



THE BAR ASSOCIATION OF  
SAN FRANCISCO

# **RULES OF PROCEDURE**

**Effective 1/1/2016**

## **Arbitration and Mediation of Attorney/Client Fee Disputes**

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**The Bar Association of San Francisco  
Attorney/Client Fee Disputes Program**

**Arbitration Rules of Procedure**

1/1/2016

**1. PURPOSE AND COMPOSITION**

**A. Purpose**

The Attorney/Client Fee Dispute Committee (Committee) of The Bar Association of San Francisco (Association) arbitrates and mediates disputes between Attorneys and Clients under the Attorney/Client Fee Dispute Program (Program) concerning the costs and fees charged by the Attorney for professional services.

**B. Chairperson and Other Officers**

The Executive Director of the Association shall appoint a Chair of the Attorney/Client Fee Dispute Executive Committee (Executive Committee). The Chair shall exercise the powers and bear the responsibilities set forth in these Rules and such other powers and responsibilities as may be necessary to carry out the functions of the Program. Included in these powers is the power of the Chair to determine all questions of interpretation of these Rules at any stage of the proceedings. The Chair shall also appoint Vice Chairs of the Executive Committee who shall perform duties assigned by the Chair including acting as Chair, should the Chair be unable to act. Should both the Chair and the Vice Chairs be unable to act for any reason, the Executive Director of the Association shall appoint a Chair pro tempore.

**C. Arbitrators**

The membership of the Committee for the Program shall be composed of both Attorney Arbitrators and Non-Attorney Arbitrators.

**1. Attorney Arbitrators**

Attorney Arbitrators shall have been in practice for a minimum of five (5) years and shall be members in good standing of The State Bar of California (State Bar) and The Bar Association of San Francisco, who in the opinion of the Chair possess the qualifications necessary to function effectively as Arbitrators.

**2. Non-Attorney Arbitrators**

Non-Attorney Arbitrators shall be individuals who are not licensed to practice law, did not attend law school or have any other affiliation with the legal profession, who work or reside in the San Francisco Bay Area and who in the opinion of the Chair possess the qualifications necessary to function effectively as Arbitrators.

**D. Program**

The Executive Director of the Association shall appoint an employee of the Association to function as Director of the Program. The Director shall perform or assign to Program administrative functions as directed by the Chair.

**2. LAWS AND REGULATIONS**

**A. Legal Basis for Rules of Procedure**

The statutory law specifically pertaining to Arbitration of Attorney's fees is contained in Sections 6200-06 of the Business and Professions Code (The State Bar Act), effective January 1, 1979. As amended, Section 6200(d) provides for Arbitration conducted by local bar associations, subject to The State Bar of California Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs by local bar associations. These Rules comply with applicable statutory law and with the State Bar Guidelines. The most current version of the Rules shall be the governing Rules, regardless of when the Request for Resolution of a Fee Dispute was filed.

**B. Matters Not Provided For In These Rules**

The California Arbitration Act, Code of Civil Procedure Sections 1282-84.2 shall apply to matters not dealt with in these Rules or in Business and Professions Code Sections 6200-06. In the event of a conflict between these Rules and the Code of Civil Procedure, these Rules shall govern.

**C. Rules Concerning Enforcement of Awards** Except as specifically provided in these Rules, judicial enforcement of any Arbitration Award issued by the Committee shall be governed by applicable provisions of Code of Civil Procedure Sections 1285-94.2 and Business and Professions Code Sections 6200-06.

### **3. TYPES OF DISPUTE/JURISDICTION**

#### **A. Jurisdiction Over the Parties**

The Committee shall have jurisdiction in a fee dispute if:

1. The Attorney or the law firm has an office in San Francisco;
2. The Attorney or the law firm maintained an office in San Francisco at the time the services were rendered;
3. A substantial portion of the work for which fees were charged was performed in San Francisco;
4. There is no local county bar association Arbitration Program available in the county in which the Attorney practices, and the Client resides in San Francisco;
5. There is a local bar association Arbitration Program available in the county in which the Attorney practices, but the parties desire to arbitrate the matter in San Francisco and the parties stipulate to transfer the jurisdiction to the Association; OR
6. The Chair determines that good cause exists for the exercise of jurisdiction and that such jurisdiction is lawful and otherwise appropriate.
7. In the event of dispute between the parties as to which Program should hear the matter, the Program where the Arbitration request was first filed shall determine that the Arbitration will be conducted in the county where the majority of legal services were provided and such a ruling shall be final and not appealable to the State Bar. Should the fee dispute transfer to a different Fee Arbitration Program after the Request for Arbitration has been filed, the original postmark or receipt of the Arbitration Request will be preserved for the purposes of determining whether jurisdiction exists. Any filing fees paid will be refunded pursuant to Rule 3.C.10(e).

#### **B. Amount in Dispute**

The Committee shall not take jurisdiction of any fee dispute involving an amount in controversy of less than \$1,000, unless the Chair, for good cause shown, determines that Arbitration should be permitted. The State Bar of California will hear matters under \$1,000. This minimum amount does not apply, however, to a fee dispute between a Client and an Attorney who was referred by the Lawyer Referral & Information Service of the Association.

#### **C. Committee's Jurisdiction**

##### **1. Fee Dispute with Client**

The purpose and charter of the Committee is to hear and decide disputes concerning the amount or balance of fees or costs claimed by the Attorney to be owed by the Client, or the amount of retainers, deposits or payments by the Client, as to which the Client seeks or claims a refund.

##### **2. Fee Dispute with Non-Client Party**

- (a) The request for Arbitration may also be made by (i) a person who is not the Client but who may be liable for or entitled to a refund of Attorney's fees or costs ("Non-Client"), or (ii) the Attorney claiming entitlement to fees against a Non-Client. For the purposes of these Rules a Non-Client shall be defined as a Client and all rules as to Client apply to a Non-Client party.
- (b) A Fee Arbitration between an Attorney and a Non-Client is not intended to abrogate the requirement that the Attorney exercise independence of professional judgment on behalf of the Client or the protection of Client confidences and secrets. Absent the Client's written consent to disclosure of confidential information, Fee Arbitration with a Non-Client is not intended to abrogate the Attorney's duty to maintain Client confidences and secrets, unless such disclosure is otherwise permitted by law. Absent the Client's signature on the Request for Arbitration, when initiated by a Non-Client, the Program will give notice of the Request to the Client by first class mail at Client's last known address.

##### **3. Cost of Arbitration**

Pursuant to Business and Professions Code Sections 6203(a) and (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, notwithstanding any contract between the parties providing for such costs or fees.

##### **4. Claims of Malpractice**

The Arbitrator(s) shall receive evidence relating to claims of malpractice and professional misconduct, but only to the

extent that those claims bear upon the fees or costs to which the Attorney is entitled. The Arbitrator(s) shall not Award affirmative relief in the form of damages, offset or otherwise, for any injuries underlying any such claims of malpractice and professional malpractice.

## **5. Interest**

- (a) The Arbitrator(s) shall Award to the prevailing party, in addition to fees and costs due, interest on the unpaid balance until the date of the Award, at a rate not to exceed the maximum interest rate that may be awarded on judgments in accordance with California law.
- (b) The Arbitrator(s) may also Award to the prevailing party post-award interest beginning the 30<sup>th</sup> day after the date of service of Award.

## **6. Court-Established Fees Excluded**

The Committee has no jurisdiction over disputed Attorney fees to be paid by the Client that are fixed by court schedule, court order, the order of an administrative agency, or by statute.

## **7. Contingency Fee Matters**

In a matter where the fee agreement provides for a contingent fee, the Committee usually cannot hear the dispute until the underlying matter has concluded.

## **8. Incarcerated Client**

If the Client is incarcerated, the Committee will not accept jurisdiction, unless filed by Non-Client, Rule 3.C.2. The matter should be filed instead with The State Bar of California's Mandatory Fee Arbitration Program.

## **9. Removal to the State Bar Mandatory Fee Arbitration Program**

- (a) If a request for Arbitration has been filed and;
  - i. A party to the Arbitration requests removal to the State Bar Program, the party must inform the Program in writing, with a copy to all sides. The party should contact the State Bar Mandatory Fee Arbitration Program regarding procedures for such a transfer. The Program will place the case on hold pending the decision of the State Bar; OR
  - ii. The Program believes a matter filed should be heard by the State Bar, the parties and the State Bar shall be notified in writing. The file will be placed on hold pending transfer decision.
- (b) Should the fee dispute transfer to the State Bar after the Request has been filed, the original postmark or receipt of the Arbitration Request will be preserved. The Program file will be closed and any filing fee refunded pursuant to Rule 3.C.10(e).

## **10. Jurisdictional Objections**

### **(a) Submitting the Objection**

To object to jurisdiction a party must submit the objection in writing; the other side then has 5 days to respond in writing. The objection and any response is written to Program and copied to each other. The Chair shall then make such determination solely on any documents submitted concerning the jurisdictional dispute or may direct that the dispute be assigned to a Jurisdictional Hearing.

### **(b) Jurisdictional Hearings**

The Chair may designate an Arbitrator to serve as Jurisdictional Arbitrator. The Program shall notify the parties in writing of the date and time of the hearing and the name of the Jurisdictional Arbitrator. Except by leave of the Jurisdictional Arbitrator, each party to the Arbitration will be limited to thirty (30) minutes to present his or her position. The parties shall receive the Award of the Jurisdictional Arbitrator within twenty (20) days of the hearing. Arbitrator compensation in a jurisdictional matter is governed by Rule 13.E.

### **(c) Applicable Rules**

Provisions contained in these Rules for Pre-Hearing Procedures, Hearing Procedures and Awards shall apply to Jurisdictional Proceedings only to the extent that such rules are deemed to be consistent with the purposes of such proceedings or necessary to safeguard the rights of the parties, as determined by exercise of the sound discretion of the Jurisdictional Arbitrator.

**(d) Final Determination**

All jurisdictional rulings are binding and final.

**(e) Filing Fees**

In the event of a lack of jurisdiction, the Program shall so notify the parties, close the file, and refund the filing fee in part or in full, as determined by the Chair, depending on the time spent on the matter by the Committee. In no event shall the Program retain more than 50% of the filing fee paid.

## **4. MANDATORY OR VOLUNTARY ARBITRATION**

### **A. Arbitration Clause in Fee Agreement**

If an Attorney's Fee Agreement contains a provision requiring Arbitration concerning Attorney's fees and costs and does not require that such Arbitration be binding, such provision is consistent with California law and enforceable by the Attorney. Pursuant to Business and Professions Code Section 6204(a) a Client cannot be required to submit to Binding Arbitration under this program to resolve a fee dispute before the dispute arises. Any provision in an Attorney Fee Agreement purporting to require the Client to submit fee disputes to Binding Arbitration under this program is considered void and unenforceable. If an Attorney Fee Agreement contains such a provision, the Client is under no obligation to submit to Arbitration under this program. In such cases, the Client may, however, voluntarily request or consent to Arbitration and may choose either Binding or Non-Binding Arbitration. If an Attorney requests Arbitration of a fee dispute with the Client, the Committee has jurisdiction if the Client timely executes a Reply Form consenting to Arbitration.

### **B. Voluntary Arbitration: Client May Not be Compelled to Arbitrate**

Unless the Client has agreed in writing to Arbitration of all disputes concerning fees, costs or both, pursuant to Business and Professions Code 6200(c), Arbitration through this Program shall be voluntary for the Client.

### **C. Mandatory Arbitration: Mandatory for Attorneys**

Arbitration of fee disputes relating to services performed on or after January 1, 1979 is mandatory for Attorneys if requested by the Client.

#### **1. Client's Right to Arbitrate**

Pursuant to Business and Professions Code Section 6201(a), an Attorney seeking to bring a civil action to recover Attorney's fees in any court, including Small Claims Court, or to commence any other procedure against the Client under a contract between Attorney and Client which provides for an alternative to Arbitration under Business and Professions Code Section 6200, including Arbitration in any other forum, must notify the Client of the Client's right to have such a fee dispute submitted to Arbitration under this Program. The State Bar of California's "Notice of Client's Right to Fee Arbitration" form *must* be used.

#### **2. Failure of Attorney to Notify the Client of Right to Arbitration**

If an Attorney fails to notify the Client of the Client's right to Arbitration using the State Bar required Notice of Client's Right to Fee Arbitration form, and the Client either responds to or answers the lawsuit or other Arbitration proceeding, or the Attorney obtains a default against the Client, the Attorney may not claim that the Client has waived the right to Arbitration. Failure of the Attorney to use the required State Bar form is a ground for dismissal or stay of any action or other Arbitration proceeding filed.

### **D. Obtaining Stay of a Lawsuit or other Arbitration Action**

If an Attorney has sued for Attorney's fees in any court or has initiated any other Arbitration proceeding for such fees, a Client may file a Request for Resolution of a Fee Dispute with the Program, unless the Client received the required State Bar Notice of Client's Right to Fee Arbitration form and the thirty (30) days to file for Arbitration has elapsed. Once the Client has filed the Request for Resolution of a Fee Dispute with the Program, the action shall be automatically stayed in accordance with Business and Professions Code Section 6201(c). Unless the Client has appeared in the action, Attorney has a duty to promptly notify the court of the automatic stay and attach a copy of the Arbitration request form.

### **E. Waiver by Client of Right to Mandatory Arbitration**

The Client will be deemed to have waived the right to mandatory Arbitration if the Client:

1. Files an answer to any civil action seeking judicial resolution of the fee dispute or equivalent response in another Arbitration proceeding if the Client received a proper State Bar Notice of Client's Right to Fee Arbitration form;
2. Commences an action or files any pleading concerning the fee dispute or seeking relief based upon alleged malpractice or professional misconduct by the Attorney; OR



3. Fails to file the completed Request for Resolution of a Fee Dispute form and the filing fees with the Program post-marked within thirty (30) days after receipt of the required State Bar Notice of Client's Right to Fee Arbitration form by the Attorney. Any filing fee submitted will be refunded pursuant to Rule 13.B.3.

## **5. BINDING OR NON-BINDING**

### **A. Binding Arbitration**

A Binding Arbitration Award is not subject to appeal and may be vacated or corrected by a court of competent jurisdiction only for one or more of the grounds listed in Code of Civil Procedure Sections 1286.2 and 1286.6. The Arbitrator(s) have limited jurisdiction to correct an Award. See Rule 11.B. Awards are binding if both sides agree after the dispute arises.

### **B. Withdrawal of Binding Arbitration Election**

A party who has requested Binding Arbitration may withdraw that request and elect Non-Binding Arbitration, so long as the other parties have not also requested Binding Arbitration before the request for Binding Arbitration is withdrawn. In no event shall a withdrawal of a request for Binding Arbitration be effective until the Program and all parties receive written notice. Except as set forth in Rule 6.D., and only prior to the first Hearing Date, Binding Arbitration may be changed to Non-Binding Arbitration after all parties have requested Binding Arbitration only by written agreement signed by all parties and sent to the Program and Arbitrator(s).

### **C. Non-Binding Arbitration**

1. A Non-Binding Arbitration Award is not binding on a party, except as to Rule 13.E, and entitles either party to a trial or another Arbitration forum pursuant to Rule 5.C.3 (a), after Arbitration on the issues that were subject to the Arbitration.
2. If either party willfully fails to appear at the Arbitration, that party shall not be entitled to a trial or new Arbitration on issues which were the subject of the Arbitration. The determination of willfulness shall be determined by the court, and the party who failed to appear shall have the burden of proving that the failure to appear was not willful.
3. A trial, or another Arbitration program, after Non- Binding Arbitration must be applied for within thirty (30) days after the mailing of the Award, as shown on the Proof of Service attached to the Award. The thirty (30) days run from the date of mailing, not from the date of receipt of the Award. If a civil action has already been filed, the party seeking a trial after Arbitration must file in that court a Rejection of Arbitration Award and Request for Trial after Arbitration. If no action has been filed at the time the Non- Binding Award was rendered, either party may initiate another Arbitration or trial by filing in the proper forum or court.
  - (a) Exception to the right to a new trial in court following Non-Binding Fee Arbitration: If the parties previously agreed to resolve the fee dispute through Arbitration other than the Mandatory Fee Arbitration Program, and either party acts to reject the Non-Binding Award within the required time period after a Non-Binding Award has been mailed, either party has the right to require that the dispute be resolved through other Arbitration instead of a new trial in court, under the terms of the preexisting Arbitration agreement.
4. If a party does not request a trial, or Arbitration pursuant to 5.C.3(a), within thirty (30) days from the mailing of the Award by the Program to the parties, the Non-Binding Award becomes binding pursuant to Business and Professions Code Section 6203(b).

## **6. INITIATION OF ARBITRATION**

### **A. Designation of Petitioner/Respondent**

The party commencing the Arbitration shall be designated as the Petitioner, whether that party is the Client or the Attorney. The party filing the Reply shall be designated as the Respondent.

### **B. Commencement of Fee Dispute Arbitration**

1. To commence Arbitration the Petitioner(s) must do all of the following:

- (a) Submit by mail or personal delivery to the Program one (1) completed original Petitioner's Request for

Resolution of a Fee Dispute form (“Request”) and four (4) copies of the completed Request form. Each party seeking Arbitration must sign the Request form. A lawyer representing a party may not sign the Request form for or on behalf of the party.

- (b) Attach photocopies of all required documents to each of the five forms. Do not send original documents. The required documents are:
    - i. A brief written description of the dispute;
    - ii. A copy of the written fee agreement, or, if there is no written fee agreement or no copy is available, an explanation of the fee agreement between Attorney and Client;
    - iii. If the Attorney has filed a lawsuit to collect the fees, a copy of the first page of the lawsuit, showing court and case number. If the Attorney is the petitioner, Attorney shall stay the matter in court promptly and attach a copy of the Arbitration Request form, in accordance with Rule 4. D.
    - iv. If the Attorney sent a “Notice of Client’s Right to Fee Arbitration” form to the Client, a copy must be attached. If the Petitioner is the Client, Client must file a completed Petitioner’s Request for Resolution of a Fee Dispute form with the Program within 30 days of receipt of the Notice.
  - (c) Pay the appropriate filing fees. [See Rule 13.A.1.]
  - (d) Parties may submit detailed briefs and any additional documents/information directly to the arbitrators and each other once the matter is assigned. [See Rule 8.B]
2. Failure to properly file a complete Request as outlined above (6.B.1.a-c) within 60 days after written request from the Program shall constitute abandonment of the case and result in forfeiture of the filing fee and a waiver of the right to arbitrate.
3. Upon receipt of the Petitioner’s executed Request, the Program shall do the following:
- (a) Determine whether the Committee has jurisdiction over the matter. All questionable cases of jurisdiction shall be referred to the Chair for a determination of jurisdiction in accordance with Rule 3.C.10.
  - (b) Serve the Request form upon the Respondent, with the blank Respondent’s Reply form, the Rules of Procedure and the State Bar required Attorney Responsibility form.

### **C. Respondent’s Reply**

- 1. The Respondent must do all of the following within twenty (20) calendar days from the date of notification reflected on proof of service from the Program:
  - (a) Submit by mail or personal delivery to the Program one (1) completed original and four (4) copies of the completed Reply form. All listed parties must sign the form. A lawyer representing a party may not sign the Reply form for or on behalf of the party.
  - (b) Attach to each of the five (5) forms photocopies of all required documents. Do not send original documents. The required documents are:
    - i. A brief written description of the dispute;
    - ii. A copy of the written fee agreement, or, if there is no written fee agreement or no copy is available, an explanation of the fee agreement between Attorney and Client.
  - (c) Serve the Petitioner with a copy of the Respondent’s Reply with all attachments.
  - (d) Pay any appropriate filing fees. If the Respondent raises the amount in dispute on their Reply form, then the Respondent must pay the full filing fee on the difference. [See Rule 13.A.1.]
  - (e) Parties may submit detailed briefs and any additional documents/information directly to the arbitrators and each other once the matter is assigned. [See Rule 8.B]
- 2. (a) If Respondent is the Attorney, failure to comply with Rule 6.C.1 within the specified time will result in the matter being referred to an arbitrator and proceeding to Arbitration without the Respondent’s Reply.

(b) If the Respondent is the Client and does not consent to Arbitrate, or has not previously agreed in writing to Arbitration, the Program shall notify the Attorney and close the file. Filing fees will be refunded pursuant to Rule 13.B.1(a).

3. If a different Responsible Attorney is named, that Attorney will be notified by the Program, named as a party and sent the following:

- (a) A copy of the Petitioner's Request;
- (b) A copy of the initial Respondent's Reply;
- (c) A blank Reply form;
- (d) Revised Notice of Responsible Attorney; and
- (e) A copy of the Rules of Procedure.

The designated Responsible Attorney shall file a response, in accordance with Rule 6.C.1., with a copy to all parties, within twenty (20) days from the notification reflected on proof of service from the Program. Failure to file a response will result in the matter proceeding to hearing, and a decision made on the basis of the evidence before the Arbitrator(s).

4. Upon receipt of the Respondent's Reply, the Program shall refer the proceeding to a Mediator or Arbitrator(s). If both parties agree to Mediation, the Rules of Mediation beginning on page 17, herein, shall apply.

5. To file a late Reply:

- (a) If the matter has not been assigned to an Arbitrator or panel, the Respondent must submit a written application to the Chair of the Committee showing good cause to file a late Reply, with a copy to all parties. An Order will be issued, granting or denying leave to file a late Reply; (Note (c) below) OR
- (b) If the matter has been assigned to an Arbitrator or Panel, the application for good cause should be sent to the Chief or Sole Arbitrator with a copy to all parties and the Program (Note (c) below). An Order will be issued, granting or denying leave to file a late Reply. Such order may deny or limit the Respondent's right to present evidence at the hearing. If a late Reply is presented at the hearing without an Order granting leave to file same, the Arbitrator(s) may not consider it. Should the Respondent fail to submit a Reply, the hearing will proceed as scheduled and a decision made on the basis of the evidence before the Arbitrator(s).
- (c) There is a non-refundable administrative charge for each request to file a late Reply. The fee, payable to BASF, must accompany the copy of the request to file a late Reply sent to the Program. The fee is as follows:
  - i. For an amount in dispute \$2,500 or less, the fee is \$50.
  - ii. For an amount in dispute over \$2,500, the fee is \$100.
  - iii. The Committee may waive or lower the fee for good cause.

6. In those matters where the Respondent is a Client who has not previously agreed to participate in Mandatory Fee Arbitration in writing and fails to file the Reply form within thirty (30) days, the Program shall notify the Petitioner. If within five (5) days of notification from the Program the Petitioner files a written request for additional time to allow the Respondent to respond, the file shall remain open a total of ninety (90) days from the filing of the Request. Should the Respondent still fail to file the Reply form after ninety (90) days, the file will be closed. The filing fees paid shall be refunded pursuant to Rule 13.B.1(b).

#### **D. Change of Claim**

Any amendment by a party to the Request or Reply must be filed at least twenty (20) days prior to the Arbitration hearing, except for good cause as determined by the Chief or Sole Arbitrator. If the change of claim increases the amount in dispute, the party requesting the change must pay to the Program the appropriate filing fee on the difference. In the event that a Request or a Reply is amended, the other parties shall have the right to change the election of Non-Binding or Binding Arbitration. A party choosing to change its election must notify the Program, the Arbitrator(s) and the other parties in writing at least five (5) days prior to the hearing.

#### **E. Withdrawal of Request for Arbitration**

1. **Non-Binding:** Pursuant to Business & Professions Code 6200, if both sides have not agreed to Binding Arbitration, a Request for Resolution of a Fee Dispute may be withdrawn in writing by the party requesting Arbitration at any

time prior to the setting of the hearing date. Such a withdrawal must be sent in writing to the other parties, the Arbitrator(s) and the Program. Withdrawal of the Request shall result in a forfeiture of the filing fee and shall constitute a waiver of the right to arbitrate.

2. **Binding:** If both parties have agreed to Binding Arbitration or the hearing date is set, a Request may be withdrawn only with the written consent of all parties. Withdrawal of the Request shall result in a forfeiture of the filing fee and shall constitute a waiver of the right to arbitrate.

#### **F. Settlement of a Dispute**

If the parties settle the dispute, they must advise the Program and the Arbitrator(s) in writing with copies to all parties. Filing fees will be refunded pursuant to Rule 13.B.4.

#### **G. Consolidation of Cases**

A party may request, in writing, that two or more Arbitration matters be consolidated for hearing. The Program will serve the other parties with a copy of the request. A written reply may be filed with the program within 15 days of service of the request for consolidation. If all parties agree, the cases will be consolidated; otherwise they will remain as separate cases. Consolidation will not result in a refund of filing fees paid or reduction of filing fees owed to the Program.

### **7. APPOINTMENT OF ARBITRATOR(S)**

#### **A. Selection of Arbitrator(s)**

The Arbitrator(s) shall be selected from a list maintained by the Committee. Arbitrators shall be selected based upon relevant factors including availability, experience, complexity of the case, and any request on the Request or Reply Form for an Arbitrator who practices civil or criminal law. If there is a disclosure to be made after the conflicts check, Program will notify the parties in writing and provide an opportunity to object to that arbitrator. An arbitrator who believes that he or she cannot render a fair and impartial decision, or who believes that there could be an appearance that he or she cannot render a fair and impartial decision, may recuse himself or herself or do so after such disclosure to the parties and upon thereafter being challenged by a party.

#### **B. Number of Arbitrators**

1. **Amount in Dispute is less than \$25,000**

In all cases in which the amount in controversy is less than \$25,000, one (1) Arbitrator shall be assigned to hear the case. The Sole Arbitrator shall be an Attorney.

2. **Amount in Dispute \$25,000 or More**

In all cases in which the amount in controversy is more than \$25,000, a Panel of three (3) Arbitrators shall be appointed to hear the case, one of whom is not an Attorney. Notwithstanding the amount in controversy, the parties may agree to have the matter heard by one (1) Arbitrator; that Arbitrator shall be an Attorney.

#### **C. Appointment of Chief Arbitrator**

In all cases assigned to a three (3) member Arbitration Panel, the Program shall appoint one (1) Attorney member as Chief Arbitrator. The Chief Arbitrator shall have an equal vote with the other members of the Panel but shall be responsible for the conduct of the Arbitration and the writing of the Arbitration Award.

#### **D. Notice to Panel and Parties**

The Program shall promptly notify the Arbitrator(s) of their appointment and shall send copies of the Request and Reply to the Arbitrator(s). The Program shall also notify the parties of the identity of the Arbitrator(s).

#### **E. Parties Disqualification of Arbitrator(s)**

After assignment, a party may disqualify one (1) Arbitrator without cause and an unlimited number for cause, by notifying the Program in writing, with a copy to all parties, within seven (7) days of receiving the identity of the Arbitrator(s), except for good cause. The Chair shall rule on challenges for cause and such rulings shall be final.

#### **F. Reassignment to Another Panel**

The Chair shall have the authority to reassign any pending case to a replacement Panel, if deemed appropriate in the Chair's discretion, at any time prior to submission (Rule 9.J.) of a case.

### **8. PRE-HEARING PROCEDURES**

## **A. Correspondence/ Communication**

### **1. Hard Copy of Documents**

Where a facsimile or email transmission is used to file a document with the Program, the document will not be considered received unless the Program also receives, within five days of the date of the transmission, the original and the required number of copies of the faxed or emailed document.

### **2. Correspondence / Communication with Arbitrator(s)**

Parties shall not contact the Arbitrator(s) directly by telephone or in person except in an emergency. All communications to and from the Arbitrator(s) shall be in writing, by US Mail, e-mail (see Rule 14) or facsimile, and must be copied to all parties, or their counsel, if any, and the Program. If any correspondence sent does not indicate that complete copies have also been sent to the other parties, it may be returned unanswered.

## **B. Submission of Evidence**

In the event that either party wishes to submit any additional information or documents not included in the Request or Reply, such party shall file a written list of evidence with copies of such documents at least fifteen (15) days prior to the hearing, with a copy to the Arbitrator(s) and each other. The Arbitrator(s) may decline to accept or consider any evidence not submitted prior to the hearing.

## **C. Scheduling of the Hearing**

The Program shall mail a Request for Resolution of a Fee Dispute Hearing Dates Form to all parties. This form must be completed, leaving at least seven (7) days available in each month, and returned to the designated Arbitrator(s) within the time period provided on the form. The failure of a party to complete or return the form in a timely manner will constitute the consent of that party to the scheduling of the hearing at the sole discretion of the Arbitrator(s), and that party will be deemed to have consented to the date set for hearing.

## **D. Notice of Hearing**

It is the goal of these Rules that all hearings be completed within sixty (60) days from assignment of the dispute to the Arbitrator(s), and that all post-hearing submissions be completed within twenty (20) days after close of the hearings. It shall be the duty of the Chief or Sole Arbitrator to arrange a time and place for the Arbitration hearing and to notify the parties, other Arbitrators and the Program of that hearing. The hearing shall be held in San Francisco unless all parties and Arbitrators agree otherwise. The Chief or Sole Arbitrator must communicate in writing, via U.S. Mail, facsimile or e-mail with the parties to the dispute and the other Arbitrator(s) to arrive at a mutually agreeable time and place for the hearing. It is advisable to schedule a hearing for a date within twenty (20) days of assignment to allow for the possibility of a continuance, postponement, more than one hearing or submission of pre-hearing briefs or arguments, if such are permitted by the Arbitrator(s). Parties who do not provide current addresses to the Program or otherwise fail to make themselves available for a hearing shall have no ground to object to any hearing and Award made in their absence if notice has otherwise been properly given.

## **E. Discovery**

### **1. Pre-hearing Discovery**

No pre-hearing discovery is permitted except upon written application to the Chief or Sole Arbitrator at least thirty (30) days prior to the hearing, and a showing of good cause. Except as provided in Rule 8.E.2 and 3, the written application must set forth specific discovery requested and show good cause, with a copy to each Arbitrator, all parties and the Program. The other parties shall then have five (5) days to respond or object in writing to the Chief or Sole Arbitrator, with a copy to the other parties and the Program. The Chief or Sole Arbitrator shall then issue a Discovery Order, granting or denying the request in part or in whole. The decision of the Arbitrator shall be final.

### **2. Client's File**

In accordance with the Rules of Professional Conduct, Rule 3-700, upon written request of the Client, the Attorney shall provide the Client with a complete copy of the file.

### **3. Attorney's Billing Records**

Following a written request by the Client to the Attorney, with a copy to the Arbitrator(s) and the Program, seeking the Attorney's detailed billing records, copies of such records must be sent to the Client and the Arbitrator(s). This shall be a Standing Order and does not require a written order from the Arbitrator(s). The request must be made at least thirty (30) days prior to the hearing, except for good cause, and the Attorney must comply within twenty (20) days of the mailing, fax transmission or hand delivery of the request.

#### **4. Failure to Comply with Discovery Orders**

Failure to comply with Discovery Orders or to provide documents in accordance with Rules 8.E.2 and 3 will be considered by the Arbitrator(s) at the hearing. The Arbitrator(s) may apply such remedy as deemed just, which may include resolution of issues in favor of the party deprived of the documents ordered produced.

#### **F. Subpoenas**

To subpoena a person or documents, a party may write to the Chief or Sole Arbitrator and request that blank subpoena(s) be issued. The person and/or the custodian of documents being subpoenaed should receive at least five (5) days of notice. It is the responsibility of the party serving the subpoena to personally serve it with a tender of witness fees in the amount of \$35 for each witness, and mileage to and from the hearing in the amount of \$.58 per mile. A copy of the subpoena shall be sent to the Program, the Arbitrator(s), and the parties or their counsel, if any.

#### **G. Witnesses**

In the event that either party wishes to have witnesses appear without subpoena, the party desiring such witnesses shall submit their names, and the expected time involved in direct examination, in writing to the opposing parties, the Program and the Arbitrator(s) at least five (5) days prior to the hearing. The Arbitrator(s) may decline to hear any witnesses whose names are not submitted prior to the hearing.

#### **H. Transcripts and Tape Recordings of Arbitration Hearing**

Transcripts and tape recordings of the Arbitration hearing are permitted only upon written application to the Chief or Sole Arbitrator at least ten (10) days prior to the hearing, except for good cause. The Program, the Arbitrator(s) and all parties must also be notified at least ten (10) days prior to the hearing. It shall be the responsibility of the requesting party to arrange for the transcript. The requesting party must bear the cost of recording and providing a copy of the transcript to the Arbitrator(s) and other parties. The use of the transcript is governed by Rule 9.H.

#### **I. Interpreter**

Any party may bring to the hearing an interpreter. Arrangement for such an interpreter must be made by that party. A professional interpreter is not required, but is allowed and will be at that party's expense. The Program, the other parties and the Arbitrator(s) must be notified in writing of the name of the interpreter five (5) days prior to the hearing.

#### **J. Clarification of Issues**

If the issues to be arbitrated are not clearly set forth in the Request, Reply, or any accompanying documents, the Arbitrator(s) may request the parties to clarify the issues or submit additional documentation. The Arbitrator(s) may in their discretion decline to determine any issues not set forth in documents submitted prior to the hearing as required by the Rules.

#### **K. Rescheduling the Hearing Date (Continuance)**

1. Continuances are not favored and should not be granted, except for good cause. Application for a continuance must be made to the Program in writing explaining the good cause, at least five (5) days prior to the hearing, and submitted with the fee pursuant to Rule 8.K.2 below. A copy of the request must be sent to the Chief or Sole Arbitrator or Mediator, the other parties, and other Arbitrators if applicable. Application for a continuance made less than five (5) days before the hearing must show good cause as to why the application could not be submitted in a timely manner. In the event that a continuance is requested at the hearing, the Chief or Sole Arbitrator, or the Mediator, shall either grant or deny the request and notify the Program. In the event that a continuance is granted, the matter will be reset for a hearing to be held no later than thirty (30) days from the date of the original hearing, except for good cause.
2. There is a non-refundable administrative charge for each request for a continuance of the Mediation or Arbitration date, which may be waived or reduced per Rule 8.K.3. The continuance fee, payable to BASF, must accompany the continuance request sent to Program. The fee is as follows:
  - (a) When the total amount in dispute is \$2,500 or less, the continuance fee is \$50.
  - (b) If the total amount in dispute is over \$2,500, the continuance fee is \$100.
3. The Committee may waive or lower the continuance fee if good cause exists.

#### **L. Staying the Matter (Putting on Hold)**

1. In the event that a party wishes to stay the Arbitration for settlement talks or other issues, that party must submit the request in writing to BASF with an estimate of the length of the stay requested, with a copy to the other parties, mediator or arbitrator(s), if assigned. The other side shall then have 5 days to object in writing if desired, copied to everyone. The Committee will then determine if the matter shall be stayed.

2. There is a non-refundable administrative charge for each request of a stay of the case. The fee, payable to BASF, must accompany the stay request sent to Program. The fee is as follows:

- (a) If the amount in dispute \$2,500 or less, the stay fee is \$50.
- (b) When the amount in dispute is over \$2,500, the stay fee is \$100.

3. The Committee may waive or lower the stay fee if good cause exists.

## **9. HEARING PROCEDURES**

### **A. Attendance of Parties**

In the event that one of the parties fails to appear at the hearing, the Arbitrator(s) shall attempt to contact the party to determine the grounds for such failure to appear. If a party willfully refuses to appear, the hearing shall go forward and a decision will be made based upon the evidence produced. In the alternative, the Chief or Sole Arbitrator may elect to delay submission of the matter or may elect to go forward with one side and allow the other side to submit written testimony, or the Arbitrator(s) may elect to proceed with the hearing and the controversy may then be determined based upon the evidence produced, notwithstanding such failure to appear. In any event, the facts with regard to the failure to appear shall be stated in the Award. In the event that one of the parties refuses or fails to appear, and a party who is present requests a continuance so that the presence of the absent party may be compelled by subpoena or otherwise for examination, such continuance shall be granted within the time limits of these Rules.

### **B. Waiver of Personal Appearance**

Any party who lives one hundred (100) miles or more from the site of the hearing may waive personal appearance and submit to the Panel testimony and exhibits by written declaration, under penalty of perjury. With the approval of the Chief Arbitrator, other means, such as speakerphone or conference call, may be used. A party living within one hundred (100) miles of the hearing must apply to the Chief or Sole Arbitrator in writing, with copies to the other parties and the Program, for approval to waive personal appearance.

### **C. Attendance of Arbitrator(s)**

If at the time set for the hearing, all three (3) members of the Panel are not present, the Arbitrators present shall decide either to postpone the hearing or, with the consent of the parties, to proceed with the hearing with a Sole Arbitrator. A Sole Arbitrator must be one of the Attorney arbitrators on the Panel. In no event shall a hearing be conducted by or proceed with two (2) Arbitrators.

### **D. Representation at Hearing**

Any party may be represented at the Arbitration hearing by an Attorney or may be aided by a non-attorney. The Program, the other parties and the Arbitrator(s), should be notified in writing, at least five (5) days prior to the hearing, except for good cause, if a party will be represented by an Attorney or aided by a non-attorney spokesperson. Representation shall be at the personal expense of the party. The Arbitrator(s) may not Award Attorney's fees or costs for the Arbitration, regardless of any such contract between the parties.

### **E. Evidence/Testimony at Hearing**

Parties may present testimony and documentary evidence, pursuant to Rule 8.B., relevant to the fee dispute. Any evidence which reflects on the competence or professional ethics of the Attorney shall be heard and considered only to the extent that such evidence has a direct bearing on the fee dispute, and such evidence shall not be considered for any other purpose. The Arbitrator(s) may hear any evidence which is deemed trustworthy and which is material to the fee dispute. Formal rules of evidence shall not apply. The disclosure at the hearing of any Attorney/Client communication or Attorney's work-product shall be limited to relevant communications between the parties to the fee dispute and to any work-product which is the subject of the fee dispute. In no event shall such disclosure be deemed a waiver of the confidentiality of such matters for any other purpose. The Chief or Sole Arbitrator shall determine the order of presentation of evidence and the time allotted to each party for presentation of evidence and argument, and shall be the sole judge of the relevance of any offered evidence and the hearing procedures employed.

### **F. Stipulations**

Stipulations and admissions that narrow issues or foreclose the need for formal testimony are encouraged.

### **G. Oaths**

The Chief or Sole Arbitrator is empowered to administer oaths. Testimony need not be given under oath to be considered and the decision whether to administer oaths shall be made by the Chief or Sole Arbitrator.

## **H. Privacy and Confidentiality**

1. Hearings shall be closed to the public, except for witnesses while testifying and others who are directly participating in the proceeding. The parties may, however, agree to permit others to attend the proceedings. The Arbitration case file, including the Request, Reply, exhibits and transcripts, as well as the Award, itself are to remain confidential. Absent a court order compelling disclosure of the Award, a Program may not disclose the Award to any individual or entity that was not a party to the Arbitration proceeding. An Award shall remain confidential except as may be necessary in connection with a judicial challenge to, confirmation or enforcement of, the Award, or as otherwise required by law or judicial decision. However, at the discretion of the Chair of the Committee and the request of the State Bar, the files may be opened to the State Bar.
2. If the matter raised during the hearing, in the opinion of the Arbitrator(s) or in the opinion of the Chair, constitutes substantial evidence of a violation of the Rules of Professional Conduct, an arbitrator may in his or her discretion refer such matters to the attention of the Chief Trial Counsel to the State Bar for disposition, as the State Bar deems appropriate.
3. In any subsequent proceeding the admissibility of any transcript or tape recording made pursuant to Rule 8.H shall be governed by Business and Professions Code Section 6202 and the applicable Rules of Evidence.

## **I. Adjournment**

The Chief or Sole Arbitrator may adjourn the hearing from time to time as may be necessary.

## **J. Submission**

At the close of the hearing, the matter shall be deemed submitted. The Chief or Sole Arbitrator may hold the matter open within the time limits set by Rule 8.D for later submission of briefs, argument, or other evidence. The Chief or Sole Arbitrator shall insure that both parties are provided an equal opportunity to submit such materials and shall submit a date certain for final submission of the matter. Other than as directed by the Chief or Sole Arbitrator, no evidence may be received by any Arbitrator following completion of the hearing.

# **10. AWARDS**

## **A. Arbitrator(s) Decision**

After the matter has been submitted, the Arbitrator(s) shall consider all of the evidence relevant and material to the fee dispute and shall determine all issues necessary to resolve the dispute.

## **B. Majority Vote**

When the Arbitration Panel consists of three (3) Arbitrators, the decision and Award shall be by majority vote.

## **C. Cost of Arbitration**

Pursuant to Business and Professions Code Sections 6203(a) and (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, notwithstanding any contract between the parties providing for such costs or fees.

## **D. Written Award**

The Arbitrator(s) shall prepare a written Award in the format required by the Committee, which includes the language set forth in The State Bar of California Guidelines and Minimum Standards. This includes at a minimum the following:

1. Full names of the parties;
2. Whether the Award is binding or non-binding;
3. Full name of the Attorney responsible for any possible refund to the Client;
4. Fee incurred and amount in dispute;
5. Statement of Facts/Issues in dispute;
6. Statement of Reasoning;
7. Amount of filing fee paid and by whom;
8. Allocation of the filing fee between the parties;
9. Where appropriate, the circumstances bearing on the willfulness of any party's nonappearance at the hearing; and
10. A clear statement specifying the precise amounts and who owes what to whom, using the full names of parties.

## **E. Processing of the Award**

1. The Award shall be signed by all Arbitrator(s) and mailed to the Program, and it is desirable that it be sent within fifteen



(15) days following submission of the matter. The Program shall have fifteen (15) days in which to process the Award after its receipt from the Arbitrator(s). It is the objective of the Committee that no more than forty-five (45) days elapse between the date of submission of the matter and the date of the Award. Failure to comply with the forty-five (45) day time frame does not constitute grounds for vacating or dismissing the Award. The Executive Committee shall review the Award, may vacate or modify the Award as necessary, and may refer the matter to another Panel. Should the Executive Committee vacate an Award and order a new hearing, the vacated Award is not made part of the file and is not available for review by anyone, including the parties.

2. Upon approval of the Award by the Executive Committee, the Program shall issue a copy of the Award, together with a copy of the State Bar's Notice of Your Rights After Fee Arbitration on the parties. Once approved and issued to the parties the Award shall be governed by Rule 11.

#### **F. Settlement at Hearing: Stipulated Awards**

The parties may agree in writing to a Stipulated Award at any time prior to issuance of the Award. The Arbitrator(s) will prepare the Award in accordance with Rule 10.D, attaching the stipulation executed by the parties. The Award will be processed in accordance with Rule 10.E. Unless provided otherwise in the stipulation executed by the parties, all other Rules that apply to the validity, enforcement and execution of Awards will also apply to Stipulated Awards.

#### **G. Post Hearing Communications**

After the close of the hearing, no party shall communicate in any manner directly with the Arbitrator(s) except as provided in Rule 9.J.

### **11. EXECUTION OF AWARDS**

#### **A. Vacating an Award**

Once it has been issued to the parties, an Award may only be vacated by a court. The State Bar of California's Notice of Your Rights After Fee Arbitration, accompanying the Award, explains the proper procedure.

#### **B. Correcting an Award**

The Arbitrator(s) cannot rehear the case or reconsider their decision. The Arbitrator(s) can only correct an Award for miscalculation of figures, or an evident mistake in the description of any person, thing or property referred to in the Award, or if the Award is imperfect in a matter of form not affecting the merits of the controversy. A request for this type of correction must be made in writing, with a copy to the other parties within ten (10) days of the date the Award was mailed (See Code of Civil Procedure Section 1284).

#### **C. Amending or Supplementing an Award**

There are limited circumstances under which an Arbitrator may amend or supplement an Award after it is issued. These consist of issues which have been brought before the Arbitrator or Panel of Arbitrators, either in testimony or briefing, but for some reason the Arbitrator(s) fails to include resolution of that issue or issues in the Award. An Arbitrator can make appropriate amendments or supplements to an Award when there has been an inadvertent omission of an issue or issues that have relevance to the Award, and where, without their inclusion, the Award would be incomplete or fail to include all of the matters brought before the Arbitrator(s) and necessary for decision. Any jurisdiction on the part of an Arbitrator to amend or supplement an Award expires after the passage of thirty (30) days following the service of a signed copy of the Award on the parties. A request for this type of correction must be made in writing with a copy to the other parties within ten (10) days of the date the Award was mailed.

#### **D. Binding Awards**

Payment of amounts due as a result of a Binding Award is to be made immediately following receipt of the Award, unless a petition to vacate the Award is filed in a court of competent jurisdiction.

#### **E. Non-Binding Awards**

1. If either party to an Arbitration which results in a Non-Binding Award wishes to obtain a trial after Arbitration, such judicial review must be initiated by the filing of a Rejection of Award and Request for Trial if there is a pending action, or the commencement of a trial in court within thirty (30) days after mailing of the Award. [See Rule 11.E (a) below for possible exception].

(a) Exception to the right to a new trial in court following Non-Binding Fee Arbitration: If the parties previously agreed to resolve the fee dispute through Arbitration other than the Mandatory Fee Arbitration Program, and either party acts to reject the Non-Binding Award within the required time period after a Non-Binding Award has been mailed, either party has the right to require that the dispute be resolved through other Arbitration

instead of a new trial in court, under the terms of the preexisting Arbitration agreement.

#### **F. Fees and Costs**

In the event that an Award must be enforced by the entering of a judgment upon the Award by a court having competent jurisdiction, the prevailing party may be entitled to costs and a reasonable allowance for Attorney's fees involved in obtaining such judgment.

### **12. ENFORCEMENT OF ARBITRATION**

The Committee may take such steps as necessary to ensure compliance with the purposes and requirements of these Rules and the notice requirements of Business and Professions Code Sections 6200 et seq. Should an Attorney fail or refuse to comply with an Award, and 100 days have passed from the date the Award was mailed to the parties, the Client may call the State Bar at (415) 538-2020 to report such failure or refusal to comply. The State Bar will assist the Client in collection of the Award and has the authority to place the Attorney on inactive status until the Award is complied with, pursuant to Business and Professions Code Section 62039(d).

### **13. FILING FEES AND COSTS**

#### **A. Filing Fees**

##### **1. Calculation of the Filing Fee**

The filing fee entitles parties to Mediation and/or Arbitration. The schedule is based on the amount in dispute as follows:

- (a) Five percent (5%) of the amount in dispute, with a \$50 minimum filing fee, when the total amount in dispute is ten thousand dollars (\$10,000) or less;
- (b) Seven percent (7%) of the amount in dispute, when the total amount in dispute is more than ten thousand dollars (\$10,000) and less than one million dollars (\$1,000,000), with a maximum filing fee of seven thousand dollars (\$7000); OR
- (c) When the total amount in dispute is one million dollars (\$1,000,000) or more, the filing fee is seven thousand dollars (\$7,000) plus a surcharge of two hundred fifty dollars (\$250) for each million dollars or fraction thereof in excess of the first million dollars.

##### **2. Calculation of the Amount in Dispute**

The amount in dispute is the difference between the fees charged or claimed by the Attorney, and the amount, if any, which the Client has indicated to be the reasonable value of the legal services received, as set forth in the Request for Resolution of a Fee Dispute and Reply. If the Arbitrator(s) find that the amount in dispute is greater than originally stated in the Request for Resolution of a Fee Dispute and Reply, the Award may direct the parties to pay to the Program the additional filing fee due. Any such Award of filing fees to the Program is binding on the parties regardless of the nature of the Award.

##### **3. Payment of the Filing Fee to the Program**

- (a) The filing fee shall be paid by check, money order or credit card payable to The Bar Association of San Francisco (BASF), by the Petitioner, whether Client or Attorney, at the time of the filing of the Request for Resolution of a Fee Dispute. The fee will be allocated in the Award pursuant to Rule 13.A.4.
- (b) In the event that the filing fee check is returned by the bank, the applicant shall pay an additional twenty dollars (\$20) returned check fee to BASF.

##### **4. Award of the Filing Fee**

At the discretion of the Arbitrator(s), Respondent may be directed, as part of the Award, to reimburse the other side, in whole or in part, for filing fees paid to the Program.

##### **5. Failure to Pay Filing Fee**

- (a) No matter may be referred to a Panel of Arbitrators, Sole Arbitrator or a Mediator without payment of the

filing fee by the Petitioner, except as in Rule 13.C. Failure of the Petitioner to pay the fee within the noted deadline shall be deemed an abandonment of the petition and a waiver of the right to arbitrate, and the file shall be closed.

- (b) Upon due notice from the Program, non-payment by the Respondent of any filing fees due pursuant to Rule 6.C.1.(d) may, at the discretion of the Arbitrator(s), result in the limitation of Respondent's evidence.

## **B. Refunds**

No filing fees are refundable by the Program except as otherwise provided in these Rules.

### **1. Client Refuses or Fails to Consent**

- (a) If the Attorney files a Request and the Client does not consent in writing to Mandatory Fee Arbitration, then the filing fee paid shall be refunded, less a one hundred dollar (\$100) administration fee or one-half (1/2) of the fee paid, whichever is less.
- (b) If the Attorney files a Request and the Client fails to file the Reply form and:
  - i. Where no extension has been requested in accordance with Rule 6.C.6, the file will be closed and the filing fee paid will be refunded, less a one hundred dollar (\$100) administration fee or one-half (1/2) the filing fee, whichever is less; OR
  - ii. Where an extension has been requested in accordance with Rule 6.C.6, after ninety (90) days from the filing of the Request, the file will be closed and the filing fee paid will be refunded, less a one hundred dollar (\$100) administration fee or one-half (1/2) the filing fee, whichever is greater, up to a maximum Program administration fee of one thousand dollars (\$1000).

### **2. Withdrawal of Request for Arbitration**

Pursuant to Rule 6.E., there is no refund when a matter has been withdrawn.

### **3. Lack of Jurisdiction**

In the event of a lack of jurisdiction, the Program shall notify the parties, close the file, and refund the filing fee in part or in full, as determined by the Chair, depending on the circumstances and time spent by the Program.

### **4. Settlement**

If the parties settle the dispute and so advise the Program in writing, with a copy to all parties and Arbitrator(s) or Mediator, the filing fee shall be refunded to the party who paid it, as follows:

- (a) Before initial Arbitrator or Mediator assignment, the Program shall retain 50% with a minimum payment of \$50.
- (b) After initial Arbitrator or Mediator assignment, there shall be no refund of filing fees.

## **C. Waiver of Filing Fee**

1. A Request for Resolution of a Fee Dispute must be filed with the Program before a waiver will be considered. A party who is financially unable to pay the filing fee may submit a waiver form which is available from the Program.
2. The application is reviewed and granted or denied based on the standards in California Rules of Court.
3. Denial of the waiver may be appealed to the Chair in writing. The processing of the Request for Resolution of a Fee Dispute will be stayed pending the determination.
4. For the purposes of a stay in any pending court or other proceeding, the Arbitration shall be deemed pending from the date the Request is filed.
5. If waiver is granted, the Arbitrator(s) may nevertheless determine and allocate the appropriate filing fee between the parties and order it to be paid to the Program. Such a ruling is binding on the parties regardless of the binding or non-binding nature of the Award.

## **D. Fees and Costs**

Pursuant to Business and Professions Code Sections 6203(a) and (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, notwithstanding any contract between the parties providing for such costs or fees.

### **E. Arbitrator Compensation**

Each Arbitrator serves for one full day on each case at no charge. In the event that a hearing takes more than one full day, the Chair may Award compensation as follows:

1. Arbitrator(s) will not be compensated for the first day of hearing, but thereafter each Arbitrator normally will be compensated at a rate of five hundred dollars (\$500) per half day (four (4) hours) [see Rule 13.E.3 for possible exception], or fraction thereof for hearing time, to be paid equally by both parties, or as the Chair determines is appropriate. A request for compensation shall be made in writing by the Chief or Sole Arbitrator to the Chair in accordance with Rule 13.E.4.
2. The parties may be required to deposit in advance an amount to cover the estimated hearing time if it is expected to be greater than one day. A request for a compensation deposit shall be made in writing by the Chief or Sole Arbitrator to the Chair and an Order for Advance Deposit may issue. If the deposited amount is greater than the Compensation Award, a refund will be issued to the parties. If the Compensation Award is greater than the deposit, parties will be ordered to pay the additional compensation amount.
3. In extraordinary circumstances, the Chair may modify or Award additional compensation to the Arbitrator(s) based on the complexity of the matter, the amount in dispute, and other appropriate factors, by adjusting the Award of Compensation upward or downward.
4. A written request for Arbitrator compensation shall be sent to the Program when the Arbitration Award is submitted to the Program. The request from the Chief or Sole Arbitrator should include the reasons why compensation should be awarded, the amount of compensation sought and copies of the time sheets of all Arbitrators supporting the request.
5. The Program shall serve parties copies of the Request for Compensation when the Award is served. A party may object to the Request, or to the amount of compensation, in writing to the Program within fifteen (15) days with a copy to all parties and Arbitrator(s). The Chair shall determine, without hearing, the amount of compensation to be awarded to the Arbitrator(s). The Arbitrator Compensation Award shall be binding on the parties and the Arbitrator(s), regardless of the binding or non-binding nature of the fee dispute Award shall include Attorney's fees to be Awarded in connection with any collection efforts.

## **14. SERVICE**

- A. The Petitioner's Request for Resolution of a Fee Dispute and the Respondent's Reply must be submitted to the Program by personal delivery or first class delivery by U.S. Mail, postmarked on or before the deadline.
- B. The Award shall be issued to the parties by the Program by personal delivery or first class delivery by U.S. Mail.
- C. All other correspondence, documents, and/or papers must be copied to the Program, the parties and their counsel, Mediators and Arbitrators. Personal delivery service is complete on delivery of the document; first class mail delivery is effective as of the postmark date. Service by facsimile or electronic transmission (e-mail) may be made on the Program and to those parties, counsel, Mediators and Arbitrators who have agreed to accept facsimile and/or e-mail. Facsimile and e-mail service are complete at the time of transmission. If a party does not agree to receive correspondence, documents, and/or papers through facsimile or e-mail, then the party must also receive, within five (5) days of the date of the transmission, the original of the facsimile or e-mailed document.
- D. All parties must keep the Program, parties, counsel, Mediator and Arbitrator(s) informed of their current address, phone numbers and e-mail. Notices and papers sent to the last known contact information for the client and the official address provided to the State Bar of California for the attorney shall be deemed delivered.
- E. For documents submitted to the Program by facsimile or email, the date of transmission will be considered the date of receipt as long as the Program also receives the required number of hard copies postmarked within five (5) days of the date of facsimile or email transmission.

**MEDIATION RULES ON NEXT PAGE**

# Mediation Rules of Procedure

8/1/2011

## I. APPOINTMENT AND RESPONSIBILITIES

It is the policy of The Bar Association of San Francisco (Association) to promote the consensual resolution of Attorney/Client Fee Disputes and to avoid the necessity of Arbitration of these disputes when agreeable to the parties. Therefore, the Association finds that a Mediation alternative to the Arbitration Program currently offered by the Association, in accordance with Business and Professions Code Section 6200 regulating Attorney/Client Fee Disputes, is desirable and authorizes the institution of a Mediation of Fee Disputes Program regulated by these Rules of Mediation. The Association hereby delegates to the Attorney/Client Fee Disputes Committee the authority and responsibility to appoint and maintain a Panel of qualified Mediators in accordance with the Attorney/Client Fee Disputes Committee's Arbitration Rules of Procedure and these Mediation Rules. Further, the Committee shall determine all questions of interpretation of the Rules at any stage of the proceedings.

## II. JURISDICTION

A. Participation in this Mediation Program (Program) is entirely voluntary for the parties. No party to any dispute shall be required to engage in Mediation through this Program, and any party may terminate the Mediation at any stage.

B. The Committee shall have jurisdiction to perform Mediation of Attorney/Client Fee Disputes under the authority of Business and Professions Code Section 6200.

## III. APPOINTMENT/QUALIFICATION OF MEDIATORS

The Committee shall appoint qualified volunteer Mediators, both Attorneys and Non-Attorneys, to a pool of Mediators. The Committee shall establish and publish guidelines for the qualifications of Mediators, which include the requirement that all Mediators have a minimum of 40 hours of mediator training.

## IV. THE PROCESS

### A. Commencement of Mediation

The matter will proceed to Mediation only if all parties indicate on the Request and Reply forms that they wish to mediate the dispute. If all parties do not wish to mediate, the matter will proceed to Arbitration in accordance with the Arbitration Rules of Procedure.

### B. Assignment of Mediator

The Committee shall notify the parties of the assignment of the Mediator within fifteen (15) calendar days after receipt of the Request and Reply indicating the willingness to mediate.

### C. Disqualification of Mediator

1. The Committee shall, as part of the assignment process, inform the prospective Mediator of the names of the parties and the nature of the case and ask if there is any personal bias regarding the parties or the subject matter, or any reason that the perception of bias could arise with any of the parties. A Mediator who has any personal bias, or who feels that the perception of bias may exist, regarding a party or the subject matter of the dispute, shall not serve as a Mediator in the dispute.
2. Any party may challenge one (1) Mediator for no cause and an unlimited number for cause. The challenge must be made in writing no later than five (5) working days after receipt of the Mediator assignment, addressed to the Committee, with a copy to the Mediator and the other party.
3. Upon the withdrawal or removal of the Mediator, the Committee shall reassign the matter and notify the parties of the new Mediator within ten (10) calendar days.

#### **D. Mediation Session Date**

Within ten (10) calendar days after the mailing of the final Mediator assignment, the Mediator shall arrange a Mediation date which shall take place within sixty (60) calendar days after the Mediator assignment was mailed. The Mediator shall promptly send the Agreement to Mediate, which shall include notification of the location, date and time of the session, to the parties and the Program.

#### **E. Mediation Session Date Continuance**

Any request for a continuance of the session date may be made to the Program, with a copy to the Mediator and all parties. The copy to the Program must include a continuance fee payable to BASF in accordance with Arbitration Rule 8.K. A continuance will be granted only with the agreement of all parties. Should one side object to a continuance request, the requesting party shall be given the choice to either attend the session on the date set or proceed directly to Arbitration without utilizing the Mediation service.

#### **F. Preparation for the Mediation Session**

Prior to the first Mediation session, the Attorney will provide copies of the relevant detailed billing records to the Mediator and the other side, if not already included in the Attorney's Request or Reply form. The parties may, by agreement, exchange other documents containing information relevant to the dispute. Either or both parties may provide the Mediator with a brief written statement outlining any pertinent information not contained in the Request or Reply for Resolution of a Fee Dispute. The Mediator and each party to the Mediation shall sign a Mediation Agreement, in the form provided by the Program which substantially complies with The State Bar of California's required form, prior to the commencement of the first Mediation session.

#### **G. Settlement before Session**

Should the parties settle the dispute on their own before the mediation session, a written confirmation of the settlement should be sent to Program with a copy to the Mediator and the other side. Filing fee refunds will be issued in accordance with Arbitration Rule 13.B.4.

#### **H. The Mediation Session**

##### **1. Costs**

The filing fee already paid to the Program for the filing of the Request for Resolution of a Fee Dispute includes up to four (4) Mediation hours, and administrative costs. Upon agreement of the parties and concurrence of the Mediator, additional or longer sessions may be scheduled. Mediator compensation for additional Mediator time and sessions shall be at an amount to be agreed upon by the parties and the Mediator but shall be no more than \$150 per hour notwithstanding that a Client may have been granted a waiver of the Program filing fee. If the Client is unable to pay for Mediator time beyond the first four (4) hours, the session shall conclude or other arrangements can be made between the Mediator and the parties. Such additional, or longer, sessions shall be governed by these Rules.

##### **2. Attendees**

Only the parties to the Mediation, their Attorneys or other advisor(s), if any, and the Mediator have the right to be present during the Mediation. However, the Mediator shall have the authority to determine if others may be present during the process.

##### **3. Communication**

Nothing in these Rules shall prevent the Mediator from meeting with the parties and/or their advisors separately during the course of the Mediation or from otherwise communicating separately with them. At the discretion of the Mediator, any Mediation session may be conducted by telephone.

##### **4. Failure to Appear**

If a party fails to appear, the Mediator shall have the option of rescheduling the Mediation or terminating the Mediation. The Mediator shall report any such action taken to the Committee.

#### **I. The Outcome**

##### **1. Resolution**

If the parties resolve the dispute, the points of agreement shall be reduced immediately to writing at the session. All parties shall sign and retain an original of the settlement agreement. Signing of the Agreement indicates that it accurately sets forth the points agreed to. The Mediator shall not draft any release, or provide legal advice concerning the terms of the agreement. The Mediator shall promptly notify the Committee in writing that the matter resolved. The file will be closed and the Program shall forward to the parties a copy of The State Bar of California's Your Rights After Mediation. There is no refund of the filing fees when the Mediation is successful and the matter settles.

**(a) Written Agreement Requirements**

**i. Responsible Attorney**

The State Bar of California's Guidelines and Minimum Standards require that each mediated agreement in which the parties agree that the Client shall receive a refund of previously paid fees/costs shall include the name of the individual responsible Attorney (s) responsible for making the refund.

**ii. Required Language**

Each mediated agreement shall be in writing and signed by the Client and the responsible Attorney(s) and shall include substantially the following language:

The following agreement is made (using full names):

- (1) [Client][Non-Client party][Attorney] \_\_\_\_\_, shall pay to [Client] [Non-Client party] [Attorney] \_\_\_\_\_, the sum of \$ \_\_\_\_\_; **OR**
- (2) Nothing further shall be paid by either Attorney or Client or Non-Client; **and**
- (3) The parties have considered the allocation of the filing fee paid to the Program in making this decision.
- (4) The Parties waive the provisions of Evidence Code Sections 1115-28 that would otherwise prohibit disclosure of the term of this agreement, and further, stipulate that this agreement is binding and shall be enforceable pursuant to California Code of Civil Procedure Section 664.6.

**2. No Resolution**

If the parties are unable to resolve the dispute through Mediation, the Mediator shall notify the Committee in writing and the matter will proceed to Arbitration in accordance with the Rules of Arbitration.

**V. CONFIDENTIALITY**

- A.** All communications, negotiations, or settlement discussion by and between participants and/or Mediators shall remain confidential.
- B.** The Mediation session or sessions, or any documents prepared for or during the Mediation, shall be confidential, in accordance with the provisions of California Evidence Code Sections 1115-27.
- C.** The Mediator, Association Program and Committee members shall be deemed ineligible to testify in any civil, judicial or quasi-judicial proceeding, including Arbitration, as to any statements made at or in connection with the Mediation.