

# BEVERLY HILLS BAR ASSOCIATION

## Rules for Arbitration Proceedings for Attorney Fee Disputes

(Amended November, 1993)

The Beverly Hills Bar Association, previously having carried on a voluntary program for the arbitration of lawyer's fee disputes, has elected to participate in the Mandatory Fee Arbitration Program established pursuant to sections 6200 to 6206, inclusive, of the California Business and Professions Code.

In order to conform to the Guidelines and Minimum Standards for such local bar association programs adopted by the Board of Governors of the State Bar of California, this Association enacts the following Rules for such proceedings:

### I

#### DEFINITIONS

- A. "Association" means the Beverly Hills Bar Association;
- B. "Tribunal" means a panel of three arbitrators;
- C. "Arbitrator" means a sole arbitrator unless the context otherwise provides;
- D. The "Chair" means the chairperson of a tribunal;
- E. "The Committee" means the committee or subcommittee of this Association charged with the responsibility of administering arbitrations under these Rules;
- F. "The parties" means the client and the attorney involved in the fee dispute;
- G. The "Arbitration Secretary" means the member of, or staff employee of this Association designated by its Board of Governors to carry out the duties of Arbitration Secretary as specified in these Rules; unless and until a different designation is made, the Executive Director of the Beverly Hills Bar Association shall serve as Arbitration Secretary.

### II

#### FEE DISPUTES SUBJECT TO ARBITRATION

A. The arbitration program of this Association, effective with respect to legal services performed by an attorney since January 1, 1979, shall apply to any dispute as to the proper fee, costs or both for such services, or as to a claimed refund of unearned fees, costs or both, between a client or the person responsible for the fees, costs or both, and:

1. Any attorney who is a member of this Association
2. Any attorney who is not a member of this Association but whose office is located in Los Angeles County (except within the city of Long Beach), or whose services were substantially performed within such area. Arbitration of such fee disputes is optional with the client but mandatory with respect to the attorney.

B. Where the Beverly Hills Bar Association elects to arbitrate a matter in which the petitioner is not the client of the attorney, but may be responsible for the fees/costs or entitled to a refund of fees/costs previously paid, (a) the request to arbitrate shall be made by the client who will include the non-client(s) as a party, and (b) the arbitration request shall be signed by all such parties.

### **III JURISDICTION**

Each arbitrator, or tribunal, shall have the authority to determine the issue of jurisdiction and shall decline to proceed with an arbitration if there is a determination of lack of jurisdiction. In any instance where jurisdiction is declined, the arbitrator, or the Chair of the tribunal, as the case may be, shall promptly notify the parties and the Arbitration Secretary of such decision.

### **IV REMOVAL TO THE STATE BAR**

A party who believes that a fair and impartial hearing cannot be obtained under the Rules of this Association is entitled to have a hearing through a State Bar panel upon written request made upon Form A, entitled "Request for Hearing by State Bar Panel", a copy of which is appended hereto and will be furnished to such party by this Association upon request. In a matter already pending before this Association, this Association or its Lawyer Referral Service shall release jurisdiction of the matter upon notification of the State Bar's acceptance of said matter for arbitration.

### **V ATTORNEY REQUIRED TO NOTIFY CLIENT**

Prior to the filing of a lawsuit against a client for attorney's fees, costs or both or at the time of service of summons in such action, there must be delivered to the client, by personal service or first class mail, a written "Notice of Client's Right to Arbitrate" on the form approved by the State Bar and appended hereto as Form B.

### **VI CLIENT'S RIGHT TO STAY PROCEEDINGS**

If an action is filed on an attorney's claim for fees, costs or both in any court and the claim is subject to arbitration under the provisions of the Business and Professions Code, the action will be automatically stayed without the necessity of a court order as provided by Business and Professions Code section 6201(c).

### **VII INITIATION OF PROCEEDINGS**

A. Within 30 days after receipt from an attorney of a Notice of Client's Right to Arbitrate, or in the absence of receipt of such notice, if a client desires to arbitrate a fee dispute with the client's attorney, the client must file with this Association a Request to Arbitrate a Fee Dispute and must serve a copy of same upon the attorney by registered or certified mail together with a blank copy of the Attorney's Reply to Client's Request to Arbitrate, both of which forms are provided upon request by this Association. The right to compel arbitration will be forfeited if arbitration proceedings are not initiated within thirty (30) days after receipt of a "Notice of Client's Right to Arbitrate".

B. A "Request to Arbitrate a Fee Dispute" must be accompanied by a non-refundable filing fee. The filing fee is an amount equal to 5% of the amount in dispute, but not less than \$50.00 nor more than \$3,500.00. ROUND THE AMOUNT UP TO THE NEXT DOLLAR.

C. A client who is financially unable to pay such filing fee in part or in its entirety at the time he files the "Request" may apply for waiver of all or a part of said fee on a financial statement form provided by the Association, entitled "Request for Waiver of the Arbitration Filing Fee". If said financial statement is deemed adequate the Association will so advise the client and proceed with the arbitration. The Association may allow for payment of the filing fee on an acceptable installment basis and proceed with the arbitration process. Where a client requests a waiver of the filing fee, the client must simultaneously request BINDING arbitration. Thereafter, if the attorney does not agree to a binding award, the matter will proceed as advisory.

## **VIII GENERAL PROVISIONS RE ARBITRATION PROCEDURE**

A. The Committee shall at all times maintain a listing of attorneys who have registered with the Committee to be prospective arbitrators and shall further maintain a listing of a reasonable number of public members who are representative of the community and shall not be required to have any expertise in the legal field. Such lay persons shall be nominated by the Board of Governors of this Association and shall have signified their willingness to serve as arbitrators.

B. A sole arbitrator shall be an attorney.

C. In arbitrations by a tribunal, two of the arbitrators shall be attorneys and one arbitrator shall be a layperson. One of the attorney members shall be designated as Chair of the tribunal.

D. This Association will not accept an application for an arbitration from a client where the amount in dispute is less than \$2,500.00 unless the client elects binding arbitration. Thereafter, if the attorney refuses binding arbitration the award shall be advisory only. All arbitration of disputes involving \$2,500.00 or more shall be advisory only unless both parties agree to the binding option.

If the arbitration is "advisory" either party may reject the award by written notice of rejection and request for a trial after arbitration if a lawsuit is pending, or file a lawsuit with a court requesting trial after arbitration within 30 days after the mailing date of the award, except that if either party willfully fails to appear at the arbitration hearing, 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.

If no such rejection or lawsuit is filed with a court by either party within 30 days from the date of mailing of the award, the award automatically becomes binding on both parties.

E. The attorney is required to complete the "Reply" form indicating his selection of the options available to him and promptly mail said completed form to this Association. If the attorney fails to respond or refuses to participate in the arbitration, the hearing shall proceed as scheduled and a decision shall be made on the basis of the evidence presented.

F. If the client fails to timely file the Request for Arbitration form and/or fails to pay the required filing fee therefor, the client's right to require a mandatory fee arbitration pursuant to the provisions of the California Business and Professions Code is deemed waived and forfeited.

G. The client's right to request arbitration is likewise waived if, 1) the client answers a complaint in a civil action before filing the "request" if notified of his right to arbitrate; 2) the client commences an action or files any pleading seeking judicial resolution of a previous suit, or seeking affirmative relief against the attorney for damages or otherwise, based upon malpractice or professional misconduct.

**IX**  
**SELECTION OF ARBITRATORS**

A. Where the fee dispute involves less than \$10,001.00, the arbitration hearing shall be conducted by a sole arbitrator appointed by the Committee chair or Arbitration Secretary.

B. Where the fee dispute involves \$10,001.00 or more, the arbitration hearing shall be conducted by a tribunal of three arbitrators appointed by the Committee chair or Arbitration Secretary. However, the client and attorney may agree to have a sole arbitrator hear such matter in which case the hearing shall be conducted by a sole arbitrator.

C. At the option of the client, one member of a three-person panel or the sole arbitrator shall be an attorney whose area of practice is either civil or criminal law. The client's election shall have a relation to the underlying case. The Beverly Hills Bar Association shall inform clients of this option at an early stage in the proceedings and provide a client a means to exercise this option on its Form D, Request to Arbitrate a Fee Dispute.

D. Each arbitrator designated to act shall be notified by the Arbitration Secretary of such selection, including the selection of the Chair of a tribunal and the names of the other members of the tribunal, and the names and addresses of the parties. It shall be the obligation of the arbitrator selected to promptly disclose to the Arbitration Secretary any reasons why he or she cannot ethically or conscientiously serve as an arbitrator. In the event that an arbitrator so designated to serve, declines to or is unable to serve, the Committee chair or Arbitration Secretary, in designating arbitrators, shall strive to rotate selection of arbitrators in an equitable manner.

E. If either party to the arbitration advises the Committee chair or Arbitration Secretary that any arbitrator should be disqualified, the Committee chair or Arbitration Secretary shall immediately appoint a successor thereto. Each party to the arbitration may disqualify no more than one (1) arbitrator without cause but is entitled to an unlimited number of challenges for good cause. If disqualification is not claimed in writing by one or more of the parties, and postmarked within fifteen (15) days after being served with notice of the appointment of the arbitrator(s), any claim of disqualification shall be considered waived, but such waiver shall have no effect upon an arbitrator's own disqualification.

F. At a time no later than the time of service of the notice appointing the Arbitration panel, the Association will also serve a copy of the approved State Bar notice of attorney responsibility form upon the attorney. A copy of said form is appended hereto as Form I.

**X**  
**RULES FOR CONDUCT OF ARBITRATION PROCEEDINGS**

A. The arbitrators shall be vested with all the powers and shall assume all the duties granted and imposed upon neutral arbitrators by Business & Professions Code section 6200(g) and the provisions of Title 9 of the Code of Civil Procedure, particularly section 1282 through 1284.2, and, furthermore, shall enjoy the immunity granted by Business & Professions Code section 6200(f).

B. It shall be the responsibility and obligation of the arbitrator(s) to proceed with a fair, speedy and impartial hearing and to determine the dispute as expeditiously as is reasonably possible.

C. The sole arbitrator or the Chair of a tribunal, as soon as possible after consultation with the other tribunal members, shall appoint a time and place for the hearing, and shall notify the parties of the hearing, by registered or certified mail, not less than 20 days before the date thereof. The notice of hearing, (a copy of which is appended hereto as form G) shall include a notification of the parties to: (1) present witnesses and documentary evidence in support of their positions; (2) to be represented by counsel, and (3) at the requesting party's own expense, to have an interpreter and/or to have a stenographic record or recording by other means, made of the proceedings by making a prior arrangement with the arbitrator or with the Chair of the tribunal. Appearance at the hearing by the party or parties waives the right to notice. (Code of Civil Procedure section 1282.2(a).)

D. Any party may be represented by counsel.

E. Upon the application of a party or upon his or her own determination, the arbitrator or the Chair of a tribunal may issue subpoenas for the attendance of witnesses at a hearing and may issue subpoenas duces tecum for the production of documents at a hearing. Issuance of subpoenas and subpoenas duces tecum shall be served and enforced in accordance with Code of Civil Procedure sections 1985 through 1987.

F. In lieu of a subpoena or a subpoena duces tecum, any party may serve on any other party not later than five (5) days before the hearing, a written request to appear, or to appear and produce any designated records, not privileged, relevant to the subject matter and in the custody or control of the party upon whom the request is made. If so notified, the notified party must appear and, if requested, must produce evidence in accordance with the request, subject however, to protective orders in response to objections which may be made orally at the hearing without prior oral or written notice but otherwise as provided in the Code of Civil Procedure section 1987(c).

G. The Committee shall, from time to time, prescribe such other forms as it may deem appropriate or convenient, to implement these Rules or proceedings pursuant to these Rules.

H. The sole arbitrator or the Chair of a tribunal may postpone or adjourn the hearing from time to time as may become necessary upon request and showing of good cause by a party, or upon the arbitrator's or the tribunal's own determination. (CCP section 1282.2(b))

I. The sole arbitrator or Chair of a tribunal shall preside at the hearing, and he or she shall rule on the admission and exclusion of evidence and on questions of procedure, and shall exercise all powers relating to the conduct of the hearing. (CCP section 1282.2(c))

J. The parties to the arbitration are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing, but California Rules of Evidence and Rules of Judicial Procedure need not be observed. Upon the request of any party or any arbitrator, the testimony of witnesses shall be given under oath (CCP 1282.2(d)). The sole arbitrator or the Chair of the tribunal may administer oaths to witnesses appearing or testifying at the hearing. (CCP section 1282.8)

K. Any relevant attorney/client communications or work product may be disclosed for the purposes of determining the dispute or enforcing an arbitration award, but in no way shall the disclosure be deemed a waiver of the confidential character of such matters for any other purpose. (Business and Professions Code section 6202)

L. The arbitration hearing may proceed in the absence of any party or parties, who after due notice, fail(s) to be present or fail(s) to obtain an adjournment or postponement of the arbitration hearing. An award shall not be made solely because of the default of a party or parties. The sole arbitrator or the Chair of the tribunal shall require the party or parties who is/are present to submit such evidence as may be required to support the making of an award. An award may be in favor of a party who is absent, if the evidence so warrants.

M. Except for the parties to the arbitration and their agents, officers, employees and representatives, all witnesses appearing pursuant to subpoena are entitled to receive fees and mileage in the same amount and under the same circumstances as prescribed for witnesses in civil actions in the Superior Court. The fee and mileage of a witness subpoenaed shall be paid in advance to the witness by the party who requested the subpoena, and if demanded and not so paid, the witness shall not be required to attend. (CCP section 1283.2)

N. If a member of a tribunal, having been duly notified, fails to participate in the arbitration, the remaining arbitrators may proceed with the arbitration with the consent of the party or parties in attendance, but only the remaining arbitrators may make the award.

O. The chair of the Committee or the Arbitration Secretary may appoint a substitute arbitrator in the event of the resignation, inability to serve or nonappearance of any sole arbitrator or any tribunal member. This substitute arbitrator shall be chosen from those persons who would otherwise have been eligible to arbitrate. However, such substitute arbitrator shall not participate in the making of the award unless he or she has been present at all of the arbitration hearings in which evidence has been proffered, or unless the fact of his or her not being present at such hearings is waived by all parties.

P. Any party may have an arbitration hearing recorded by providing for the attendance of a certified shorthand reporter, after making arrangements with the reporter to pay his or her fee. In such event each party shall be entitled to a copy of said reporter's transcript of the testimony upon request and payment thereafter to the reporter. In the absence of a certified shorthand reporter, any party may have the arbitration hearing recorded by some other means, after providing for the expense thereof. In such event, each party shall be entitled to a copy of the transcript of such other reporting upon request and payment therefor.

Q. The award of a sole arbitrator or of a tribunal shall be made as soon as possible after the close of the hearing. The award of the tribunal shall be made by concurrence of two or more of the tribunal members.

R. The award shall be made in writing and signed by the arbitrator or arbitrators present at the arbitration hearing and concurring therein. It shall include a determination of all the questions submitted to the arbitrator or to the tribunal, the decision of which is necessary in order to determine and settle the controversy, including the name(s) of the responsible attorney(s). It may include an allocation of the filing fee and the fee paid by the client for filing a stay with the court and may also include an allocation of witness fees paid and the cost of services rendered by an interpreter on behalf of a party in connection with the arbitration proceeding. The award shall not include any award to either party for attorney's fees incurred in the arbitration proceeding, notwithstanding any contract between the parties providing for such an award of attorney's fees.

S. The arbitration award should consist of a preliminary statement reciting the jurisdictional facts, (e.g., that a hearing was held upon written notice pursuant to a written agreement to arbitrate, that the parties were given an opportunity to testify and cross-examine, and the like), a brief statement of the dispute, findings of fact and conclusions and the award. At a minimum, the arbitration award shall include substantially the following language, as appropriate:

The arbitrator(s) find that the total amount of fees and/or costs which should have been charged in this matter are: \$ \_\_\_\_\_

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

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

\$ \_\_\_\_\_ Client

\$ \_\_\_\_\_ Attorney

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

Accordingly, the following award is made:

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

OR

(b) Attorney, \_\_\_\_\_, shall refund to client, \_\_\_\_\_: \$ \_\_\_\_\_

OR

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

A copy of the proposed award is attached hereto as Form H.

T. The original and four (4) copies of the arbitration award shall be signed by the sole arbitrator or by the members of a tribunal concurring therein. The sole arbitrator or the Chair of a tribunal shall forward said award and the signed copies thereof, together with the entire file, to the Arbitration Secretary, who shall thereupon, for and on the behalf of the sole arbitrator, or tribunal, serve a signed copy of the award on each party to the arbitration by mail with an original declaration of service of the award and a notice of the parties' post-arbitration rights. The Arbitration Secretary shall then notify the chair of the Committee that the matter has been handled to conclusion.

U. Any award, when final, made pursuant to these Rules may be enforced in accordance with the provisions of CCP sections 1285 through 1288.88.

V. Whenever it appears to a sole arbitrator or to a tribunal that there may have been a breach of the Rules of Professional Conduct of the State Bar of California, the arbitrator or tribunal, upon conclusion of the arbitration proceeding and at his/her/its discretion, shall refer the file with a written report to the Committee chair or Arbitration Secretary. The Committee, or any subcommittee thereof appointed for such purpose by the chair of the Committee, shall review the matter and may, if it deems it appropriate, refer the matter to the State Bar of California for further review.

W. The arbitrator or panel shall receive and consider evidence relating to malpractice or professional misconduct, but only as to the extent that those claims bear upon the fees, costs or both to which an attorney is entitled. The award may not include any affirmative relief, in the form of damages or offset or otherwise, for injuries underlying any such claim.

X. All hearings shall be closed to the public. Upon request of a client, members of the client's immediate family may be permitted to be present at a hearing.

Y. No arbitrator will be entitled to receive compensation for services rendered at arbitration hearings but is entitled to be compensated for certain costs, such as parking, upon presentation to the Association of the receipt and, except for the prescribed filing fees, no charges will be made by the Association, the Committee or the arbitrators. A hearing room will be provided by an arbitrator or by the Association without charge to the parties.

Adopted: May, 1980

Amended: Feb. 1985; Feb. 1987; July 1988; Jan., 1992; March, 1993; Nov. 1993

**-END-**