

# Instructions and Information for Requesting Fee Arbitration

## INSTRUCTIONS

1. **READ** the *San Fernando Valley Bar Association Rules of Procedure for Fee Arbitrations*.
2. **COMPLETE** both pages of the *Client/Attorney Request for Arbitration of a Fee Dispute* form. Include additional pages to describe the fee dispute. **Sign and date the form. An incomplete form will be returned to you.** If you are initiating the fee dispute because you received a *Notice of Client's Right to Arbitration* from the attorney, **a returned form will effect your filing date.** The filing date is the day that our office receives your completed form. If you do not file by the 30-day deadline as stated in the notice, you will have waived your right to arbitration, thereby allowing the attorney to sue you to collect the fees. If you do not understand any part of the form or if you need help in completing it, please telephone our office and speak to a staff member who will help you.
3. **MAIL** the **complete original** *Client/Attorney Request for Arbitration of a Fee Dispute* form and any supporting documents that you wish to submit, accompanied by an additional:
  - **three (3) copies of the original form and your supporting documents if the disputed amount is less than \$10,000;** or
  - **five (5) copies of the original form and your supporting documents if the disputed amount is \$10,000 or more;** and
  - **A check, money order or credit card payment for the filing fee;**

**To:**           **San Fernando Valley Bar  
Association Mandatory Fee  
Arbitration Program  
20750 Ventura Blvd., Suite 140  
Woodland Hills, CA 91364**

## OTHER INFORMATION

1. **HEARINGS.** Fee disputes involving \$1,000 or less are decided without a hearing by the Committee Chair or designee based on the pleadings. Each party must submit all supporting documents and a complete written statement of the reasons for the dispute under penalty of perjury. If the amount in controversy is less than \$1,000 but more than \$500, any party may request that the parties appear at a hearing, either in person or telephonically, before the Committee Chair or designee assigned to the matter in addition to providing the written information required (Rule 21.3).
2. **WHO CAN REQUEST ARBITRATION.** Only the person or entity represented by the attorney can request arbitration. If someone else is being charged for the fees, the client must make the request and include that person as a party. Both the client and the other party must sign the request form (Rule 14.4).
3. **STAY OF PROCEEDINGS.** If you have been sued, you may stay the action by filing a *Notice of Automatic Stay* form with a copy of your completed request for arbitration with the court and the attorney (Rule 9.0). You may call this office for the appropriate form to notify the attorney and the court that the action has been stayed pending arbitration.
4. **WAIVER OF PERSONAL APPEARANCE.** If you cannot attend the hearing, you may waive your personal appearance (Rule 27.0) and have the matter decided on the documents submitted or have someone appear for you. If you wish to waive your personal appearance or if you want someone else to appear for you, you must complete a *Waiver of Personal Appearance* form. Please contact this office and ask that one be mailed to you.

**ATTORNEY REQUEST FOR ARBITRATION OF A FEE DISPUTE**

San Fernando Valley Bar Association fee arbitration matters are governed by the San Fernando Valley Bar Association Rules of Procedure for Fee Arbitrations which were sent to you with this form. If you do not have a copy, contact this office IMMEDIATELY or download the rules from the website at [www.sfvba.org](http://www.sfvba.org). You should read the rules carefully and, if you have questions after you have done so, contact this office for additional information.

PLEASE PRINT OR TYPE.

1. (a) **ATTORNEY**

(b) **CLIENT(S)** (with whom there is a fee dispute)

\_\_\_\_\_  
Name(s)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Firm name

\_\_\_\_\_  
Company name (if applicable)

\_\_\_\_\_  
Box or street address

\_\_\_\_\_  
Box or street address

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Telephone Number E-Mail address

\_\_\_\_\_  
Telephone Number E-Mail address

2. If you are, or will be, represented by an attorney in the arbitration, provide the name, address and telephone number:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Firm name

\_\_\_\_\_  
Box or street address

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Telephone Number E-Mail address

3. When did you first talk with or were hired by the client? \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

4. When did you stop representing the client? \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

5. Was the client referred to you by the SFVBA Lawyer Referral Service?  Yes  No

6. What type of case resulted in the dispute (divorce, criminal, etc.)? \_\_\_\_\_

7. Please attach a detailed description of the fee dispute with any supporting documents.

8. Do you have a written fee agreement? (If yes, please attach a copy.)  Yes  No  
If yes, do you have an arbitration clause in the agreement?  Yes  No

9. Was your fee agreement contingent?  Yes  No  
If yes, is the matter concluded?  Yes  No

10. Did you serve the client with a **Notice of Client's Right to Arbitration**?  Yes  No  
If yes, when did you serve it? \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ (Please attach a copy of the notice.)

11. Have you filed a lawsuit to collect this fee? (If yes, please attach a copy of the complaint.)  Yes  No

12. Has the client filed a lawsuit against you? (If yes, please attach a copy of the complaint.)  Yes  No

13. Were the attorney's fees ordered by the court or set by law?  Yes  No (If yes, explain on a separate sheet.)

14. Total fees and costs billed to the client \$ \_\_\_\_\_

15. Total amount paid by the client \$ \_\_\_\_\_

16. **DISPUTED AMOUNT** (Subtract line 15 from line 14) \$ \_\_\_\_\_

17. **FILING FEE:** (\$50 plus 5% of the disputed amount shown on line 16 if the amount is less than \$10,000; 6% of the disputed amount if the amount is \$10,000 or more but less than \$20,000; or 7% of the disputed amount when the total amount is \$20,000 or more, with a maximum fee of \$5,000).

\$ \_\_\_\_\_

Method of Payment:

- Check or money order payable to the **San Fernando Valley Bar Association**.
- Please charge my credit card for \$\_\_\_\_\_.

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Credit card number	Expiration Date	Authorized Signature
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18. If the fee dispute is for \$10,000 or less, it is heard by one (1) arbitrator. If it is for more than \$10,000, it is heard by three (3) arbitrators. If all parties agree, you can have the dispute heard by one (1) arbitrator even if the dispute is for more than \$10,000.

- The dispute is for \$10,000 or less
- The dispute is for more than \$10,000 and **I agree** to one arbitrator.
- The dispute is for more than \$10,000 and **I do not agree** to one arbitrator.

19. Unless both parties agree in writing to BINDING ARBITRATION after the fee dispute arises, this arbitration is NON-BINDING. Non-binding arbitration means that if either party is unhappy with the award, either party has the right to ask for a trial in a *civil court*. Requesting a trial after arbitration will require filing documents with the appropriate court within 30 days from the date the award is mailed. Unless a party requests a trial after arbitration, the award *automatically* becomes *final* and *binding*.

If both parties agree in writing to make the arbitration BINDING, a new trial may *not* be requested and the award will *immediately* become final and binding on both parties with limited rights to challenge the award in civil court.

Do you agree to binding arbitration?       Yes  No

**I declare under penalty of perjury under the laws of the State of California that my statements on this request and any attachments are true and correct. I have read and agree to abide by the Rules of Procedure of this program and confirm that I understand the refund schedule (Rule 19.3).**

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Attorney's Signature

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Date

**Mail this original form, supporting documents, copies\* and filing fee to:**

**San Fernando Valley Bar  
Association Mandatory Fee  
Arbitration Program  
20750 Ventura Blvd., Suite 140  
Woodland Hills, CA 91364  
Telephone (818)227-0490**

\*Include four (4) copies of this form and supporting documents for disputes of less than \$10,000. Include six (6) copies of this form and supporting documents for disputes of \$10,000 or more. Cases will not be accepted without the correct number of copies. **DO NOT FAX.**

**San Fernando Valley Bar Association  
Rules of Procedure for Fee Arbitrations**

Adopted by San Fernando Valley Bar Association Board of Trustees October 10, 2006

Approved by State Bar Board of Governors November 17, 2006

**ARTICLE I  
DEFINITIONS**

**RULE 1.0. Definitions**

As used in this chapter:

- 1.1 ACTION:** A civil judicial proceeding brought to enforce, redress or protect a right.
- 1.2 ADMINISTRATOR:** The staff person responsible for administering the San Fernando Valley Bar Association's ("Association") Mandatory Fee Arbitration Program.
- 1.3 ASSIGNEE:** A person to whom a claim, right or property is transferred.
- 1.4 AWARD:** The decision of the arbitrator or arbitrators in the fee arbitration proceeding.
- 1.5 CLIENT:** A person who directly or through an authorized representative consults, retains or secures legal services or advice from an attorney in the attorney's professional capacity.
- 1.6 COMMITTEE CHAIR:** The President of the Association shall appoint a Chair of the Mandatory Fee Arbitration Committee ("Committee") responsible for supervising the program's fee arbitrators and for ruling on matters as set forth in these rules.
- 1.7 DECLARATION:** A declaration is a document in compliance with the requirements of Code of Civil Procedure section 2015.5, or an affidavit.
- 1.8 FILE:** Fee arbitration records and papers in a specific fee arbitration case.
- 1.9 HEARING PANEL:** One or three arbitrators assigned to hear the fee dispute and to issue the award.
- 1.10 PANEL CHAIR:** Refers to either the sole arbitrator or Panel Chair of a three-member panel assigned to hear a matter. The Panel Chair is responsible for ruling on matters pertaining to the individual case assigned as set forth in these rules.
- 1.11 PARTY:** A person who initiates or is named in an arbitration proceeding under these rules, including an attorney, a client or other person who may be liable for payment of, or entitled to a refund of attorney's fees.

**1.12 PROGRAM:** Unless indicated otherwise, reference to the program means the Mandatory Fee Arbitration Program of the San Fernando Valley Bar Association.

**1.13 STATE BAR:** The State Bar of California. Unless indicated otherwise, reference to the State Bar means the State Bar's Office of Mandatory Fee Arbitration.

## **ARTICLE II ARBITRATION GENERALLY**

### **RULE 2.0 Arbitration Mandatory For Attorneys**

Arbitration under Business and Professions Code sections 6200-6206 is voluntary for a client, unless the parties agreed in writing to submit their fee disputes to arbitration, and mandatory for an attorney if commenced by a client.

### **RULE 3.0 Party's Failure To Respond Or Participate**

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

### **RULE 4.0 Disputes Covered**

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

- 4.1** disputes where the attorney is admitted to practice in another jurisdiction, or where the attorney is only admitted to practice in another jurisdiction, and he or she maintains no office in the State of California, and no material portion of the services was rendered in the State of California;
- 4.2** claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct;
- 4.3** disputes where the fees or costs to be paid by the client or on the client's behalf have been determined or are determinable pursuant to statute or court order;
- 4.4** disputes where the request for arbitration is made by a person who is not liable for or entitled to a refund of attorney's fees or costs; or
- 4.5** disputes where the claim has been assigned by the client.

### **RULE 5.0 Binding Arbitration**

- 5.1** Arbitration is not binding unless all parties agree in writing after the fee dispute arises. Such agreement shall be made prior to the taking of evidence at the hearing. If any party has not agreed in writing to binding arbitration, the arbitration is non-binding. Any party may request a trial after arbitration in a civil court pursuant to Business and

Professions Code section 6204 within 30 days after the arbitration award has been served. If a trial after arbitration is not requested, the award automatically becomes binding 30 days after the award is served, except that if any party willfully fails to appear at the hearing as provided for under these rules, that party shall not be entitled to a trial after arbitration. The decision as to whether the non-appearance was willful is made by the court. The party who failed to appear at the hearing shall have the burden of proving that the failure to appear was not willful.

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

#### **RULE 6.0 Withdrawal of Binding Arbitration Election**

- 6.1** If the parties agree in writing, after the fee dispute arises, to binding arbitration, the arbitration shall proceed as binding. The parties may request binding arbitration as provided on the program forms. In the absence of a written agreement made after the fee dispute arises to submit to binding arbitration, the arbitration shall be non-binding.
- 6.2** A party who has requested binding arbitration may withdraw that request and request a change to non-binding arbitration in writing to the program and the other parties, so long as the other parties have not already agreed to binding arbitration.
- 6.3** If the party who initially requests arbitration requests that the arbitration will be binding, and the respondent party's Reply agrees to binding arbitration but also seeks to materially increase the amount in dispute, then the party who requested arbitration may withdraw his request that the arbitration be binding. Such withdrawal of consent to binding arbitration, by the initiating party, must be communicated in writing to the Program within ten days of that party's receipt of the Reply.
- 6.4** Except as provided above, if the parties have already agreed to binding arbitration, the binding election may be changed to non-binding arbitration only by written agreement signed by all parties and sent to the program.

#### **RULE 7.0 Right To Counsel**

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

#### **RULE 8.0 Waiver Of Right To Request Or Maintain Arbitration**

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

- 8.1** answers a complaint in a civil action or other equivalent response to the civil action before filing a request for arbitration, after the required form entitled "Notice of Client's Right to Arbitration" was given pursuant to Business and Professions Code section 6201(a);

- 8.2** commences an action or files any pleading seeking judicial resolution of a fee or cost dispute or seeking affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct;
- 8.3** fails to deliver to the program a request for arbitration on the approved program form that is postmarked or received on or before the 30th day from the date of the client's receipt of the form entitled "Notice of Client's Right to Arbitration" given pursuant to Business and Professions Code section 6201, subdivision (a). Should the fee dispute transfer to a different fee arbitration program after the request for arbitration is filed, the original date of postmark or receipt of the arbitration request will be preserved for purposes of determining whether jurisdiction exists.

#### **RULE 9.0 Stay Of Proceedings**

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

### **ARTICLE III PROGRAM**

#### **RULE 10.0 Determination Of Jurisdiction**

- 10.1** The program shall reject any request for arbitration when it is clear from the face of the request that the provisions of Business & Professions Code section 6200 have not been met or the matter is time barred under Business & Professions Code section 6206. Where the existence of an attorney-client relationship is in dispute, the parties may stipulate to submit the issue for a determination by the program, which otherwise lacks jurisdiction to determine that issue.
- 10.2** The Committee Chair may request that the parties submit written statements supporting their respective positions on the issue of whether the program has jurisdiction over their fee dispute or whether the dispute is time barred. For good cause, Committee Chair may assign the matter to a hearing panel to take evidence and make a determination of whether jurisdiction should be accepted.
- 10.3** Within 15 days from service of notice of a ruling on a challenge to jurisdiction or claim that the matter is time barred, a party may file a written request for reconsideration based on new evidence. The Committee Chair shall rule on the request for reconsideration.

- 10.4** There is no appeal of the Committee Chair's decision following reconsideration. Any ruling on reconsideration by the local bar program is final.
- 10.5** If there is an approved local bar association program that is willing to accept jurisdiction where the parties consent in writing to submit to such jurisdiction, a program may assume jurisdiction over a matter even if the program does not have original jurisdiction.

**RULE 11.0 Jurisdiction by the Program**

The Program shall have jurisdiction over a fee dispute if at least one of the attorneys involved in the dispute has an office in Los Angeles County or Ventura County or maintained an office in Los Angeles County or Ventura County at the times the services were rendered.

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

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

a) The party seeking removal from the program must submit a declaration signed under penalty of perjury asserting the factual basis for the removal. That party need not submit an additional filing fee to the State Bar until there has been a final ruling by the State Bar's Presiding Arbitrator granting removal to the State Bar.

b) The State Bar will serve the request for removal and supporting declaration on the other parties and the program. Any written responses must be received by the State Bar within 15 days of service of the request for removal and declaration for consideration by the State Bar's Presiding Arbitrator.

c) The party seeking removal must provide all additional information requested by the State Bar within the time limits set by the State Bar.

d) A request for removal to the State Bar will be decided by the State Bar's Presiding Arbitrator under the applicable rules of procedure of the State Bar.

**12.2** The State Bar's Presiding Arbitrator shall deny a request for removal if he or she determines that:

a) The other parties to the local bar program's arbitration or the program itself would be prejudiced by removal and such prejudice outweighs the allegations by the party seeking removal that the party believes that a fair hearing through the local bar's program cannot be obtained; or

b) The conduct of the party seeking removal during the course of the arbitration proceedings before the local bar program is clearly inconsistent with a bona fide belief by that party that he or she cannot obtain a fair hearing in that forum; or



c) The party seeking removal has waived any claim that the party cannot obtain a fair hearing before the local bar's arbitration program.

**RULE 13.0 Effect Of Failure to Adhere to Time Requirements**

The program shall neither lose jurisdiction, nor shall any arbitration be dismissed nor any award invalidated or modified in any way, solely because of the program's or the hearing panel's failure to comply with time requirements as set forth in these rules.

**ARTICLE IV  
INITIATION OF ARBITRATION PROCEEDING**

**RULE 14.0 Request For Arbitration**

- 14.1** Arbitration is initiated by filing a written "Request For Arbitration" with the program on the approved program form and paying the appropriate filing fee as established by the program. Service of the request on the other party with whom there is a fee dispute named on the request form shall be made by the program.
- 14.2** At the time of service of a request on an attorney, the program shall serve with it a copy of the approved "Notice of Attorney Responsibility" form.
- 14.3** The party requesting arbitration may amend the request up to 15 days after mailing it to the program, unless a request for clarification is made by the program. Thereafter, it may be amended only with the approval of the Committee Chair or by the Panel Chair, if a notice of assignment of the hearing panel has been served on the parties.
- 14.4** The request for arbitration form must be signed by the client. The client may include as a party to the arbitration any person who is not the client of the attorney but who may be liable for or entitled to a refund of the attorney's fees or costs, or both so long as that person signs the request. If arbitration is requested by any other person who may be liable for or entitled to a refund of attorney's fees included by the client, that person must also sign the request.

**15.0 Filing Fee**

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

**15.1 Filing Fee Schedule**

The filing fee schedule for arbitration is based on the amount in dispute as follows:

- (a) Fifty dollars plus five percent (5%) of the amount in dispute when the total amount in dispute is less than \$10,000.

(b) Six percent (6%) of the amount in dispute when the total amount in dispute is \$10,000 or more but less than \$20,000.

(c) 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.

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

**16.1** A party seeking arbitration may file with the program an application for a filing fee waiver on the approved program form. The person seeking waiver of the filing fee who is not a client and who may be liable for or entitled to a refund of attorney's fees identified by the client as set forth in Rule 14.4, may be required to submit supporting documents regarding his or her own financial status to the program to support the client's application for a filing fee waiver. If the non-client party replies to the program that he or she no longer has an interest in the outcome of the arbitration, the application will proceed based on the client's supporting documents alone.

**16.2** For good cause shown, the Committee Chair may grant or deny the filing fee waiver or order a reduced fee. The order of the Committee Chair shall be final.

**16.3** The financial statement filed in support of a request for a fee waiver shall not be disclosed by the program to the other party.

#### **RULE 17.0 Response To Request For Arbitration**

**17.1** The respondent party's reply to a Request for Arbitration, together with any response, if the respondent party is an attorney, to the issue of the attorney's responsibility for any award that refunds fees or costs or both to the client, shall be submitted to the program on its approved form within 30 days of the service of the request, unless an extension of time to reply is obtained from the program.

**17.2** If the attorney seeks arbitration, and there is no written agreement between the parties that fee disputes be submitted to fee arbitration, arbitration shall proceed only if the client consents in writing on the approved form within 30 days of service of the request, unless the attorney is seeking removal from a local bar program under rule 10.2 of a matter in which the client has already requested arbitration or has consented to an attorney's request for arbitration.

#### **RULE 18.0 Requests and Responses to Requests for Arbitration**

Parties filing or responding to a Request for Arbitration shall file one original and the required number of copies of all forms and supporting documentation with the program. Copies of materials filed with the program will be forwarded to the other party and the hearing panel assigned to hear the matter.

## **RULE 19.0 Settlement Of Disputes; Withdrawal From Arbitration; Refund Schedule**

- 19.1** Upon confirmation by the parties or the hearing panel if one has been assigned that a dispute has been settled, the matter shall be dismissed by the program in the absence of an assigned hearing panel, or by the Panel Chair if a notice of assignment of the hearing panel has been served on the parties.
- 19.2** (a) If a party wishes to withdraw from a binding arbitration and the matter has not been settled, all other parties must agree to the matter being withdrawn.
- (b) If there is a written agreement between the parties requiring arbitration of the fee dispute through the Mandatory Fee Arbitration Program, all other parties must consent to a request for withdrawal before the proceeding is dismissed.
- (c) If arbitration has been requested by the attorney, the matter may only be dismissed with the agreement of the other parties.
- (d) In all other cases, the party who requested arbitration may withdraw from the arbitration proceeding without the consent of other parties at any time before evidence is taken.
- 19.3** (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 an arbitrator, the Program will retain 50% of the total filing fee with a \$50 minimum.
- (c) In cases closed after the assignment of a 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, unless the Program receives written notice of settlement or withdrawal of the arbitration at least ten (10) days prior to the date set for the arbitration hearing.
- (e) In cases closed where either the petitioner is a lawyer or law firm and the respondent declines arbitration, or the Committee determines it does not have jurisdiction, the Program will retain 10% of the filing fee with a minimum of \$50 dollars.
- 19.4** If the parties settle the fee dispute and wish to obtain a stipulated award incorporating the terms of a written settlement agreement, the Committee Chair, if no hearing panel has been assigned, or the Panel Chair, if the hearing panel has been assigned, may issue a stipulated award incorporating by reference the parties' written settlement agreement. The Program will serve the stipulated award in the same manner as it would serve an arbitration award as prescribed elsewhere in these rules.

## **RULE 20.0 Consolidations**

A party may request, in writing, that two or more arbitration matters be consolidated for hearing. The Program will serve the other party with a copy of the request. A written reply may be filed with the program within 15 days of service of the request for consolidation. The Committee Chair shall rule on all written requests to consolidate. The order of the Committee Chair shall be final. Consolidation will not result in a refund of filing fees paid or reduction of filing fees owed to the Program.

## **ARTICLE V PANELS**

### **RULE 21.0 Appointment Of Panel**

- 21.1** For each dispute, the Program shall assign a hearing panel from the program's roster of fee arbitrators. A hearing panel shall consist of one attorney arbitrator if the amount in dispute is \$10,000 or less and three arbitrators if the amount in dispute is more than \$10,000, one of which shall be a non-lawyer. An attorney arbitrator shall be designated as Panel Chair. If the amount in dispute is more than \$10,000, the parties may agree, in writing, to have the matter heard by a single attorney arbitrator.
- 21.2** Upon the client's request, the program shall assign a sole arbitrator, or in the case of a three person panel, one of the attorney arbitrators, whose area of practice is civil or criminal law. Any such designation made by the client shall be of an arbitrator who practices in the same area of law as was involved in the matter for which the attorney was retained by the client. Any such request made pursuant to Business and Professions Code section 6200, subdivision (e) must be submitted by the client at the time the written "Request for Arbitration" on the approved program form is submitted to the program.
- 21.3** If a fee dispute involves \$1,000 or less, the arbitration shall be decided by the Committee Chair or designee. Each party shall submit all supporting documents and a complete written statement of the reasons for the dispute, a response, or both, under penalty of perjury. The parties have 30 days from the service by the program of the reply to the arbitration request, which will be reflected in a proof of service. The record shall thereafter be forwarded to the Committee Chair or designee for action, who may require either or both parties to submit additional information within 30 days. However, if the amount in controversy is less than \$1,000 but greater than \$500, the parties upon the request of any party, may appear at a hearing, either in person or telephonically, before the Committee Chair or designee assigned to the matter, in addition to providing the written information required by this section. The program shall keep a permanent record of the number of fee disputes in which the amount in controversy is between \$500 and \$1,000 and of that number, the number of fee disputes in which any party requested a hearing. The parties shall be informed of this rule at the time of the program's service of a completed arbitration request form.

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

**RULE 22.0 Notice Of Appointment Of Panel**

A notice identifying the arbitrator(s) who will hear the dispute shall be served on the parties within 60 days of the date on which the reply to the arbitration request is received, or as soon thereafter as is reasonably possible. If no reply is received, the notice of appointment of panel will be served within 60 days of the date on which the time to file the response expired, or as soon thereafter as is reasonably possible.

**RULE 23.0 Challenge Disqualification Of Arbitrator(s)**

Each party may disqualify one arbitrator without cause and shall have unlimited challenges for cause. Any disqualification without cause of an arbitrator shall be ineffective unless made in writing and served on the program within 15 days of the service of a notice of assignment of panel or substitute arbitrator(s) if there is a disqualification or successful challenge. An arbitrator who believes that he or she cannot render a fair and impartial decision or who believes that there is an appearance that he or she cannot render a fair and impartial decision, shall disqualify themselves or shall accede to a party's challenge for cause. If an arbitrator does not agree to be disqualified, the challenge shall be decided by the Committee Chair.

**RULE 24.0 Discharge Of Arbitrator Or Panel**

The Committee Chair shall have the authority to discharge an arbitrator or panel of arbitrators from further proceedings on a matter whenever the Committee Chair, in his or her sole discretion, determines that there has been an unreasonable delay in performing duties under these rules, or for other good cause shown.

**RULE 25.0 Prohibited Contacts With Arbitrators**

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

- a) At scheduled hearings;
- b) In writing with a copy to all other parties, or their respective counsel, if any, and the program;
- c) For the sole purpose of scheduling a hearing date or other administrative procedures with notice of same to the other parties;

- d) For the purpose of obtaining the issuance of a subpoena as set forth in these rules; or
- e) In an emergency.

## **ARTICLE VI THE HEARING**

### **RULE 26.0 Confidentiality**

- 26.1** All hearings shall be closed to the public. However, in the discretion of the hearing panel and in the absence of any objections by the parties, witnesses may be present during the hearing.
- 26.2** The hearing panel, upon request of the client, shall permit the client to be accompanied by another person and may also permit additional persons to attend. Any such person shall be subject to the confidentiality of the arbitration proceedings.
- 26.3** The arbitration award is public; the arbitration case file, including the request, reply, exhibits and transcripts, remains confidential.

### **RULE 27.0 Waiver Of Personal Appearance**

- 27.1** Upon advance approval of the Panel Chair, any party may waive personal appearance and submit to the hearing panel testimony and exhibits by written declaration under penalty of perjury.
- 27.2** Any party unable to attend a hearing may designate a lawyer or non-lawyer representative.
- 27.3** Any party may request to appear by telephone, subject to the advance approval of the Panel Chair.
- 27.4** A request for waiver of appearance or designation of a representative and the submission of testimony by written declaration or request for telephonic appearance pursuant to this rule shall be filed with the Panel Chair and served on all parties at least 10 days prior to the hearing.

### **RULE 28.0 Death Or Incompetence Of a Party**

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

### **RULE 29.0 Discovery**

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

### **RULE 30.0 Subpoenas**

The Committee Chair may issue subpoenas and/or subpoenas duces tecum at the request of a party. The Committee Chair or Panel Chair shall provide signed, blank subpoenas to the requesting party who shall be responsible for service of the subpoenas. The party requesting subpoenas will be responsible for any witness fees and any costs of service of the subpoenas.

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

- 31.1** The hearing shall commence within 45 days for a single arbitrator panel or 90 days for a three- member panel after the date of service of the “Notice of Assignment of Panel.” A disqualification or allowed challenge of an assigned arbitrator will result in a 15- day extension from the date of the assignment of replacement member(s). Upon stipulation or application to the Panel Chair, the matter may be continued for good cause shown except in the instance where the continuance is for 30 days or more, in which case the continuance must be approved by the Committee Chair.
- 31.2** The panel shall serve written notice of hearing on each party at the address in the “Notice of Assignment of Panel” and the program within 15 days of its assignment and at least 15 days prior to the hearing date. Appearance by a party at a scheduled hearing shall constitute waiver by said party of any deficiency with respect to the giving of “Notice of Hearing.” Notwithstanding the failure of either party to attend, the hearing shall proceed as scheduled and a decision made on the basis of evidence submitted.
- 31.3** An award shall not be made against a party solely because of the party's absence. The panel shall require the party who is present to submit such evidence as may be required to support the making of an award.
- 31.4** An award may be made in favor of a party who is absent if the evidence so warrants. If neither party appears and the panel chair has not approved waiver of personal appearance, the panel will issue an award based on the evidence submitted.
- 31.5** If one of the panel members fails to appear, upon written stipulation of the parties, the hearing may proceed with the panel chair acting as the sole arbitrator. Under no circumstances will the hearing proceed with two arbitrators or with one lay arbitrator.
- 31.6** If all parties so stipulate, the sole arbitrator or Hearing Panel shall decide all matters without a hearing based upon the Petition, Reply and any other written materials provided by the parties. All such written materials shall be filed with the hearing panel and served on all other parties.

### **RULE 32.0 Stipulations Encouraged**

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

**RULE 33.0 Oaths**

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

**RULE 34.0 Evidence**

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

**RULE 34.5 Clarification Of Issues And Exchange Of Documents**

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

**RULE 35.0 Order Of Proof**

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

**RULE 36.0 Interpreter**

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

**RULE 37.0 Transcripts or Recordings**

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

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

**38.1** No arbitrator shall be entitled to compensation for services unless the hearings extend beyond four hours. Unless waived in writing, each arbitrator will be compensated at the rate of \$250 for each additional half day after a four hour hearing. A hearing of four hours or less in one day will be considered as a one- half day hearing. A hearing of more than four hours in one day will be considered as a one-day hearing. The compensation shall be paid equally by each party to the program, in advance, for each



day of hearing on which compensation is payable. No compensation will be paid to arbitrators for services other than during formal hearing sessions extending beyond four hours. Any disputes concerning compensation of the arbitrators will be determined by the Committee Chair, and its determination shall be binding on the parties, including the arbitrators.

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

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

## **ARTICLE VII AWARD**

### **RULE 39.0 Award**

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

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

**39.3** The award shall include substantially the following language, as appropriate:

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

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

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

Pre-award interest [check box]: [  ] is not awarded.  
[  ] is awarded in the amount of \$ \_\_\_\_\_

In addition, the fee arbitration filing fee of \$ \_\_\_\_\_ as paid by \_\_\_\_\_ shall be allocated:

Client: \$ \_\_\_\_\_  
Attorney: \$ \_\_\_\_\_

For a net amount of: \$ \_\_\_\_\_

Accordingly, the following award is made:

a) Client, \_\_\_\_\_ (name) \_\_\_\_\_, shall pay attorney, \_\_\_\_\_ (name) \_\_\_\_\_: \$ \_\_\_\_\_

**OR**

b) Attorney, \_\_\_\_\_ (name) \_\_\_\_\_, shall pay client, \_\_\_\_\_ (name) \_\_\_\_\_: \$ \_\_\_\_\_

**OR**

c) Nothing further shall be paid by either attorney or client.

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

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

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

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

**39.8** The award may include an allocation of the filing fee; however, it shall not include an award for any other costs of the arbitration, including attorneys' fees resulting from the arbitration proceeding.

**39.9** The panel shall forward the original of the signed award to the Program, which shall serve a copy of the award by mail on each party together with a Notice of Rights After Arbitration form approved by the State Bar Board of Governors. No award is final or is to be issued until approved for procedural compliance and as to the form of the award by the Committee Chair or such person as the Chair may designate for this purpose. After approval of the award as to the procedural compliance and approval as to the form of the award, the Program shall serve a copy of the award by mail on each party together with a Notice of Rights After Arbitration form approved by the State Bar Board of Governors. Any party who has submitted exhibits or documents to the panel shall, upon service of the award, make arrangements to retrieve them.

## **RULE 40.0. Correction Of Award By Hearing Panel**

- 40.1** The Hearing Panel may correct a binding or non-binding award only on the grounds set forth in Code of Civil Procedure section 1286.6, subdivision (a) [evident miscalculation of figures or evident mistake in the description of a person, thing or property referred to in the award] and subdivision(c) [the award is imperfect in a matter of form, not affecting the merits of the controversy] under the procedures set forth in Code of Civil Procedure section 1284. An application for such a correction does not extend the deadline for seeking a civil trial after a non-binding award is rendered, and a non-binding award will automatically become binding 30 days after it is served on the parties.
- 40.2** A party requesting correction or amendment under this rule must file a request in writing to the Program and serve a copy on the other party within ten days after service of the award. Any party to the arbitration may make a written objection to such request.
- 40.3** Any corrected or amended award will be served by the Program. The time for filing a petition to confirm, vacate or correct the award begins from the date of service of the amended or corrected award, the date of denial of the request for correction or amendment of the award, or the date that a request that a request for correction of amendment of the award is deemed denied under Code of Civil Procedure 1284, whichever date is earlier.
- 40.4** The Hearing Panel shall either deny the application or correct the award in writing signed by the arbitrator(s) concurring therein. Any jurisdiction on the part of the Hearing Panel to amend or supplement an award expires upon entry of judgment.

## **ARTICLE VIII SERVICE; ADDRESS**

### **RULE 41.0 Service.**

- 41.1** Unless otherwise specifically stated in these rules, service on the client shall be by personal delivery, by deposit in the United States mail, or by deposit in a business facility used for collection and processing of correspondence for mailing with the United States Postal Service pursuant to Code of Civil Procedure section 1013(a)(3), postage paid, addressed to the person on whom it is to be served, at his or her address as last given, on any document which has been filed in the arbitration. The client shall keep the program advised of his or her current address.
- 41.2** Unless otherwise specifically stated in these rules, service on an individual attorney shall be at the latest address shown on the official membership records of the State Bar. Service shall be in accordance with subsection 41.1 above.

- 41.3** If either party is represented by counsel, service shall be on the party as indicated in subsections 40.1 and 40.2 of this rule, and on the counsel at the latest address shown on the official membership records of the State Bar.
- 41.4** The service is complete at the time of deposit. The time for performing any act shall commence on the date service is complete and shall not be extended by reason of service by mail.
- 41.5** Where a facsimile or email transmission is used to communicate with the program or to file any document, it will not be considered received unless the program also receives within five days of the date of the transmission, the original of the faxed document.
- 41.6** In the event that the client fails to keep the program advised of his or her current address, the program may close the arbitration request, if it is made by the client, after 30 days from the date that the program learns of the invalid address.

## ARTICLE 13

### ARBITRATION OF ATTORNEYS' FEES

**§ 6200. Establishment of system and procedure; arbitration and mediation; application of article; voluntary or mandatory nature; rules; immunity of arbitrator and mediator; powers of arbitrator; confidentiality of mediation**

(a) The board of governors shall, by rule, establish, maintain, and administer a system and procedure for the arbitration, and may establish, maintain, and administer a system and procedure for mediation of disputes concerning fees, costs, or both, charged for professional services by members of the State Bar or by members of the bar of other jurisdictions. The rules may include provision for a filing fee in such amount as the board may, from time to time, determine.

(b) This article shall not apply to any of the following:

(1) Disputes where a member of the State Bar of California is also admitted to practice in another jurisdiction or where an attorney is only admitted to practice in another jurisdiction, and he or she maintains no office in the State of California, and no material portion of the services were rendered in the State of California.

(2) Claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct, except as provided in subdivision (a) of Section 6203.

(3) Disputes where the fee or cost to be paid by the client or on his or her behalf has been determined pursuant to statute or court order.

(c) Unless the client has agreed in writing to arbitration under this article of all disputes concerning fees, costs, or both, arbitration under this article shall be voluntary for a client and shall be mandatory for an attorney if commenced by a client. Mediation under this article shall be voluntary for an attorney and a client.

(d) The board of governors shall adopt rules to allow arbitration and mediation of attorney fee and cost disputes under this article to proceed under arbitration and mediation systems sponsored by local bar associations in this state. Rules of

procedure promulgated by local bar associations are subject to review by the board or a committee designated by the board to insure that they provide for a fair, impartial, and speedy hearing and award.

(e) In adopting or reviewing rules of arbitration under this section the board shall provide that the panel shall include one attorney member whose area of practice is either, at the option of the client, civil law, if the attorney's representation involved civil law, or criminal law, if the attorney's representation involved criminal law, as follows:

(1) If the panel is composed of three members the panel shall include one attorney member whose area of practice is either, at the option of the client, civil or criminal law, and shall include one lay member.

(2) If the panel is composed of one member, that member shall be an attorney whose area of practice is either, at the option of the client, civil or criminal law.

(f) In any arbitration or mediation conducted pursuant to this article by the State Bar or by a local bar association, pursuant to rules of procedure approved by the board of governors, an arbitrator or mediator, as well as the arbitrating association and its directors, officers, and employees, shall have the same immunity which attaches in judicial proceedings.

(g) In the conduct of arbitrations under this article the arbitrator or arbitrators may do all of the following:

(1) Take and hear evidence pertaining to the proceeding.

(2) Administer oaths and affirmations.

(3) Issue subpoenas for the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding.

(h) Participation in mediation is a voluntary consensual process, based on direct negotiations between the attorney and his or her client, and is an extension of the negotiated settlement process. All discussions and offers of settlement are confidential and may not be disclosed in any subsequent arbitration or other proceedings. (Added by Stats. 1978, ch. 719. Amended by Stats. 1984, ch. 825; Stats. 1989, ch. 1416; Stats. 1990, ch. 483; Stats. 1990, ch. 1020; Stats. 1993, ch. 1262; Stats. 1994, ch. 479; Stats. 1996, ch. 1104; Stats. 2009, ch. 54.)

**§ 6201. Notice to client and state bar; stay of action; right to arbitration; waiver by client**

(a) The rules adopted by the board of governors shall provide that an attorney shall forward a written notice to the client prior to or at the time of service of summons or claim in an action against the client, or prior to or at the commencement of any other proceeding against the client under a contract between attorney and client which provides for an alternative to arbitration under this article, for recovery of fees, costs, or both. The written notice shall be in the form that the board of governors prescribes, and shall include a statement of the client's right to arbitration under this article. Failure to give this notice shall be a ground for the dismissal of the action or other proceeding. The notice shall not be required, however, prior to initiating mediation of the dispute.

The rules adopted by the board of governors shall provide that the client's failure to request arbitration within 30 days after receipt of notice from the attorney shall be deemed a waiver of the client's right to arbitration under the provisions of this article.

(b) If an attorney, or the attorney's assignee, commences an action in any court or any other proceeding and the client is entitled to maintain arbitration under this article, and the dispute is not one to which subdivision (b) of Section 6200 applies, the client may stay the action or other proceeding by serving and filing a request for arbitration in accordance with the rules established by the board of governors pursuant to subdivision (a) of Section 6200. The request for arbitration shall be served and filed prior to the filing of an answer in the action or equivalent response in the other proceeding; failure to so request arbitration prior to the filing of an answer or equivalent response shall be deemed a waiver of the client's right to arbitration under the provisions of this article if notice of the client's right to arbitration was given pursuant to subdivision (a).

(c) Upon filing and service of the request for arbitration, the action or other proceeding shall be automatically stayed until the award of the arbitrators is issued or the arbitration is otherwise terminated. The stay may be vacated in whole or in part, after a hearing duly noticed by any party or the court, if and to the extent the court finds that the matter is not appropriate for arbitration under the provisions of this article. The action or other proceeding may thereafter proceed subject to the provisions of Section 6204.

(d) A client's right to request or maintain arbitration under the provisions of this article is waived by the

client commencing an action or filing any pleading seeking either of the following:

(1) Judicial resolution of a fee dispute to which this article applies.

(2) Affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct.

(e) If the client waives the right to arbitration under this article, the parties may stipulate to set aside the waiver and to proceed with arbitration. (Added by Stats. 1978, ch. 719. Amended by Stats. 1979, ch. 878; Stats. 1982, ch. 979; Stats. 1984, ch. 825; Stats. 1989, ch. 1416; Stats. 1990, ch. 483; Stats. 1993, ch. 1262; Stats. 1994, ch. 479; Stats. 1996, ch. 1104.)

**§ 6202. Disclosure of attorney-client communication or attorney's work product; limitation**

The provisions of Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code shall not prohibit the disclosure of any relevant communication, nor shall the provisions of Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure be construed to prohibit the disclosure of any relevant work product of the attorney in connection with: (a) an arbitration hearing or mediation pursuant to this article; (b) a trial after arbitration; or (c) judicial confirmation, correction, or vacation of an arbitration award. In no event shall such disclosure be deemed a waiver of the confidential character of such matters for any other purpose. (Added by Stats. 1978, ch. 719. Amended by Stats. 1982, ch. 979; Stats. 1984, ch. 825; Stats. 1996, ch. 1104; Stats. 2004, ch 182)

**§ 6203. Award; contents; damages and offset; fees and costs; finality of award; appellate fees and costs; attorney inactive status and penalties**

(a) The award shall be in writing and signed by the arbitrators concurring therein. It shall include a determination of all the questions submitted to the arbitrators, the decision of which is necessary in order to determine the controversy. The award shall not include any award to either party for costs or 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 costs or attorney's fees. However, the filing fee paid may be allocated

between the parties by the arbitrators. This section shall not preclude an award of costs or attorney's fees to either party by a court pursuant to subdivision (c) of this section or of subdivision (d) of Section 6204. The State Bar, or the local bar association delegated by the State Bar to conduct the arbitration, shall deliver to each of the parties with the award, an original declaration of service of the award. Evidence relating to claims of malpractice and professional misconduct, shall be admissible only to the extent that those claims bear upon the fees, costs, or both, to which the attorney is entitled. The arbitrators shall not award affirmative relief, in the form of damages or offset or otherwise, for injuries underlying any such claim. Nothing in this section shall be construed to prevent the arbitrators from awarding the client a refund of unearned fees, costs, or both previously paid to the attorney.

(b) Even if the parties to the arbitration have not agreed in writing to be bound, the arbitration award shall become binding upon the passage of 30 days after service of notice of the award, unless a party has, within the 30 days, sought a trial after arbitration pursuant to Section 6204. If an action has previously been filed in any court, any petition to confirm, correct, or vacate the award shall be 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 Section 1003) of Title 14 of Part 2 of the Code of Civil Procedure; otherwise it shall be in the same manner as provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure. If no action is pending in any court, the award may be confirmed, corrected, or vacated by petition to the court having jurisdiction over the amount of the arbitration award, but otherwise in the same manner as provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.

(c) Neither party to the arbitration may recover costs or attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding with the exception of the filing fee paid pursuant to subdivision (a) of this section. However, a court confirming, correcting, or vacating an award under this section may award to the prevailing party reasonable fees and costs incurred in obtaining confirmation, correction, or vacation of the award including, if applicable, fees and costs on appeal. The party obtaining judgment confirming, correcting, or vacating the award shall be the prevailing party except that, without regard to consideration of who the prevailing party may be, if a party did not appear at the arbitration hearing in the manner provided by the rules adopted by the board of governors, that party shall not be entitled to attorney's fees or costs

upon confirmation, correction, or vacation of the award.

(d) (1) In any matter arbitrated under this article in which the award is binding or has become binding by operation of law or has become a judgment either after confirmation under subdivision (c) or after a trial after arbitration under Section 6204, or in any matter mediated under this article if: (A) the award, judgment, or agreement reached after mediation includes a refund of fees or costs or both, to the client and (B) the attorney has not complied with that award, judgment, or agreement the State Bar shall enforce the award, judgment, or agreement by placing the attorney on involuntary inactive status until the refund has been paid.

(2) The State Bar shall provide for an administrative procedure to determine whether an award, judgment, or agreement should be enforced pursuant to this subdivision. An award, judgment, or agreement shall be so enforced if:

(A) The State Bar shows that the attorney has failed to comply with a binding fee arbitration award, judgment, or agreement rendered pursuant to this article.

(B) The attorney has not proposed a payment plan acceptable to the client or the State Bar.

However, the award, judgment, or agreement shall not be so enforced if the attorney has demonstrated that he or she (i) is not personally responsible for making or ensuring payment of the refund, or (ii) is unable to pay the refund.

(3) An attorney who has failed to comply with a binding award, judgment, or agreement shall pay administrative penalties or reasonable costs, or both, as directed by the State Bar. Penalties imposed shall not exceed 20 percent of the amount to be refunded to the client or one thousand dollars (\$1,000), whichever is greater. Any penalties or costs, or both, that are not paid shall be added to the membership fee of the attorney for the next calendar year.

(4) The board shall terminate the inactive enrollment upon proof that the attorney has complied with the award, judgment or agreement and upon payment of any costs or penalties, or both, assessed as a result of the attorney's failure to comply.

(5) A request for enforcement under this subdivision shall be made within four years from the date (A) the arbitration award was mailed, (B) the judgment was entered, or (C) the date the agreement was signed. In an arbitrated matter, however, in no event shall a request be made prior to 100 days from the date of the service of a signed copy of the award. In cases where the award is appealed, a request shall not be made prior to 100 days from the date the award has become final as set forth in this section. (Added by Stats. 1978, ch. 719. Amended by Stats. 1982, ch. 979; Stats. 1984, ch. 825; Stats. 1989, ch. 1416; Stats. 1990, ch. 483; Stats. 1992, ch. 1265; Stats. 1993, ch. 1262, Stats. 1996, ch. 1104; Stats. 2009, ch. 54.)

**§ 6204. Agreement to be bound by award of arbitrator; trial after arbitration in absence of agreement; commencement of proceeding; prevailing party; effect of award and determination**

(a) The parties may agree in writing to be bound by the award of arbitrators appointed pursuant to this article at any time after the dispute over fees, costs, or both, has arisen. In the absence of such an agreement, either party shall be entitled to a trial after arbitration if sought within 30 days, pursuant to subdivisions (b) and (c), except that if either party willfully fails to appear at the arbitration hearing in the manner provided by the rules adopted by the board of governors, that party shall not be entitled to a trial after arbitration. The determination of willfulness shall be made by the court. The party who failed to appear at the arbitration shall have the burden of proving that the failure to appear was not willful. In making its determination, the court may consider any findings made by the arbitrators on the subject of a party's failure to appear.

(b) If there is an action pending, the trial after arbitration shall be initiated by filing a rejection of arbitration award and request for trial after arbitration in that action within 30 days after service of notice of the award. If the rejection of arbitration award has been filed by the plaintiff in the pending action, all defendants shall file a responsive pleading within 30 days following service upon the defendant of the rejection of arbitration award and request for trial after arbitration. If the rejection of arbitration award has been filed by the defendant in the pending action, all defendants shall file a responsive pleading within 30 days after the filing of the rejection of arbitration award and request for trial after arbitration. Service may be made by mail on any party who has appeared; otherwise service shall be

made in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure. Upon service and filing of the rejection of arbitration award, any stay entered pursuant to Section 6201 shall be vacated, without the necessity of a court order.

(c) If no action is pending, the trial after arbitration shall be initiated by the commencement of an action in the court having jurisdiction over the amount of money in controversy within 30 days after service of notice of the award. After the filing of such an action, the action shall proceed in accordance with the provisions of Part 2 (commencing with Section 307) of the Code of Civil Procedure, concerning civil actions generally.

(d) The party seeking a trial after arbitration shall be the prevailing party if that party obtains a judgment more favorable than that provided by the arbitration award, and in all other cases the other party shall be the prevailing party. The prevailing party may, in the discretion of the court, be entitled to an allowance for reasonable attorneys' fees and costs incurred in the trial after arbitration, which allowance shall be fixed by the court. In fixing the attorneys' fees, the court shall consider the award and determinations of the arbitrators, in addition to any other relevant evidence.

(e) Except as provided in this section, the award and determinations of the arbitrators shall not be admissible nor operate as collateral estoppel or res judicata in any action or proceeding. (Added by Stats. 1978, ch. 719. Amended by Stats. 1979, ch. 878; Stats. 1982, ch. 979; Stats. 1984, ch. 825; Stats. 1992, ch. 1265; Stats. 1996, ch. 1104; Stats. 1998, ch. 798; Stats. 2009, ch. 54.)

**§ 6204.5 Disqualification of arbitrator or mediator; notice of right to judicial relief**

(a) The State Bar shall provide by rule for an appropriate procedure to disqualify an arbitrator or mediator upon request of either party.

(b) The State Bar, or the local bar association delegated by the State Bar to conduct the arbitration, shall deliver a notice to the parties advising them of their rights to judicial relief subsequent to the arbitration proceeding. (Added by Stats. 1986, ch. 475; Stats. 1996, ch. 1104.)

**§ 6205. Repealed by Stats. 1996, ch. 1104 § 18**



**§ 6206. 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. Arbitration may not be commenced under this article if a civil action requesting the same relief would be barred by any provision of Title 2 (commencing with section 312) of Part 2 of the Code of Civil Procedure; provided that this limitation shall not apply to a request for arbitration by a client, pursuant to the provisions of subdivision (b) of section 6201, following the filing of a civil action by the attorney. (Added by Stats. 1978, ch. 719. Amended by Stats. 1984, ch. 825.)

January, 2010