before a panel, rulings on the admission of evidence and other such matters not otherwise specified by these rules shall be made by concurrence of at least two or more of its members (Code Civ. Proc. § 1282 (c)). Any arbitrator who disagrees with the majority of the panel is entitled to write a dissenting opinion.

34. FORM AND CONTENTS OF AWARD

- a) The award shall be in writing and signed by the sole arbitrator or, in the case of a panel, by the arbitrators concurring therein. It shall indicate whether the arbitration was binding or non-binding and shall include a determination of all questions submitted to the arbitrators, 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 file findings of fact with their awards. In the discretion of the arbitrators, the award may also include findings as to the willfulness of a party's non-attendance at the hearings.
- b) The award of the sole arbitrator or the panel need not be in any particular form, but it should consist of a preliminary statement reciting the jurisdictional facts (i.e., that a hearing was held pursuant to Rule 4 of the rules; that the parties were given due notice of the hearing and an opportunity to testify, cross-examine and otherwise participate in the proceedings); a brief statement of the dispute; a statement of decision explaining the factual and legal basis for the decision, brief in form, but with sufficient detail to provide a general understanding of the basis of the determination; and the award. Such document is referred to in these Rules as the "award." In the event a refund is determined to be owed to the client and where questions are raised as to who the responsible attorney(s) in the arbitration is, the arbitrator(s) shall make that determination and shall include in the award the name of the attorney(s) and, if appropriate, the law firm(s). The award shall also include substantially the following language, as appropriate:

The arbitrator finds 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:

Client, (name) _____ shall pay to attorney, (name) _____

\$ _____

plus interest in the amount of ten percent per annum from the 30th day after the date of service of this award.

or

Attorney, (name) _____ shall refund to client, (name) _____

\$ _____

plus interest in the amount of ten percent per annum from the 30th day after the date of service of this award.

or

Nothing further shall be paid by either attorney or client.

- c) The arbitration award must specifically exclude any award to either party for attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding, notwithstanding any contract between the parties providing for such an award of attorney's fees.
- d) The award shall include an allocation of the filing fee as determined by the arbitrator or panel. The absence of such allocation in the award will be deemed to mean each party is responsible for the fee arbitration filing fee paid by that party.
- e) In any event, whether the award makes any allocation of cost does not constitute a determination of prevailing party for purposes of Civil Code § 1717.

35. **SERVICE OF AWARD TO PARTIES**

The sole arbitrator or panel shall forward a signed original and two signed copies of the award to the Arbitration Committee Office. Any award not in procedural compliance with these Rules shall be referred to the Arbitration Executive Committee. The Arbitration Executive Committee will then have the task of conforming the award to

these Rules provided the only error is one of procedure or form. The Arbitration Committee Office shall then serve a signed copy of the award and a notice of the parties' post-arbitration rights on each party to the arbitration, together with a proof of service of the award, personally or by first class mail, in accordance with Rule 45..

36. CORRECTION OF AWARD

- a) The Hearing Panel may correct an award only on the grounds set forth in Code of Civil Procedure § 1286.6 (a) [evident miscalculation of figures or evident mistake in the description of a person, thing or property referred to in the award] and § 1286.6 (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 § 1284. An application for correction of the award does not extend the deadline for seeking a trial after a non-binding award is rendered, and a non-binding award will automatically become binding 30 days after it is served on the parties.
- b) A party requesting correction under this rule must file a request in writing to the Program, with a proof of service, and serve a copy on the other party within ten days after service of the award. Any party to the arbitration may make a written objection to such request. Any correction of the award by the Hearing Panel must be made within 30 days after service of the award.
- c) A party may request amendment of the award. A party must file a request to amend the award in writing to the Program, with a proof of service, and serve a copy on the other party at any time prior to judicial confirmation of the award. Any party to the arbitration may make a written objection to such request. Any corrected or amended award, or denial of application to correct or amend the award, shall be served by the Arbitration Committee in the same manner as provided by Rule 35.

37. BINDING ARBITRATION

- a) If both parties agree in writing that arbitration shall be binding, no appeal from the award is allowed, except that provided for by Chapter 4 of Title 9 of Part 3 of the Code of Civil Procedure § 1285 *et seq.* is allowed.
- b) At any time prior to the actual taking of evidence at the hearing, the parties may agree in writing to be bound by the award.
- c) The parties may agree to be bound only after the dispute has arisen.
- d) Once both parties have agreed to be bound neither party may withdraw from the arbitration process without written consent from the other side.

38. FINALITY OF NON-BINDING AWARDS

When any dispute is submitted to mandatory arbitration under these Rules and all parties have not agreed in writing to be bound, the award shall nevertheless become final and binding on the parties, with the same effect as if the parties had originally agreed in writing to be bound, unless, within 30 days after service of the award, a party (i) commences an action in court to resolve the dispute adjudicated in the non-binding arbitration, or (ii) if there is an action pending, files a rejection of arbitration award and requests for trial after arbitration and otherwise complies with Business and Professions Code § 6204 (a). Provided, however, that if any party willfully fails to appear at the hearing for non-binding arbitration 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.

39. ENFORCEMENT OF THE AWARD

Any award made pursuant to these Rules may be enforced in accordance with the provisions of Code of Civil Procedure §§ 1285-1288.8. If an action has previously been filed in any court, any petition to confirm, correct or vacate the award shall be made to the court in which the action is pending and may be served by mail on any party who has appeared, as provided in Chapter 4 (commencing with § 1285) Title 14 of Part 2 of the Code of Civil Procedure; otherwise it shall be served in the same manner as provided in Chapter 4 (commencing with § 1285) Title 9 of Part 3 of the Code of Civil Procedure (Bus. & Prof. Code § 6203 (b)).

40. QUALIFICATION OF ARBITRATORS

- a) No person appointed as an arbitrator shall arbitrate a dispute if he or she has any financial or personal interest in the result of the arbitration or if he or she determines that he or she is not qualified to act as to that dispute for any other reason. A person appointed as an arbitrator shall immediately disclose to the parties and the Arbitration Committee staff any circumstances which might be the basis for a claim of bias or any past or present relationship with the parties or their counsel which might disqualify the arbitrator. If disqualification is not claimed in writing by one or more of the parties within seven days after such disclosure, any claim of disqualification shall be considered waived, but such waiver shall have no effect upon any arbitrator's decision to disqualify himself or herself on his or her own motion.
- b) Any party may claim that one arbitrator is disqualified without cause by written notification to the Arbitration Committee staff and the sole arbitrator or panel served not later than 15 days after service of notice of appointment of the arbitrator or panel. An unlimited number of claims of disqualification served or

raised thereafter shall be considered only on an adequate showing of good cause, to be determined by the sole arbitrator or panel. The sole arbitrator or panel shall consider and rule upon the claim of disqualification.

- c) The party seeking disqualification may appeal the denial by the arbitrator or panel of a claim of disqualification. Any such appeal shall be served in writing on the Arbitration Committee staff within five days after service of the decision appealed from. The appeal shall be decided in writing by the Vice Chairperson with the concurrence of the Chairperson. If the Chairperson and the Vice Chairperson disagree, the Chairperson, in his or her discretion, shall either refer the matter to the Arbitration Executive Committee for decision or designate an additional Vice Chairperson to break the tie. All proceedings before the sole arbitrator or panel shall be stayed until the appeal is decided and until the resulting vacancy is filled.

41. VACANCIES

If any arbitrator should resign, die, withdraw, be disqualified or unable to perform the duties of his or her office as a sole arbitrator or member of a panel, the vacancy shall be filled in accordance with Rule 9 of these Rules.

42. COMPENSATION OF ARBITRATORS; ADMINISTRATIVE CHARGES

- a) No arbitrator shall be entitled to compensation for services unless the hearing extends beyond four hours. Unless waived in writing, each arbitrator will be compensated at the rate of \$175 for each additional hour after a four hour hearing. The compensation shall be paid equally by each party directly to each arbitrator, in advance for each day of hearing on which compensation is payable. No compensation will be paid to arbitrators for services other than during hearing sessions. Any disputes concerning compensation of the arbitrators will be determined by the Arbitration Executive Committee, and its determination shall be binding on the parties, including the arbitrators.
- b) Except for the prescribed filing fees, no charges will be made by the Los Angeles County Bar Association, by the Arbitration Committee, or by any arbitrator, for administrative or clerical services. A hearing room will be provided by an arbitrator or by the Arbitration Committee without charge to the parties.

43. ARBITRATOR AS WITNESS

No arbitrator appointed under these Rules shall be competent to testify in any subsequent civil proceeding, as to any statement or conduct occurring during the course of the arbitration proceeding, except as to a statement that could (a) give rise to civil or criminal contempt, (b) constitute a crime, (c) be the subject of investigation by the State Bar or

Commission on Judicial Performance, or (d) give rise to disqualification proceedings under Code of Civil Procedure § 170 (5) (Evid. Code § 703.5).

44. CONFIDENTIALITY

- a) In order to preserve confidentiality, all hearings shall be closed to the public. However, in the discretion of the arbitrator or panel, witnesses and other such persons as may be necessary to the conduct of the hearing may be present during the hearing.
- b) The panel, upon request of the client, shall permit the client to be accompanied by another person and may also permit additional persons to attend.
- c) All communications, negotiations, or settlement discussions by and between the participants and/or arbitrators in the arbitration shall remain confidential. Evidence of anything said or any admissions made in the course of the arbitration shall not be admissible in evidence or subject to discovery, and disclosure of that evidence cannot be compelled in any civil action or proceeding in which testimony can be compelled to be given.
- d) No document prepared for the purpose of, or in the course of, or pursuant to the arbitration (nor any copy of it), including but not limited to the case file, the request, reply, the award, all financial data pertaining to “consumers” as defined in Code of Civil Procedure § 1985.3, exhibits, transcripts, and all correspondence, shall be admissible in evidence or available through discovery, and its disclosure shall not be compelled in any civil action or proceeding in which testimony can be compelled to be given; provided, however, that a communication or a document (or any part thereof) that would otherwise be privileged or confidential pursuant to this Rule may be disclosed if all parties to the arbitration give their consent.

45. 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 pre-paid, addressed to the person on whom it is to be served, at his or her office address as last given, on any document which has been filed in the arbitration and served on the party making service by mail; otherwise at his or her place of residence. The service is complete at the time of deposit in the mail (Code Civ. Proc. § 1013 (a)). The timing for performing any act shall commence on the date service is complete and shall not be extended by reason of service by mail.
- b) 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 § 1013 (a), postage paid, addressed to the person on whom it is to be served, at his or her address as last given, on any document which has been filed in the arbitration. The client shall keep the program advised of his or her current address.

- c) Unless otherwise specifically stated in these rules, service on an individual attorney shall be at the latest address shown on the official records of the State Bar. Service shall be in accordance with Rule 48 (b) above.
- d) In the event the attorney does not file a Response, service on an individual attorney shall be at the latest address shown on the official records of the State Bar and the address listed on the Petition for Arbitration if these addresses differ. If the fee dispute is with a law firm, service shall be on the address as shown in the Request For Arbitration form unless the law firm designates an attorney to be responsible for the arbitration, then service shall be on the designee's address shown on the official records of the State Bar.
- e) Electronic Service
 - i. In addition to the methods of service provided for in subdivision (a) of these Rules, 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 Arbitrator(s) or the Arbitration Committee staff in lieu of service by mail by providing to the Arbitrator(s) or Arbitration Committee staff written consent to receive electronic service of documents from the Arbitrator(s) or Arbitration Committee staff at the party's designated electronic address.
 - iii. Service pursuant to this subsection is complete upon transmission.

46. CERTIFICATION OF DOCUMENTS FOR JUDICIAL PROCEEDINGS

The Arbitration Committee staff shall, upon written request of a party, furnish to such party, at his or her expense, certified copies of any papers in the possession of the Association that may be required in judicial proceedings relating to the arbitration.

47. RETENTION OF FILES

The Arbitration Committee staff may, without prior notice, destroy any file five years after service of the award or, if no award is rendered, five years after the last paper is received from any party.

48. LIMITATION OF ACTIONS; JUDICIAL RESOLUTION OF ARBITRATION DISPUTE

The time for filing a civil action seeking judicial resolution of a dispute subject to arbitration under this article shall be tolled from the time an arbitration is initiated in accordance with the rules adopted by the board of governors until: (a) 30 days after receipt of notice of the award of the arbitrators; or (b) receipt of notice that the arbitration is otherwise terminated, whichever comes first (Bus. & Prof. Code § 6206).

49. INTERPRETATION OF RULES

The Arbitration Executive Committee has the authority to interpret these Rules, and to determine their application to specific situations and their interaction with related statutory and case law. When the Chairperson determines it is in the best interest of the arbitration program to do so, the Arbitration Executive Committee may issue written opinions expressing such interpretations. Such opinions shall be issued upon the approval of a majority of the Arbitration Executive Committee, and, upon issuance, shall have the same force and effect as the Rules. Issued opinions shall be maintained in a permanent file at the Arbitration Committee's Office and shall be available to the public.

50. CONTACTS WITH ARBITRATORS

A party or an attorney acting for a party shall not directly or indirectly contact an arbitrator regarding a matter pending before such arbitrator, except:

- a) At the scheduled hearing;
- b) In writing with a copy to all parties, or their respective counsel, if any, and the Arbitration Committee;
- c) For purposes of scheduling a hearing date or other administrative procedure or matter;
- d) In an emergency.

Nothing in this Rule shall be interpreted or construed to prohibit the arbitrator from contacting a party or attorney for the party to discuss an administrative or procedural matter.

51. IMMUNITY

- a) In any arbitration, whether voluntary or mandatory, the arbitrator(s), the Arbitration Committee, Arbitration Executive Committee, the Los Angeles County Bar Association, and their officers, directors, and employees or agents shall have the same immunity, which attaches in judicial proceedings (Bus. & Prof. Code Section 6200(f)).
- b) In any arbitration, whether voluntary or mandatory, neither the arbitrator(s), the Arbitration Committee, the Los Angeles County Bar Association, nor their officers, directors, and employees or agents is a necessary party in judicial proceedings relating to the arbitration, nor shall any of them be liable to any party for any act or omission arising out of any proceeding initiated or conducted under these Rules.

Approved ____ 2020