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January 2010

Dear Applicant,

The Ventura County Bar Association (VCBA) offers a Fee Arbitration Program which can help you with a dispute over fees for attorney services. The Fee Arbitration Program gives you the opportunity to have a neutral arbitrator decide the appropriate amount of attorney's fees for professional services. Fee disputes involving less than \$5,000, are also eligible to participate on a voluntary basis in the optional Fee Mediation Program (see Section IV). The Ventura County Bar Association provides this option through the services of the Ventura Center for Dispute Settlement (VCDS). The Fee Mediation Program is available, where all parties agree to participation, to help the parties resolve their disputes. Matters not resolved by the Fee Mediation Program will return to the Fee Arbitration Program for resolution.

The Ventura County Bar Association is not authorized to discipline attorneys. If you believe your attorney has committed malpractice or professional misconduct and you wish to file a formal complaint with the State Bar of California, call (800) 843-9053.

If you have received written notice from your attorney of your right to arbitrate, ***you have 30 days from the date you received it to file a request for arbitration (including the mediation option) on the forms provided in this packet.*** You must make sure that we receive your request on the approved form within 30 days, that the form is completely filled out and that you have included any filing fee. Failure to properly file may constitute a waiver of your right to request or maintain arbitration. A telephone call or a letter will not protect that right.

Dean W. Hazard, Chairperson
Attorney Client Relations Committee

Alejandra Varela-Guerra
Client Relations Manager

**RULES OF PROCEDURE
FOR THE HEARING OF FEE ARBITRATIONS
BY
FEE ARBITRATION COMMITTEE
OF
VENTURA COUNTY BAR ASSOCIATION**

EFFECTIVE

January 1, 1979

As Amended

July 8, 1982

April 20, 1983

March 19, 1987

August 29, 1988

January 12, 1989

May 1, 1990

October 30, 1990

January 1, 1994

May 10, 1996

May 11, 1998

August 29, 2000

February 5, 2002

May 27, 2003

January 12, 2004

February 15, 2005

July 11, 2008

RULES OF PROCEDURE FOR FEE ARBITRATIONS

TABLE OF CONTENTS

ARTICLE I. DEFINITIONS

1	Definitions.....	1
---	------------------	---

ARTICLE II. ARBITRATION GENERALLY

2	Arbitration Mandatory for Attorneys	2
3	Parties Failure To Respond Or Participate.....	2
4	Disputes Covered.	2
5	Non-Binding & Binding Arbitration.....	2
6	Withdrawal of Binding Arbitration.	3
7	Right To Counsel.....	3
8	Waiver Of Right To Request Or Maintain Arbitration.....	3
9	Stay Of Proceedings.....	4

ARTICLE III. PROGRAM

10	Determination of Jurisdiction.....	4
11	Jurisdiction by the Program.	5
12	Removal to the State Bar of California.....	5
13	Effect of Failure to Adhere to Time Requirements.	6

ARTICLE IV. INITIATION OF ARBITRATION PROCEEDINGS

14	Request for Arbitration.....	6
15	Filing Fee.....	7
16	Request for Filing Fee Waiver.....	7
17	Response to Request for Arbitration.	8
18	Requests & Responses to Requests for Arbitration.	8
19	Settlement of Disputes; Withdrawal from Arbitration; Refund Schedule.	8
20	Consolidations.	9

ARTICLE V. PANELS

21	Appointment of Panels.	9
22	Notice of Appointment of Panel.....	10
23	Challenge Disqualification of Arbitrators.	10
24	Discharge of Arbitrator of Panel.	11
25	Prohibited Contacts with Arbitrators.	11

ARTICLE VI. THE HEARING

26	Confidentiality.....	11
----	----------------------	----

27	Waiver of Personal Appearance.....	11
28	Death or Incompetence of a Party.....	12
29	Discovery.....	12
30	Subpoenas.....	12
31	Commencement of Hearing; Notice; Attendance.....	12
32	Stipulations Encouraged.....	13
33	Oaths.....	13
34	Evidence.....	13
35	Order of Proof.....	13
36	Interpreter.....	14
37	Transcripts or Recordings.....	14
38	Compensation of Arbitrators; Administrative Charges.....	14

ARTICLE VII.AWARD

39	Award.....	14
40	Correction of Award by Hearing Panel.....	16

ARTICLE VIII.SERVICE; ADDRESS

41	Service.....	17
----	--------------	----

ARTICLE IX.ENFORCEMENT OF THE ARBITRATION AWARD

42	Enforcement Of The Arbitration Award.....	18
43	Records Retention.....	18

ARTICLE X. FEE MEDIATION PROGRAM

44	Preamble.....	18
45	Jurisdiction.....	18
46	Appointment/Qualifications Of Mediators.....	19
47	The Mediation.....	19
48	Confidentiality.....	22
49	Statistics.....	23

State Bar of California Model Rules of Procedure for Fee Arbitrations

(Approved November 17, 2006; rev. July 11, 2008)

ARTICLE I. DEFINITIONS

RULE 1.0. Definitions.

As used in this chapter:

- 1.1 **ACTION:** A civil judicial proceeding brought to enforce, redress or protect a right.
- 1.2 **ADMINISTRATOR:** The staff person responsible for administering the local bar association's Mandatory Fee Arbitration Program.
- 1.3 **AWARD:** The decision of the arbitrator or arbitrators in the fee arbitration proceeding.
- 1.4 **CLIENT:** A person who directly or through an authorized representative consults, retains or secures legal services or advice from an attorney in the attorney's professional capacity.
- 1.5 **COMMITTEE CHAIR:** The person on the Mandatory Fee Arbitration program responsible for supervising the program's fee arbitrators and for ruling on matters as set forth in these rules.
- 1.6 **DECLARATION:** A declaration is a document in compliance with the requirements of Code of Civil Procedure section 2015.5, or an affidavit.
- 1.7 **FILE:** Fee arbitration records and papers in a specific fee arbitration case.
- 1.8 **HEARING PANEL:** One or three arbitrators assigned to hear the fee dispute and to issue the award.
- 1.9 **PANEL CHAIR:** Refers to either the sole arbitrator or Panel Chair of a three-member panel assigned to hear a matter. The Panel Chair is responsible for ruling on matters pertaining to the individual case assigned as set forth in these rules.
- 1.10 **PARTY:** A person who initiates or is named in an arbitration proceeding under these rules, including an attorney, a client or other person who is not the client but may be liable for payment of, or entitled to a refund of attorney's fees.
- 1.11 **PROGRAM:** Unless indicated otherwise, reference to the program means the Mandatory Fee Arbitration Program of the Ventura County Bar Association.

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

ARTICLE II. ARBITRATION GENERALLY

RULE 2.0 Arbitration Mandatory For Attorneys.

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

RULE 3.0 Party's Failure To Respond Or Participate.

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

RULE 4.0 Disputes Covered.

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

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

RULE 5.0 Non-Binding and Binding Arbitration.

- 5.1 Arbitration is not binding unless all parties agree in writing after the fee dispute arises. Such agreement shall be made prior to the taking of evidence at the hearing. If any party has not agreed in writing to binding arbitration, the arbitration is non-binding, and any party may request a trial after arbitration in a civil court pursuant to Business and Professions Code section 6204 within 30 days after the non-binding arbitration award has been served. If a trial after arbitration is not requested, the non-binding award

automatically becomes binding 30 days after the award is served, except that if any party willfully fails to appear at the hearing as provided for under these rules, that party shall not be entitled to a trial after arbitration. The decision as to whether the non-appearance was willful is made by the court. The party who failed to appear at the hearing shall have the burden of proving that the failure to appear was not willful. An award may be corrected, vacated or confirmed pursuant to Code of Civil Procedure section 1285 et seq.

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

RULE 6.0 Withdrawal of Binding Arbitration Election.

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

RULE 7.0 Right To Counsel.

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

RULE 8.0 Waiver Of Right To Request Or Maintain Arbitration

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

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

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

RULE 9.0 Stay Of Proceedings.

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

**ARTICLE III.
PROGRAM**

RULE 10.0 Determination Of Jurisdiction.

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

based on new evidence. The Committee Chair shall rule on the request for reconsideration.

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

RULE 11.0 Jurisdiction by the Program.

- 11.1** The Program shall have jurisdiction over a fee dispute if a substantial portion of the legal services was performed in the county where the Program is located, or at least one of the attorneys involved in the dispute has an office in VTA Cty or maintained an office in VTA Cty at the times the services were rendered.
- 11.2** In the event of a 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 ruling is final and not appealable to the State Bar. Should the fee dispute transfer to a different fee arbitration program after the request for arbitration is filed, the original date of postmark or receipt of the arbitration request will be preserved for purposes of determining whether jurisdiction exists.

RULE 12.0 Removal to the State Bar of California.

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

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

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

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

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

service of an order granting a request for removal, the party who paid the filing fee to the program shall receive a refund of the filing fee from the Program.

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

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

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

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

RULE 13.0 Effect Of Failure to Adhere to Time Requirements.

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

**ARTICLE IV.
INITIATION OF ARBITRATION PROCEEDING**

RULE 14.0 Request For Arbitration.

14.1 Arbitration may be initiated by a client, an attorney or a third party entitled to request mandatory fee arbitration.

14.2 An Arbitration is initiated by filing a written "Request For Arbitration" with the program on the approved program form and paying the appropriate filing fee as established by the program. Service of the request on the other party with whom there is a fee dispute named on the request form shall be made by the program.

14.3 At the time of service of a request on an attorney, the program shall serve with it a copy of the approved "Notice of Attorney Responsibility" form.

14.4 The party requesting arbitration may amend the request up to 15 days after mailing it to the program, unless a request for clarification is made by the program. Thereafter, it may be amended only with the approval of the Committee Chair or by the Panel Chair, if a notice of assignment of the hearing panel has been served on the parties.

14.5 The request for arbitration may 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. 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, a fee arbitration with a non-client is not intended to abrogate the attorney's duty to maintain client confidences and secrets, unless such disclosure is otherwise permitted by law. Absent the client's signature on the request for arbitration, when an arbitration with a non-client is initiated, the program will give notice of the request to the client by first class mail at the client's last known address.

15.0 Filing Fee.

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

15.2 The joining of additional parties as petitioner or respondent shall not increase the filing fee.

15.3 Filing Fee Schedule.

The filing fee is \$200 for disputes up to \$ 5,000
\$400 for disputes up to \$ 5,001-\$10,000
\$600 for disputes up to \$ 10,001-\$20,000
\$1200 for disputes over \$20,001-\$50,000
~~\$1600~~ for disputes over \$50,000

RULE 16.0 Request For Filing Fee Waiver.

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

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

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

RULE 17.0 Response To Request For Arbitration.

- 17.1** The respondent party's reply to a Request for Arbitration, together with any response, if the respondent party is an attorney, to the issue of the attorney's responsibility for any award that refunds fees or costs or both to the client, shall be submitted to the program on its approved form within 30 days of the service of the request, unless an extension of time to reply is obtained from the program.
- 17.2** If the attorney seeks arbitration, and there is no written agreement between the parties that fee disputes be submitted to fee arbitration, arbitration shall proceed only if the client consents in writing on the approved form within 30 days of service of the request, unless the attorney is seeking removal from a local bar program under rule 10.2 of a matter in which the client has already requested arbitration or has consented to an attorney's request for arbitration.

RULE 18.0 Requests and Responses to Requests for Arbitration.

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

RULE 19.0 Settlement Of Disputes; Withdrawal From Arbitration; Refund Schedule.

- 19.1** Upon confirmation by the parties or the hearing panel if one has been assigned that the dispute has been settled, the matter shall be dismissed by the program in the absence of an assigned hearing panel, or by the panel chair if a notice of assignment of the hearing panel has been served on the parties.
- 19.2**
- a) If a party wishes to withdraw from a binding arbitration and the matter has not been settled, all other parties must agree to the matter being withdrawn.
 - b) If there is a written agreement between the parties requiring arbitration of the fee dispute through the Mandatory Fee Arbitration Program, all other parties must consent to a request for withdrawal before the proceeding is dismissed.
 - c) If arbitration has been requested by the attorney, the matter may only be dismissed with the agreement of the other parties.
 - d) In all other cases, the party who requested arbitration may withdraw from the arbitration proceeding without the consent of other parties at any time before evidence is taken.
- 19.3** Refund of the filing fee: If the matter is settled or dismissed based on withdrawal before the request for arbitration is served on the attorney by the program, 100percent of the filing fee shall be refunded to the party who paid it. If the matter is settled after the

request for arbitration has been served on the respondent party by the program but before assignment of a panel, the program shall retain 0 percent of the filing fee paid up to a maximum of \$ _____. After assignment of a hearing panel, if written notice of the settlement is received by the program at least 10 days prior to the date of the scheduled hearing, the program shall retain 100 percent of the filing fee up to a maximum of \$ _____. The remaining fee shall be refunded to the party who paid it. After hearing panel assignment and less than 10 days before the hearing, there shall be no refund of filing fees.

- 19.4 If the parties settle the fee dispute and wish to obtain a stipulated award incorporating the terms of a written settlement agreement, the Committee Chair, if no hearing panel has been assigned, or the Panel Chair, if the hearing panel has been assigned, may issue a stipulated award incorporating by reference the parties' written settlement agreement. The Program will serve the stipulated award in the same manner as it would serve an arbitration award as prescribed elsewhere in these rules.

RULE 20.0 Consolidations.

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

If a client requests fee arbitration against an attorney who is already a party in a non-client fee arbitration relating to the client's matter or joins a fee arbitration as a party in a fee dispute between the client's attorney and a non-client, consolidation of the arbitration matters is automatic absent a showing of good cause to the contrary.

ARTICLE V. PANELS

RULE 21.0 Appointment Of Panel.

- 21.1 For each dispute, the Program shall assign a hearing panel from the program's roster of fee arbitrators. A hearing panel shall consist of one attorney arbitrator if the amount in dispute is \$10,000 or less and three arbitrators if the amount in dispute is more than \$10,000, one of which shall be a non-lawyer. An attorney arbitrator shall be designated as Panel Chair. If the amount in dispute is more than \$10,000, the parties may agree, in writing, to have the matter heard by a single attorney arbitrator.
- 21.2 Upon the client's request, the program shall assign a sole arbitrator, or in the case of a three person panel, one of the attorney arbitrators, whose area of practice is civil or criminal law. Any such designation made by the client shall be of an arbitrator who

practices in the same area of law as was involved in the matter for which the attorney was retained by the client. Any such request made pursuant to Business and Professions Code section 6200, subdivision (e) must be submitted by the client at the time the written "Request for Arbitration" on the approved program form is submitted to the program.

- 21.3** If a fee dispute involves \$1,000 or less, the arbitration shall be decided by the Committee Chair or designee. Each party shall submit all supporting documents and a complete written statement of the reasons for the dispute, a response, or both, under penalty of perjury. The parties have 30 days from the service by the program of the reply to the arbitration request, which will be reflected in a proof of service. The record shall thereafter be forwarded to the Committee Chair or designee for action, who may require either or both parties to submit additional information within 30 days. However, if the amount in controversy is less than \$1,000 but greater than \$500, the parties upon the request of any party, may appear at a hearing, either in person or telephonically, before the Committee Chair or designee assigned to the matter, in addition to providing the written information required by this section. The program shall keep a permanent record of the number of fee disputes in which the amount in controversy is between \$500 and \$1,000 and of that number, the number of fee disputes in which any party requested a hearing. The parties shall be informed of this rule at the time of the program's service of a completed arbitration request form.
- 21.4** Any vacancy of an arbitrator, by way of disqualification or inability to serve, may be filled by the program, but in no event shall the arbitration proceed with only two arbitrators.

RULE 22.0 Notice Of Appointment Of Panel.

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

RULE 23.0 Challenge Disqualification Of Arbitrator(s).

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

RULE 24.0 Discharge Of Arbitrator Or Panel.

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

RULE 25.0 Prohibited Contacts With Arbitrators.

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

- a) At scheduled hearings;
- b) In writing with a copy to all other parties, or their respective counsel, if any, and the program;
- c) For the sole purpose of scheduling a hearing date or other administrative procedures with notice of same to the other parties;
- d) For the purpose of obtaining the issuance of a subpoena as set forth in these rules; or
- e) In an emergency.

ARTICLE VI. THE HEARING

RULE 26.0 Confidentiality.

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

RULE 27.0 Waiver Of Personal Appearance.

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

RULE 28.0 Death Or Incompetence Of a Party.

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

RULE 29.0 Discovery.

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

RULE 30.0 Subpoenas.

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

RULE 31.0 Commencement of Hearing; Notice; Attendance.

- 31.1 The hearing shall commence within 45 days for a single arbitrator or 90 days for a three-member panel after the date of service of the "Notice of Assignment of Panel." A disqualification or allowed challenge of an assigned arbitrator will result in a 15- day extension from the date of the assignment of replacement member(s). Upon stipulation or application to the Panel Chair, the matter may be continued for good cause shown except in the instance where the continuance is for 30 days or more, in which case the continuance must be approved by the Committee Chair.
- 31.2 The panel shall serve written notice of hearing on each party at the address in the "Notice of Assignment of Panel" and the program within 15 days of its assignment and at least 15 days prior to the hearing date. Appearance by a party at a scheduled hearing shall constitute waiver by said party of any deficiency with respect to the giving of

“Notice of Hearing.” Notwithstanding the failure of either party to attend, the hearing shall proceed as scheduled and a decision made on the basis of evidence submitted.

- 31.3** An award shall not be made against a party solely because of the party's absence. The panel shall require the party who is present to submit such evidence as may be required to support the making of an award.
- 31.4** An award may be made in favor of a party who is absent if the evidence so warrants. If neither party appears and the panel chair has not approved waiver of personal appearance, the panel will issue an award based on the evidence submitted.
- 31.5** If one of the panel members fails to appear, upon written stipulation of the parties, the hearing may proceed with either of the attorney arbitrators acting as the sole arbitrator. Under no circumstances will the hearing proceed with two arbitrators or with one lay arbitrator.
- 31.6** If all parties so stipulate, the sole arbitrator or Hearing Panel shall decide all matters without a hearing based upon the Petition, Reply and any other written materials provided by the parties. All such written materials shall be filed with the hearing panel and served on all other parties.

RULE 32.0 Stipulations Encouraged.

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

RULE 33.0 Oaths.

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

RULE 34.0 Evidence.

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

RULE 34.5 Clarification Of Issues And Exchange Of Documents

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

RULE 35.0 Order Of Proof.

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

RULE 36.0 Interpreter.

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

RULE 37.0 Transcripts or Recordings.

No stenographic audio or video recording is permissible.

RULE 38.0 Compensation of Arbitrators; Administrative Charges

- 38.1** No arbitrator shall be entitled to compensation for services unless the hearings extend beyond four hours. Unless waived in writing, each arbitrator will be compensated at the rate of \$150 for each additional hour after a four hour hearing. The compensation shall be paid equally by each party to the program for each day of hearing on which compensation is payable. No compensation will be paid to arbitrators for services other than during formal hearing sessions extending beyond four hours. Any disputes concerning compensation of the arbitrators will be determined by the Committee Chair, and its determination shall be binding on the parties, including the arbitrators.
- 38.2** Except for the prescribed filing fees, no charges will be made by the program, nor by any arbitrator, for administrative or clerical services. A hearing room will be provided by an arbitrator or by the program without charge to the parties.
- 38.3** All parties will bear their own costs, including the costs of interpreters and expert witnesses.

**ARTICLE VII.
AWARD**

RULE 39.0 Award.

- 39.1** The award shall be submitted to the Program within 15 days of the close of the hearing in any matter heard by a sole arbitrator and within 25 days of the close of the hearing in any matter heard by a three-member panel. The award shall be reviewed pursuant to rule 39.9 and then served on the parties forthwith by the Program.
- 39.2** The award shall be in writing. The award shall indicate whether it is binding or non-binding. It shall include a determination of all questions submitted to the panel, the decision of which is necessary in order to determine the controversy, including the name of the responsible attorney(s). Arbitrators are encouraged, where appropriate, to include findings of fact. If a party failed to appear for non-binding arbitration, the

award should also include the circumstances bearing on the willfulness of any party's nonappearance at the hearing.

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

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

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

Subtotal \$ _____

Pre-award interest [check box]: [] is not awarded.

[] is awarded in the amount of \$ _____

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

Client: \$ _____

Attorney: \$ _____

For a net amount of: \$ _____

Accordingly, the following award is made:

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

OR

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

OR

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

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

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

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

not award affirmative relief in the form of damages or offset or otherwise, for injuries underlying any such claim.

- 39.7 The award shall be signed by all arbitrators concurring with it.
- 39.8 The award may include an allocation of the filing fee; however, it shall not include an award for any other costs of the arbitration, including attorneys' fees resulting from the arbitration proceeding notwithstanding any contract between the parties providing for such an award of costs or attorney's fees.
- 39.9 The panel shall forward the original of the signed award to the Program., which shall serve a copy of the award by mail on each party together with a Notice of Rights After Arbitration form approved by the State Bar Board of Governors. No award is final or is to be issued until approved for procedural compliance and as to the form of the award by the Committee Chair or such person as the Chair may designate for this purpose. After approval of the award as to the procedural compliance and approval as to the form of the award, the Program shall serve a copy of the award by mail on each party together with a Notice of Rights After Arbitration form approved by the State Bar Board of Governors. Any party who has submitted exhibits or documents to the panel shall, upon service of the award, make arrangements to retrieve them.

RULE 40.0. Correction Of Award By Hearing Panel.

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

- 40.4** The Hearing Panel shall either deny the application or correct the award in writing signed by the arbitrator(s) concurring therein. Any jurisdiction on the part of the Hearing Panel to amend or supplement an award expires upon entry of judgment.

**ARTICLE VIII.
SERVICE; ADDRESS**

RULE 41.0 Service.

- 41.1** Unless otherwise specifically stated in these rules, service on the client shall be by personal delivery, by deposit in the United States mail, or by deposit in a business facility used for collection and processing of correspondence for mailing with the United States Postal Service pursuant to Code of Civil Procedure section 1013(a), postage paid, addressed to the person on whom it is to be served, at his or her address as last given, on any document which has been filed in the arbitration. The client shall keep the program advised of his or her current address.
- 41.2** Unless otherwise specifically stated in these rules, service on an individual attorney shall be at the latest address shown on the official membership records of the State Bar. Service shall be in accordance with subsection 46.1 above.
- 41.3** If either party is represented by counsel, service shall be on the party as indicated in subsections 40.1 and 40.2 of this rule, and on the counsel at the latest address shown on the official membership records of the State Bar.
- 41.4** The service is complete at the time of deposit. The time for performing any act shall commence on the date service is complete and shall not be extended by reason of service by mail.
- 41.5** Where a facsimile or email transmission is used to communicate with the program or to file any document, it will not be considered received unless the program also receives within five days of the date of the transmission, the original of the faxed document.
- 41.6** In the event that the client fails to keep the program advised of his or her current address, the program may close the arbitration request, if it is made by the client, after 30 days from the date that the program learns of the invalid address.

ARTICLE IX.

ENFORCEMENT OF THE ARBITRATION AWARD

42. Enforcement Of The Arbitration Award.

- 42.1 In any fee arbitration conducted by the VCBA Mandatory Fee Arbitration Program in which the client is awarded a refund of previously paid fees and/or costs, the client may request State Bar assistance if the attorney has not timely complied with that award as set forth in the State Bar's rules of procedure on enforcement.

43 Records Retention.

- 43.1 The VCBA Mandatory Fee Arbitration Program shall retain each fee arbitration file for five (5) years from the date the final award was mailed to the parties. After that date the entire file shall be destroyed.

ARTICLE X.

FEE MEDIATION PROGRAM

44 Preamble

- 44.1 Mediation is a process by which those who have a dispute, misunderstanding, or conflict come together, with the assistance of a trained mediator, to resolve the issues and problems in a way that meets the needs and interests of the parties. Fee Mediation is an alternative to Fee Arbitration

- 44.2 Mediation often enhances communication and preserves ongoing relationships, thereby benefiting both the attorney and the client.

45 Jurisdiction

- 45.1 The jurisdiction for Fee Mediation is the same as it is for Fee Arbitration. Fee disputes involving less than \$5,000, are eligible to participate on a voluntary basis in the optional Fee Mediation Program. The Ventura County Bar Association provides this option through the services of the Ventura Center for Dispute Settlement (VCDS). The Fee Mediation Program is available, where all parties agree to participation, to help the parties resolve their disputes. Matters not resolved by the Fee Mediation Program will return to the Fee Arbitration Program for resolution.

- 45.2 If a settlement agreement is not reached through mediation, the parties shall proceed to Fee Arbitration (see the attached flow chart). A fair, speedy and impartial arbitration procedure suitable to the circumstances shall be provided.

46 Appointment/Qualifications Of Mediators

- 46.1 Ventura County Bar Association (VCBA) shall delegate responsibility to conduct Fee Mediations for fee disputes not to exceed \$5000 on behalf of VCBA to Ventura Center for Dispute Settlement (VCDS). VCDS shall appoint a pool of qualified mediators who may be lawyers or non-lawyers.

47 The Mediation

- 47.1 The matter will proceed to mediation only if all parties indicate on the Request and Response 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.

47.2. Selection Of Mediator

- 47.3 The VCDS agreement to mediate must be signed by all parties. VCDS 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.

47.4 Disqualification Of Mediator

- 47.4.1 VCDS 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. The challenge will be resolved by VCDS.
- 47.4.2 Any party may challenge one 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 VCDS, with a copy to the Mediator, the other party and VCBA.
- 47.4.3 Upon the withdrawal or removal of the Mediator, VCDS shall reassign the matter and notify the parties and VCBA of the new Mediator within ten (10) calendar days.

47.5 Mediation Session Date

- 47.5.1 Within ten (10) calendar days after the mailing of the Mediator assignment the Mediator shall arrange a mediation date which shall take place within thirty (30)

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 VCBA.

47.6 Mediation Session Date Continuance

- 47.6.1 A request for a continuance of the session date should be made to the Mediator. Each side shall have one continuance without the agreement of the other party(s). Otherwise the Mediator only with the agreement of all parties will grant a continuance. Should one side object to such 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. The Mediator shall promptly notify the VCDS staff. VCDS shall notify VCBA in writing of any continuance or of the necessity to proceed to arbitration.

47.7 Preparation For The Mediation Session

- 47.7.1 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 Response 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 Response form for resolution of a fee dispute. Any party submitting such a brief shall also provide the other side with a copy.
- 47.7.2 The Mediator and each party to the mediation shall sign a Mediation Agreement, in the form provided by VCBA to VCDS which substantially complies with the State Bar of California's required form, prior to the commencement of the first mediation session.

47.8 The Mediation Session

- 47.8.1 Mediations shall normally be scheduled for no more than a three-hour session. The filing fees already paid to VCBA for the filing of the Request For Resolution of a Fee Dispute shall include up to three mediation hours and administrative costs. **Refer to Arbitration Rule 13.B.2 for information concerning refunds if the matter settles prior to the mediation session date.** 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 \$150.00 per hour. This is true regardless of the fact that an initiating party may have been granted a waiver of VCBA filing fee. If a party is unable to pay for Mediator time beyond the first three 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.

47.8.2 Only the parties to the mediation, their attorneys or other advisor, if any, and the Mediator shall be present during the mediation. However, the Mediator shall have the authority to determine if others may be present during the process. 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.

47.8.3 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 action taken to reschedule or terminate the mediation to VCDS. VCDS shall forward a copy of the report to VCBA.

47.9 The Outcome

47.9.1 Resolution

47.9.2 If the parties resolve the dispute, the points of agreement shall be immediately reduced to writing at the session. All parties shall sign and copies will be distributed to the parties. 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 VCDS in writing that the matter has been resolved. VCDS shall forward to VCBA a copy of the agreement after the mediation, which VCBA will serve on the parties and provide a copy of the State Bar of California's "Notice of Your Rights after Mediation". The file will be closed.

47.10 Written Agreement Requirements

47.10.1 Responsible Attorney

47.10.2 The State Bar of California Guidelines and Minimum Standards requires 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 (Minimum Standard III. 7.)

47.11 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 (Minimum Standard III.8.):

Participating Party

(Client) _____

Participating Party
(Attorney)_____

The following agreement is made:

- (a) Client, _____, shall pay to Attorney, _____ the sum of \$ _____ ;or
- (b) Attorney, _____ shall pay to Client _____ the sum of \$ _____ ; and the individual responsible attorney is: _____ or
- (c) Nothing further shall be paid by either Attorney or Client.
- (d) The parties have considered the allocation of the filing fee in making this decision.
- (e) The parties waive the provisions of Evidence Code Sections 1115-1128 that would otherwise prohibit disclosure of the terms of this Agreement, and further, stipulate that this Agreement shall be enforceable pursuant to California Code of Civil Procedure Section 664.6.

Partial Mediation

In case of a partial resolution, those issues that have been resolved and agreed to shall be included in the written agreement per Section IV, Paragraph J. Any remaining unresolved issues shall be forwarded to VCBA for resolution through arbitration in accordance with Section IV, Paragraph L.

47.13 No Resolution

If the parties are unable to resolve the dispute through mediation, the Mediator shall notify VCDS which shall notify VCBA in writing and the matter will proceed to arbitration in accordance with the Rules of Arbitration.

48 Confidentiality

- 48.1 All communications, negotiations, or settlement discussion by and between participants and/or Mediators shall remain confidential.
- 48.2. 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 - 1127.
- 48.3. The Mediator, VCDS, VCBA's Client Relations Committee and VCBA Staff 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.
- 48.4 Information reported to VCBA under Sections 7 and 9 are deemed not to violate the confidentiality provisions of the Agreement to Mediate.

49 **Statistics**

49.1 Statistics regarding mediations shall be maintained by VCDS with quarterly copies to

VCBA in accordance with State Bar Minimum Standards for Mediation.

Notice of Client's Right To Arbitration

Client's Name _____

Attorney's Name _____

Client's Address _____

Attorney's Address _____

You have an outstanding balance for fees and/or costs for professional services in the amount of \$ _____ charged to you in the matter of _____

☐ I have filed a lawsuit against you in the:

Court _____ Case No. _____

Address _____

☐ I have filed an arbitration proceeding against you with the:

Agency _____ Case No. _____

Address _____

☐ No lawsuit or arbitration proceeding has yet been filed but may be filed if we do not resolve this claim.

You have the right under Sections 6200-6206 of the California Business and Professions Code to request arbitration of these fees or costs by an independent, impartial arbitrator or panel of arbitrators through a bar association program created solely to resolve fee disputes between lawyers and clients.

You will LOSE YOUR RIGHT TO ARBITRATION UNDER THIS PROGRAM if:

1. YOU DO NOT FILE A WRITTEN APPLICATION FOR ARBITRATION WITH THE BAR ASSOCIATION WITHIN 30 DAYS FROM RECEIPT OF THIS NOTICE USING A FORM PROVIDED BY THE LOCAL BAR ASSOCIATION OR STATE BAR OF CALIFORNIA FEE ARBITRATION PROGRAM; OR
2. YOU RECEIVE THIS NOTICE AND THEN EITHER (1) ANSWER A COMPLAINT I HAVE FILED IN COURT; OR (2) FILE A RESPONSE TO ANY ARBITRATION PROCEEDING THAT I HAVE INITIATED FOR COLLECTION OF FEES, AND/OR COSTS, WITHOUT FIRST HAVING SERVED AND FILED A REQUEST FOR ARBITRATION UNDER THIS PROGRAM; OR
3. YOU FILE AN ACTION OR PLEADING IN ANY LAWSUIT WHICH SEEKS A COURT DECISION ON THIS DISPUTE OR WHICH SEEKS DAMAGES FOR ANY ALLEGED MALPRACTICE OR PROFESSIONAL MISCONDUCT.

I have the right to file a lawsuit against you if you give up your right to mandatory fee arbitration. If I have already filed a lawsuit or arbitration, you may have the lawsuit or arbitration postponed after you have filed an application for arbitration under this program.

I have determined that:

☐ There is a local program which may have jurisdiction to hear this matter. The address of the arbitration program you should contact is:

Name of Program _____

Address _____

City _____ State _____ Zip Code _____

Telephone No _____

☐ There is no approved local program which has jurisdiction to hear this matter.

The State Bar of California will conduct fee arbitration (1) where there is no approved local program, (2) where there is a local program but it declines for any reason to hear your case, (3) where there is a local program and you wish non-binding arbitration of this dispute and the local program refuses to allow non-binding arbitration of your dispute, or (4) if you believe you cannot receive a fair hearing before the local bar named above. If you need assistance, please contact Mandatory Fee Arbitration, State Bar of California, 180 Howard Street, San Francisco, CA 94105-1639, (415) 538-2020.

Date _____

Attorney _____

Aviso del Derecho del Cliente a un Arbitraje

Nombre del Cliente

Nombre del Abogado

Dirección del Cliente

Dirección del Abogado

Usted tiene un saldo pendiente de honorarios y/o costos de servicios profesionales resultando en la cantidad de \$

Que se le esta cobrando en el caso de

☐ Yo he promovido una demanda en su contra en el:

Tribunal

Número del Caso

Dirección

☐ Yo he promovido un procedimiento arbitral en su contra con la:

Agencia

Número del Caso

Dirección

☐ Aun no se ha promovido una demanda o procedimiento arbitral pero se puede promover si no se resuelve este reclamo.

Usted tiene el derecho según los Artículos 6200-6206 del Código de Negocios y Profesiones de California de solicitar el arbitraje de estos honorarios o costos por medio de un arbitrador independiente e imparcial o por medio del programa de una junta de árbitros por medio de una asociación de abogados creado únicamente para resolver disputas sobre honorarios entre abogados y clientes.

Usted PERDERÁ SU DERECHO AL ARBITRAJE BAJO ESTE PROGRAMA SI:

1. USTED NO PRESENTA UNA SOLICITUD POR ESCRITO PARA UN ARBITRAJE CON LA ASOSACION DE ABOGADOS DENTRO DEL PLAZO DE TIEMPO DE 30 DIAS A PARTIR DE RECIBIR ESTE AVISO USANDO UN FORMULARIO PROVEIDO POR PARTE DE LA ASOCIACION DE ABOGADOS LOCAL O EL PROGRAMA ARBITRAL DE HONORARIOS DE LA BARRA ESTATAL DE CALIFORNIA; O
2. SI USTED RECIBE ESTE AVISO Y LUEGO YA SEA (1) RESPONDE A UNA QUEJA QUE HE PROMOVIDO EN EL TRIBUNAL; O (2) PRESENTA UNA RESPUESTA A CUALQUIER PROCEDIMIENTO ARBITRAL QUE YO HE INICIADO PARA RECAUDAR LOS HONORARIOS, Y/O COSTOS, SIN PRIMERAMENTE HABER DADO Y PROMOVIDO UNA SOLICITUD PARA UN ARBITRAJE SEGÚN ESTE PROGRAMA; O
3. USTED PRESENTA UNA ACCION LEGAL O ALEGATO EN CUALQUIER DEMANDA QUE BUSCA UNA DECISION JUDICIAL EN ESTA DISPUTA O QUE PIDE DANOS POR CUALQUIER SUPUESTA CONDUCTA ILEGAL O CONDUCTA INDEBIDA DE UNA PROFESION.

Yo tengo el derecho de presentar una demanda en su contra si usted cede su derecho a un arbitraje obligatorio de honorarios. Usted podría aplazar la demanda o el arbitraje que yo ya promoví al presentar una solicitud de arbitraje bajo este programa.

Yo he determinado que:

☐ Existe un programa arbitral local que tiene jurisdicción para reconocer este caso. La dirección donde se debe comunicar es:

Nombre del Programa

Dirección

Ciudad

Estado

Código Postal

Numero de Teléfono

☐ No existe un programa aprobado a nivel local que tenga jurisdicción para reconocer este caso.

La Barra Estatal de California desempeñara un arbitraje de honorarios (1) cuando no existe un programa local aprobado, (2) cuando existe un programa local que se niega tomar su caso por alguna razón, (3) cuando existe un programa local y usted desea un arbitraje de esta disputa sin vínculos y el programa local se niega a permitir un arbitraje sin vínculos de su disputa, o (4) si usted cree que no puede recibir una audiencia justa ante la barra local mencionada anteriormente. Si usted necesita asistencia, por favor comuníquese con Mandatory Fee Arbitration, State Bar of California, 180 Howard Street, San Francisco, CA 94105-1639, (415) 538-2020.

Fecha

Abogado

NOTICE OF AUTOMATIC STAY INSTRUCTIONS

If an attorney has filed a lawsuit against a client to collect fees, the lawsuit will be stayed when the client has:

- (a) Completed a request for arbitration and submitted ("filed") it with the bar association;
- (b) Served a copy of the request for arbitration on the attorney in the fee dispute by either (i) sending it first class mail (postage full prepaid), or (ii) by arranging for it to be delivered to the attorney by a person over 18 years of age, not a party to the lawsuit.

Once the request has been served, complete a "Notice of Automatic Stay" form by filling in the following information in the numbered spaces:

- (1) Your name, address and telephone number;
- (2) Whether the lawsuit is in "Small Claims" or "Superior" Court;
- (3) The name of the county in which the lawsuit was filed;
- (4) The name of the judicial district in which the lawsuit was filed;
- (5) The case number on the papers in the lawsuit;
- (6) The name of the plaintiff in the lawsuit (the plaintiff is the person who filed the lawsuit);
- (7) The name of the defendant in the lawsuit (the defendant is the person who has been sued);
- (8) The date you are signing the stay form;
- (9) Your signature.

Attach a copy of the arbitration request to the stay form.

Deliver the **original** "Notice of Automatic Stay" to the court, and a **copy** to the Bar Association program at:

Ventura County Bar Association
Attorney Client Relations Fee Arbitration Program
4475 Market Street, Suite B
Ventura, CA 93003

Serve (as defined in (b) above) a copy of the "Notice of Stay" on the other party in the lawsuit, or that party's lawyer if the party is represented by counsel. Consult local rules which may impose additional requirements.

*It is recommended to make three (3) copies of the completed "Notice of Stay." When filing the original with the court, ask the court clerk to stamp the three (3) copies. One copy must be submitted to the local Fee arbitration program; one copy must be served on the attorney; and one copy should be retained for the client's records.

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(1) _____

(2) _____ Court of California
(3) County of _____
(4) _____ Judicial District

(6) _____,	)	(5) Case No.: _____
Plaintiff,	)	
	)	
vs.	)	
	)	NOTICE OF AUTOMATIC STAY UNDER
(7) _____,	)	BUSINESS AND PROFESSIONS CODE SEC.
Defendant.	)	6201(c) AND CALIFORNIA RULES OF COURT,
	)	RULES 225 AND 525
	)	(Mandatory Fee Arbitration)
	)	

☐ I, the client, have filed and served on the attorney; or
☐ I, the attorney, have received
the attached request for arbitration of attorney fees and costs under section 6201 of the Business and Professions Code.

Accordingly, the above captioned action has been stayed automatically pursuant to section 6201(c) of the Business and Professions Code.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

(8) _____ Date
(9) _____ Signature

REQUEST FOR ARBITRATION OF A FEE DISPUTE

VCBA Fee Arbitration matters are governed by the Rules of Procedure for Fee Arbitration which were sent to you with this form. If you do not have a copy of the rules, contact this office **IMMEDIATELY**. You should read the rules carefully. If you have questions after doing so, contact this office at (805) 650-7599.

1. INITIATING PARTY:

The person requesting fee arbitration is the: (check one) ☐ Client ☐ Attorney ☐ Other
(Complete Section #19)

Name: _____ Phone: () _____ - _____

Address: _____
P. O. Box or Street Address

City County State Zip Code

E-mail Address (If applicable)

2. RESPONDING PARTY:

The person this arbitration is against is the: (check one) ☐ Client ☐ Attorney

Name: _____ Phone: () _____ - _____

Address: _____
P. O. Box or Street Address

City County State Zip Code

E-mail Address (If applicable)

3. If you are, or will be, REPRESENTED BY AN ATTORNEY IN THE ARBITRATION, please provide the following information about your attorney:

Name: _____ Phone: () _____ - _____

Address: _____
P. O. Box or Street Address

City County State Zip Code

E-mail Address (If applicable)

4. What type of case is involved in the dispute (e.g. adoption, probate, bankruptcy)?

5. Do you have a written fee agreement? (ATTACH A COPY)

YES NO

6. Did the attorney give you a written notice of your right to arbitrate? (ATTACH A COPY OF THE NOTICE)

If yes, when did you receive the notice?

Month/Day/Year

YES NO

7. Has the attorney filed a lawsuit against you to collect the fees or costs?*

If yes, have you filed an answer to the suit?

8. Have you filed a civil lawsuit against the attorney?*

**If you answered 'YES' to questions 7 or 8, call the Ventura County Bar Association at (805) 650-7599 for further information.*

9. Amount you have already paid the attorney?

\$ _____

10. Additional amount, if any, the attorney claims you still owe?

\$ _____

11. Add lines 9 and 10:

\$ _____

12. Total amount you think the attorney should be paid:

\$ _____

13. Subtract lines 12 from 11. **This is the AMOUNT IN DISPUTE:**

\$ _____

14. **NON REFUNDABLE FILING FEE**

Attach check or money order, payable to 'VCBA'
(See attached fee schedule for filing fee amount)

\$ _____

15. Provide a brief description of the fee dispute (use additional sheets as necessary)

16. A Fee Mediation Program is a voluntary option for fee disputes not to exceed \$5,000, if both parties agree. If both you and the other party agree to fee mediation, the arbitration process will be automatically stayed until the completion of the mediation procedure.

Do you agree to fee mediation instead of arbitration? Yes _____ No _____

If you checked yes to the mediation option, you will be contacted by Ventura Center for Dispute Resolution (VCDS) to mediate your case. You can skip numbers 17 and 18 and fill out number 19.

17. Unless **both** you and the attorney agree in writing to **BINDING ARBITRATION**, this arbitration is **NON-BINDING**. This means that if you or the attorney are not happy with the award, **either** of you has the right to ask for a new trial in a *civil court* within 30 days from the date the award is mailed to you. If neither of you ask for a new trial in 30 days, the award **automatically becomes final and binding**.

If you and the attorney **BOTH** agree in writing to make the arbitration **BINDING**, a new trial may not be requested and the award will *immediately* become final and binding on both of you.

Choice (check one): _____ I want Advisory Arbitration.

_____ I agree to Binding Arbitration.

18. If the attorney represented you in a civil matter you are entitled to choose an arbitrator who practices civil law; if your attorney represented you in a criminal matter you are entitled to chose an arbitrator who practices criminal law.

Choice (check one):

☐ I do not have a preference

☐ I want an attorney who practices civil law as an arbitrator

☐ I want an attorney who practices criminal law as an arbitrator.

19. If checked "Other" in Section #1, please explain your relationship to the client and the attorney named in Section #1. _____

20. I, _____, declare under penalty of perjury that I have filed an original of this
Initiating Party Name

Request for Arbitration with the Ventura County Bar Association by first class mail or arranged to have a process server deliver it to: Fee Arbitration Committee, 4475 Market Street, Suite B, Ventura, CA 93003.

I have also sent a copy of the Request for Arbitration to the responding party identified in paragraph number two (2) of this request by first class mail or arranged to have it delivered by process server.

By signing below, I/we fully understand that arbitration of a fee dispute is solely for the purpose of disputing attorney(s) fees, and that no issues of legal malpractice/negligence will be discussed.

Signed this _____ day of _____, 20

at _____, California.

Signature

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[illegible]

I declare under the penalty of perjury that the foregoing is true and correct.

Signed by Declarant



Ventura County Bar Association

4475 Market Street, Suite B, Ventura, CA 93003

(805) 650-7599 office • (805) 650-8059 fax • bar@vcba.org • www.vcba.org

Agreement to Mediate a Fee Dispute

Please check appropriate areas, sign and return immediately

- ☐ I agree to mediation of the fee dispute with _____. I understand that the mediation will be held through the Ventura Center for Dispute Settlement. (VCDS)
- ☐ I understand that the request for fee arbitration is being put on hold, pending the outcome of the mediation.
- ☐ I understand that if the mediation fails to settle this matter it will be sent back to the Ventura County Bar Association for arbitration.
- ☐ I understand that this mediation will be for the fee dispute only and no other matter may be addressed at the mediation.

Signed: _____

Date: _____

RESPONSE TO REQUEST FOR ARBITRATION

Arbitration Case No. _____

Initiating Party

Responding Party

STATEMENT OF FACTS:

If both you and the other party agree to fee mediation, the arbitration process will be automatically stayed until the completion of the mediation procedure.

Do you agree to fee mediation? YES _____ NO _____

If both you and the other party agree to make the arbitration BINDING, no appeal or further proceedings will be allowed after the arbitration award is made.

Do you agree to enter the dispute into binding arbitration?

YES _____

NO _____

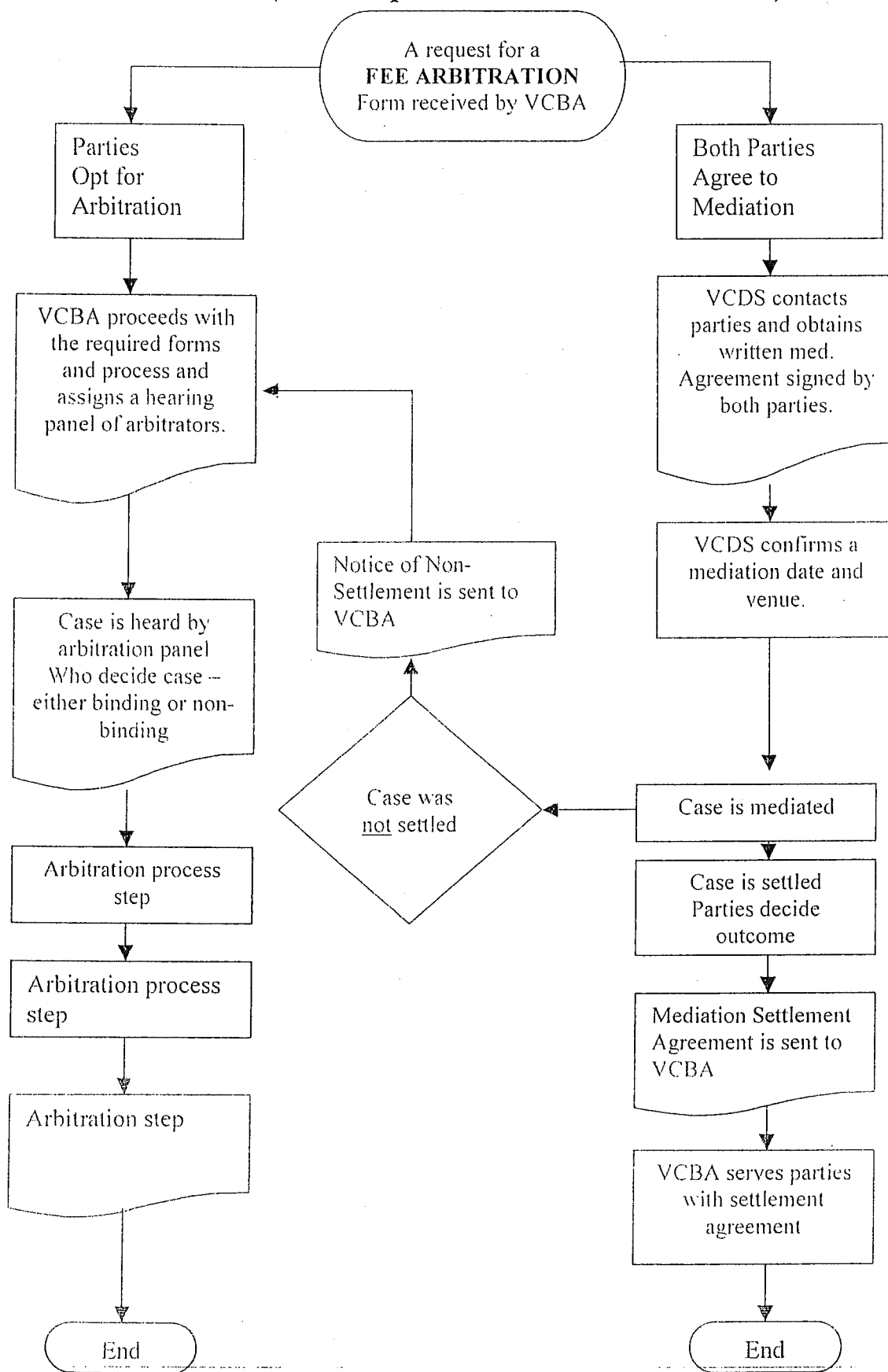
Original response form shall be filed within twenty (20) days of the service of the request to the VCBA Office. Copies of the response form and materials must be sent to the arbitrator(s) and initiating party.

Failure to respond within the twenty days will disqualify you from attending the scheduled hearing and may result in a finding that you willfully failed to participate. Such a finding may preclude your ability to request trial de novo.

Signature

Date

Fee Mediation Process (as an option to Fee Arbitration)



GUIDELINES AND MINIMUM STANDARDS
FOR THE OPERATION OF
MANDATORY FEE ARBITRATION PROGRAMS

(Adopted by the Board of Governors December 16, 1978, January 1, 1979, revised March 21, 1992, amended April 17, 1993, amended July 17, 1993, amended November 5, 1993, amended June 18, 1994, amended April 8, 1995, amended March 2, 1996, amended November 22, 1996, amended January 25, 1997, amended March 21, 1997; amended April 3, 1998; amended January 26, 2001; amended March 9, 2007, amended July 20, 2007.)

1. If the current rules of procedure of a local bar association or a lawyer referral service are approved by the Board of Governors and those rules are in compliance with Business and Professions Code sections 6200-6206 and the Minimum Standards set forth herein, the local program will have jurisdiction over fee disputes submitted, and such arbitration will be the arbitration provided for in Business and Professions Code sections 6200-6206.

2. If an approved local program is not available, and the parties do not consent to have the fee dispute submitted to another local program willing to assume jurisdiction over the matter, the State Bar will assume jurisdiction over the fee dispute and proceed under the State Bar's rules of procedure for fee arbitration.

Local bar association rules of procedure for fee arbitration shall provide for the following:

3. Each party shall receive a fair, speedy and impartial hearing and award;

4. The attorney, prior to or at the time of filing an action against the client for the recovery of fees for professional services, shall serve, personally or by first class mail, upon the client the State Bar "Notice of Client's Right to Arbitrate" form;

5. In the event the attorney fails to respond or refuses to participate in the arbitration, the hearing will proceed as scheduled, and a decision will be made on the basis of the evidence;

6. A procedure for preserving the confidentiality afforded by Business and Professions Code section 6202, except that such procedure shall not prohibit the arbitrator(s) or the program from referring a matter to the State Bar's Office of Intake and Legal Advice when possible misconduct by an attorney is disclosed in an arbitration proceeding.

7. An appropriate procedure for the parties to disqualify no less than one arbitrator without cause and to have an unlimited number of challenges for cause;

8. At the time of service of the arbitrator's award on the parties, there shall also be served a notice of the parties' post-arbitration rights in the form approved by the Board of Governors of the State Bar;

9. Except as set forth below, in each three-member panel, one member shall be a lay person and the other two members shall be attorneys and in each sole arbitrator panel, the sole arbitrator shall be an attorney;

10. In the event of a three-member panel, the matter may not proceed with two members in the absence of the third member, but the parties may stipulate to proceed with a sole attorney arbitrator.

11. 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; clients shall be informed of this option at an early stage in the proceedings and provided a means of exercising the option;

12. Authorization for the arbitrators to include an allocation of the filing fee in the arbitration award; and

13. The request for arbitration may 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. 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, a fee arbitration with a non-client is not intended to abrogate the attorney's duty to maintain client confidences and secrets, unless such disclosure is otherwise permitted by law. Absent the client's signature on the request for arbitration, when an arbitration with a non-client is initiated, notice of the request must be sent to the client by first class mail at the client's last known address. The programs shall adopt procedures to insure that such notice has been sent to the client.

14. The program shall serve on the attorney(s) designated by the client, no later than the time of service of the notice appointing the arbitration panel the State Bar approved notice of attorney responsibility form;

15. The award shall be in writing, including a determination of all questions submitted to the panel, the decision of which is necessary in order to determine the controversy, and if a refund is owed, the name(s) of the responsible attorney(s).

16. Each award served on the parties shall contain substantially the following language:

The arbitrators find that the total amount of fees and/or costs which should have been charged in this matter are: \$_____

Of which client is found to have paid: \$_____
Subtotal \$_____

Pre-award interest [check box]

[] is not awarded.

[] is awarded in the

amount of \$_____.

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.

17. For a filing fee schedule and refund policy that are reasonably related to the amount in dispute and the cost of providing the service and shall not be in such an amount as to discourage the use of the service.

18. In the event of a 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 ruling is final and not appealable to the State Bar. Should the fee dispute transfer to a different fee arbitration program after the request for arbitration is filed, the original date of postmark or receipt of the arbitration request will be preserved for purposes of determining whether jurisdiction exists.

19. A monetary threshold above which three-member panels will be used must be reasonable.

20. A lay arbitrator is a person who has not been admitted to practice law in any jurisdiction and has not worked regularly for a public or private law office or practice, court of law or attended law school for any period of time. Paralegal assistants, law firm staff, and law clerks shall not serve as lay arbitrators.

21. Retired judges who are not on active membership status with the State Bar may not serve as fee arbitrators.

22. A client or an attorney who believes that he or she cannot obtain a fair and

impartial hearing under the local program's rules of procedure shall be entitled to a hearing through a State Bar panel. Removal to the State Bar shall be governed by Rule 10.0, "Rules of Procedure for the Resolution of Fee Disputes and the Enforcement of Awards by the State Bar of California."

MINIMUM STANDARDS FOR MEDIATION

When a request for arbitration has been filed with an authorized local bar association or lawyer referral service fee arbitration program, the rules of procedure may include provisions for parties who agree to mediate the dispute prior to proceeding through arbitration. In addition to the Minimum Standards set forth for arbitration of disputes, rules of procedure for those programs which wish to provide for mediation of fee disputes shall provide:

1. For a fair, speedy and impartial mediation procedure suitable to the circumstances;
2. That mediators have completed a minimum of 25 hours of mediation training which includes classroom and practical training;
3. For an appropriate procedure for parties to disqualify no less than one mediator without cause and to have an unlimited number of challenges for cause;
4. For an appropriate procedure for a mediator to disclose any conflict of interest;
5. For a procedure to preserve the confidentiality afforded by Evidence Code section 1152.5;

6. For the use of either lawyer or non-lawyer mediators.

7. That each mediated agreement in which the parties agree that the client shall receive a refund of previously paid fees and/or costs shall include the name of the individual attorney(s) responsible for making the refund;

8. That each mediated agreement shall be in writing and signed by the client and responsible attorney(s) and shall include substantially the following language:

The following agreement is made:

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

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

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

The parties have considered the allocation of the filing fee in making this agreement.

9. That the parties be required to execute an agreement to mediate that substantially conforms with the agreement approved by the State Bar.

10. That, after an agreement has been reached, the program shall provide the parties with a notice of the right to enforce the agreement that substantially conforms with the notice approved by the State Bar.

IV. NON-MANDATORY CONSIDERATIONS

1. GEOGRAPHIC TEST

Local programs are encouraged to use a geographic test of jurisdiction, that is, to accept jurisdiction of all matters where an office of the attorney is or substantial legal services were performed within the geographic boundaries of the association.

2. THREE-MEMBER PANELS

Local programs should establish a reasonable monetary threshold above which three member panels should be used.

V. REMOVAL TO THE STATE BAR

A client or an attorney who believes that he or she cannot obtain a fair and impartial hearing under the local program's rules of procedure shall be entitled to a hearing through a State Bar panel. Removal to the State Bar shall be governed by Rule 10.1(b), "*Rules of Procedure for Fee Arbitrations and the Enforcement of Awards by the State Bar of California.*"

If a matter is pending before a local program at the time a request for removal is made, the local program shall stay all proceedings in the matter until a decision is

made by the State Bar whether to accept jurisdiction. The State Bar shall advise the program in writing whether it has accepted jurisdiction.

Prior to the State Bar granting a request for removal, all parties and the local program shall be given an opportunity to comment on the removal.

Upon written notification to the local program that the State Bar has accepted jurisdiction, the local program shall release jurisdiction of the matter.

VI. PILOT PROJECT

A pilot project to allow the use of two non-attorney arbitrators on three person panels may be conducted under supplemental guidelines adopted by the Board of Governors and under the guidance of the Committee on Mandatory Fee Arbitration ("Committee"). The purpose of the pilot project is to obtain and review information on the effects of using a majority of non-attorneys on a panel, including the effects on logistics and administration of fee arbitration programs and on the goals of achieving fair, speedy and economical resolution of fee disputes. The conclusions of the Committee shall be reported to the Board of Governors at the conclusion of the pilot project.

SUPPLEMENTAL GUIDELINES AND MINIMUM STANDARDS FOR THE OPERATION OF MANDATORY FEE ARBITRATION PROGRAMS (NON-ATTORNEY ARBITRATOR PILOT PROJECT)

I. PURPOSE

A pilot project to allow the use of two non-attorney arbitrators on three person

panels may be conducted under these guidelines and under the guidance of the Committee on Mandatory Fee Arbitration ("Committee"). The purpose of the pilot project is to obtain and review information on the effects of using a majority of non-attorneys on a panel, including the effects on logistics and administration of fee arbitration programs and on the goals of achieving fair, speedy and economical resolution of fee disputes. The conclusions of the Committee shall be reported to the Board of Governors at the conclusion of the pilot project.

II. REVIEW AND APPROVAL OF LOCAL PROGRAM GUIDELINES BY THE COMMITTEE

The pilot project shall be open to voluntary participation by no more than five (5) local bar or lawyer referral services for a period of no more than two (2) years. Any local program wishing to be included in the pilot project shall submit to the Committee for review the program's proposed written standards. Such standards shall be approved by the Committee before a local program may participate. Approval shall be given only after the Committee determines that the proposed standards meet the Pilot Project Minimum Standards.

III. PILOT PROJECT MINIMUM STANDARDS

Local bar association and lawyer referral services shall provide:

1. For the appropriate selection of arbitrators who will participate in the pilot project and for the adequate training of such arbitrators.

2. That the parties will be advised of their possible participation in the pilot project prior to the assignment of a panel.

3. Either that cases included in the pilot project shall be determined by random selection made by the local program or that parties can voluntarily participate and/or remove the matter from the pilot project.

4. That the chair of the panel shall be an attorney arbitrator.

5. That the arbitration will be conducted in the same manner as an arbitration with two attorney arbitrators and that the parties shall be provided with a notice of arbitration approved by the Committee which is appropriate for cases in the pilot project.

6. That appropriate information and data shall be gathered on:

(a). the results of the cases in the pilot project and, where reasonably practical, on the results of arbitrations with three-person panels not assigned to the pilot project;

(b). the availability of non-attorney arbitrators and other relevant logistics;

(c). the reactions of the parties and arbitrators participating in the pilot project; and

(d). the accomplishments or difficulties encountered in arbitrations under the project.

Such information may be gathered by questionnaire or by any other means the Committee finds appropriate. In reviewing and approving local standards for such information gathering, the Committee shall balance the value of the information with the costs and burdens of obtaining it on the local program participating in the pilot project. The data and information obtained shall be reported to the Committee.

EXCERPT FROM THE CALIFORNIA STATE BAR ACT
(BUSINESS AND PROFESSIONS CODE)

ARTICLE 13
ARBITRATION OF ATTORNEYS' FEES

§6200. Establishment of System and Procedure; Jurisdiction; Local Bar Association Rules

- (a) The board of governors shall, by rule, establish, maintain, and administer a system and procedure for the arbitration, and may establish, maintain, and administer a system and procedure for mediation of disputes concerning fees, costs, or both, charged for professional services by members of the State Bar or by members of the bar of other jurisdictions. The rules may include provision for a filing fee in such amount as the board may, from time to time, determine.
- (b) This article shall not apply to any of the following:
 - (1) Disputes where a member of the State Bar of California is also admitted to practice in another jurisdiction or where an attorney is only admitted to practice in another jurisdiction, and he or she maintains no office in the State of California, and no material portion of the services were rendered in the State of California.
 - (2) Claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct, except as provided in subdivision (a) of Section 6203.
 - (3) Disputes where the fee or cost to be paid by the client or on his or her behalf has been determined pursuant to statute or court order.
- (c) Unless the client has agreed in writing to arbitration under this article of all disputes concerning fees, costs, or both, arbitration under this article shall be voluntary for a client and shall be mandatory for an attorney if commenced by a client. Mediation under this article shall be voluntary for an attorney and a client.
- (d) The board of governors shall adopt rules to allow arbitration and mediation of attorney fee and cost disputes under this article to proceed under arbitration and mediation systems sponsored by local bar associations in this state. Rules of procedure promulgated by local bar associations are subject to review by the board to insure that they provide for a fair, impartial, and speedy hearing and award.
- (e) In adopting or reviewing rules of arbitration under this section the board shall provide that the panel shall include one attorney member whose area of practice is either, at the option of the client, civil law, if the attorney's representation involved civil law, or criminal law, if the attorney's representation involved criminal law, as follows:
 - (1) If the panel is composed of three members the panel shall include one attorney member whose area of practice is either, at the option of the client, civil or criminal law, and shall include one lay member.
 - (2) If the panel is composed of one member, that member shall be an attorney whose area of practice is either, at the option of the client, civil or criminal law.
- (f) In any arbitration or mediation conducted pursuant to this article by the State Bar or by a local bar association, pursuant to rules of procedure approved by the board of governors, an arbitrator or mediator, as well as the arbitrating association and its directors, officers,

and employees, shall have the same immunity which attaches in judicial proceedings.

- (g) In the conduct of arbitrations under this article the arbitrator or arbitrators may do all of the following:
 - (1) Take and hear evidence pertaining to the proceeding.
 - (2) Administer oaths and affirmations.
 - (3) Compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding.
- (h) Participation in mediation is a voluntary consensual process, based on direct negotiations between the attorney and his or her client, and is an extension of the negotiated settlement process. All discussions and offers of settlement are confidential and may not be disclosed in any subsequent arbitration or other proceedings. (Added by Stats. 1978, ch. 719. Amended by Stats. 1984, ch. 825; Stats. 1990, ch. 483, ch. 1020; Stats. 1993, ch. 1262; Stats. 1994, ch. 479; Stats. 1996, ch. 1104.)

§6201. Notice to Client; Request for Arbitration; Client's Waiver of Right To Arbitration

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

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

- (b) If an attorney, or the attorney's assignee, commences an action in any court or any other proceeding and the client is entitled to maintain arbitration under this article, and the dispute is not one to which subdivision (b) of Section 6200 applies, the client may stay the action or other proceeding by serving and filing a request for arbitration in accordance with the rules established by the board of governors pursuant to subdivision (a) of Section 6200. The request for arbitration shall be served and filed prior to the filing of an answer in the action or equivalent response in the other proceeding; failure to so request arbitration prior to the filing of an answer or equivalent response shall be deemed a waiver of the client's right to arbitration under the provisions of this article if notice of the client's right to arbitration was given pursuant to subdivision (a).
- (c) Upon filing and service of the request for arbitration, the action or other proceeding shall be automatically stayed until the award of the arbitrators is issued or the arbitration is otherwise terminated. The stay may be vacated in whole or in part, after a hearing duly noticed by any party

or the court, if and to the extent the court finds that the matter is not appropriate for arbitration under the provisions of this article. The action or other proceeding may thereafter proceed subject to the provisions of Section 6204.

- (d) A client's right to request or maintain arbitration under the provisions of this article is waived by the client commencing an action or filing any pleading seeking either of the following:

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

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

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

§6202. Disclosure of Attorney-Client Communication and Work Product; Limitation

The provisions of Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code shall not prohibit the disclosure of any relevant communication, nor shall the provisions of Section 2018 of the Code of Civil Procedure be construed to prohibit the disclosure of any relevant work product of the attorney in connection with: (a) an arbitration hearing or mediation pursuant to this article; (b) a trial after arbitration; or (c) judicial confirmation, correction, or vacation of an arbitration award. In no event shall such disclosure be deemed a waiver of the confidential character of such matters for any other purpose. (Added by Stats. 1978, ch. 719. Amended by Stats. 1982, ch. 979; Stats. 1984, ch. 825; Stats. 1996, ch. 1104.)

§6203. Award; Contents; Finality; Petition to Court; Award of Fees and Costs

- (a) The award shall be in writing and signed by the arbitrators concurring therein. It shall include a determination of all the questions submitted to the arbitrators, the decision of which is necessary in order to determine the controversy. The award shall not include any award to either party for costs or attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding, notwithstanding any contract between the parties providing for such an award or costs or attorney's fees. However, the filing fee paid may be allocated between the parties by the arbitrators. This section shall not preclude an award of costs or attorney's fees to either party by a court pursuant to subdivision (c) of this section or of subdivision (d) of Section 6204. The State Bar, or the local bar association delegated by the State Bar to conduct the arbitration, shall deliver to each of the parties with the award, an original declaration of service of the award.

Evidence relating to claims of malpractice and professional misconduct, shall be admissible only to the extent that those claims bear upon the fees, costs, or both, to which the attorney is entitled. The arbitrators shall not award affirmative relief, in the form of damages or offset or otherwise, for injuries underlying any such claim. Nothing in this section shall be construed to prevent the arbitrators from awarding the client a refund of unearned fees, costs, or both previously paid to the attorney.

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

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

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

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

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

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

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

- (3) An attorney who has failed to comply with a binding

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

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

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

§6204. Agreement to be Bound by Award of Arbitrator; Trial After Arbitration in Absence of Agreement; Prevailing Party; Effect of Award and Determination

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

(b) If there is an action pending, the trial after arbitration shall be initiated by filing a rejection of arbitration award and request for trial after arbitration in that action within 30 days after mailing of notice of the award. If the rejection of arbitration award has been filed by the plaintiff in the pending action, all defendants shall file a responsive pleading within 30 days following service upon the defendant of the rejection of arbitration award and request for trial after arbitration. If the rejection of arbitration award has been filed by the defendant in the pending action, all defendants shall file a responsive pleading within 30 days after the filing of the rejection of arbitration award and request for trial after arbitration. Service may be made by mail on any party who has appeared; otherwise service shall be made in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure. Upon service and filing of the rejection of arbitration award, any stay entered pursuant to Section 6201 shall be vacated, without the necessity of a court order.

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

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

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

§6204.5 Disqualification of Arbitrators or Mediators; Post-arbitration Notice

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

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

§6205. Enacted 1978. Repealed 1996, ch. 1104.

§6206. Arbitration Barred if Time for Commencing Civil Action Barred; Exception

The time for filing a civil action seeking judicial resolution of a dispute subject to arbitration under this article shall be tolled from the time an arbitration is initiated in accordance with the rules adopted by the board of governors until (a) 30 days after receipt of notice of the award of the arbitrators, or (b) receipt of notice that the arbitration is otherwise terminated, whichever comes first. Arbitration may not be commenced under this article if a civil action requesting the same relief would be barred by any provision of Title 2 (commencing with section 312) of Part 2 of the Code of Civil Procedure; provided that this limitation shall not apply to a request for arbitration by a client pursuant to the provisions of subdivision (b) of section 6201, following the filing of a civil action by the attorney. (Added by Stats. 1978, ch. 719. Amended by Stats. 1984, ch. 825.)

Excerpt from the California Code of Civil Procedure

CHAPTER 4 ENFORCEMENT OF THE AWARD

Art. 1. Confirmation, Correction or Vacation of the Award §§1285-1287.6

Art. 2. Limitations of Time. §§1288-1288.8

ARTICLE 1

Confirmation, Correction or Vacation of the Award

Filing petition for court review of award. §1285.

Response to petition. §1285.2.

Contents of petition. §1285.4.

Contents of response. §1285.6.

Grounds on request to vacate or correct. §1285.8.

Action by court. §1286.

Grounds for vacating award. §1286.2.

Requisites for vacating award. §1286.4.

Grounds for correcting award. §1286.6.

Requisites for correcting award. §1286.8.

Order for rehearing. §1287.

Dismissal of proceeding. §1287.2.

Judgment confirming award. §1287.4.

Effect of unconfirmed or unvacated award. §1287.6.

§1285. Enacted 1872. Repealed 1961 ch. 461.

A new §1285 follows.

§1285. Filing Petition for Court Review of Award.

Any party to an arbitration in which an award has been made may petition the court to confirm, correct or vacate the award. The petition shall name as respondents all parties to the arbitration and may name as respondents any other persons bound by the arbitration award. Leg.H. 1961 ch. 461.

Ref.: Cal fms Pl & Pr, "Arbitration."

§1285.2 Response to Petition.

A response to a petition under this chapter may request the court to dismiss the petition or to confirm, correct or vacate the award. Leg.H. 1961 ch. 461.

Ref.: Cal fms Pl & Pr, "Arbitration."

§1285.4 Contents of Petition.

A petition under this chapter shall:

- (a) Set forth the substance of or have attached a copy of the agreement to arbitrate unless the petitioner denies the existence of such an agreement.
- (b) Set forth the names of the arbitrators.
- (c) Set forth or have attached a copy of the award and the written opinion of the arbitrators, if any. Leg.H. 1961 ch. 461

Ref.: Cal fms Pl & Pr, "Arbitration."

§1285.6 Contents of Response.

Unless a copy thereof is set forth in or attached to the petition, response to a petition under this chapter shall:

- (a) Set forth the substance of or have attached a copy of the agreement to arbitrate unless the respondent denies the existence of such an agreement.
- (b) Set forth the names of the arbitrators.

- (c) Set forth or have attached a copy of the award and the written opinion of the arbitrators, if any. Leg.H. 1961 ch. 461.

Ref.: Cal fms Pl & Pr, "Arbitration."

§1285.8 Grounds on Request to Vacate or Correct.

A petition to correct or vacate an award, or a response requesting such relief, shall set forth the grounds on which the request of such relief is based. Leg.H. 1961 ch. 461.

Ref.: Cal fms Pl & Pr, "Arbitration."

§1286. Enacted 1872. Repealed 1961 ch. 461.

A new §1286 follows.

§1286. Action by Court.

If a petition or response under this chapter is duly served and filed, the court shall confirm the award as made, whether rendered in this state or another state, unless in accordance with this chapter it corrects the award and confirms it as corrected, vacates the award or dismisses the proceeding. Leg.H. 1961 ch. 461, 1978 ch. 260.

Ref.: Cal fms Pl & Pr, "Arbitration."

§1286.2. Grounds for Vacating Award.

Subject to Section 1286.4, the court shall vacate the award if the court determines any of the following:

- (a) The award was procured by corruption, fraud or other undue means.
- (b) There was corruption in any of the arbitrators.
- (c) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator.
- (d) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.
- (e) The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title.
- (f) An arbitrator making the award was subject to disqualification upon grounds specified in subdivision (e) of Section 1282, but failed upon receipt of timely demand to disqualify himself or herself as required by those provisions. However, this subdivision does not apply to arbitration proceedings conducted under a collective agreement between employers and employees or between their respective representatives. Leg.H. 1961 ch. 461, 1993 ch. 768.

Ref.: Cal fms Pl & Pr, "Arbitration."

§1286.4 Requisites for Vacating Award.

The court may not vacate an award unless:

- (a) A petition or response requesting that the award be vacated has been duly served and filed; or
- (b) A petition or response requesting that the award be corrected has been duly served and filed; and
- (1) All petitions and respondents are before the court; or
- (2) All petitions and respondents have been given reasonable notice that the court will be requested at the hearing to vacate the award or that the court will be requested at the

hearing to vacate the award or that the court on its own motion has determined to vacate the award and all petitions and respondents have been given an opportunity to show why the award should not be vacated. **Leg.H.** 1961 ch. 461.

Ref.: Cal fms Pl & Pr, "Arbitration."

§1286.6 Grounds for Correcting Award.

Subject to Section 1286.8, the court, unless it vacates the award pursuant to Section 1286.2, shall correct the award and confirm it as corrected if the court determines that:

- (a) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;
- (b) The arbitrators exceeded their powers but the award may be corrected without affecting the merits of the decision upon the controversy submitted; or
- (c) The award is imperfect in a matter of form, not affecting the merits of the controversy. **Leg.H.** 1961 ch.461.

Ref.: Cal fms Pl & Pr, "Arbitration."

§1286.8. Requisites for Correcting Award.

The court may not correct an award unless:

- (a) A petition or response requesting that the award be corrected has been duly served and filed; or
- (b) A petition or response requesting that the award be vacated has been duly served and filed; and:
- (1) All petitions and respondents are before the court; or
- (2) All petitions and respondents have been given reasonable notice that the court will be requested at the hearing to correct the award or that the court on its own motion has determined to correct the award and all petitioners and respondents have been given an opportunity to show why the award should not be corrected. **Leg.H.** 1961 ch. 461.

Ref.: Cal fms Pl & Pr, "Arbitration."

§1287. Enacted 1872. Repealed 1961 ch.461.

A new §1287 follows.

§1287. Order for Rehearing.

If the award is vacated, the court may order a rehearing before new arbitrators. If the award is vacated on the grounds set forth in subdivision (d) or (e) of Section 1286.2, the court with the consent of the parties to the court proceeding may order a rehearing before the original arbitrators.

If the arbitration agreement requires that the award be made within a specified period of time, the rehearing may nevertheless be held and the award made within an equal period of time beginning with the date of the order for rehearing but only if the court determines that the purpose of the time limit agreed upon by the parties to the arbitration agreement will not be frustrated by the application of this provision. **Leg.H.** 1961 ch.461.

Ref.: Cal fms Pl & Pr, "Arbitration."

§1287.2 Dismissal of Proceeding.

The court shall dismiss the proceeding under this chapter as to any person named as a respondent if the court determines that such person was not bound by the arbitration award and was not a party to the arbitration **Leg.H.** 1961 ch.461.

Ref.: Cal fms Pl & Pr, "Arbitration."

§1287.4 Judgment Confirming Award.

If an award is confirmed, judgment shall be entered in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action; and it may be enforced like any other judgment of the court in which it is entered. **Leg.H.** 1961 ch. 461.

Ref.: Cal fms Pl & Pr, "Arbitration."

§1287.6 Effect of Unconfirmed or Unvacated Award.

An award that has not been confirmed or vacated has the same force and effect as a contract in writing between the parties to the arbitration. **Leg.H.** 1961 ch. 461.

Ref.: Cal fms Pl & Pr, "Arbitration."

ARTICLE 2 Limitations of Time

Time to file petition for court review. §1288.

Time for filing response. §1288.2.

Petition at least ten days after service of award. §1288.4.

No filing while application for correction pending. §1288.6.

Date of service of award when petition for correction filed. §1288.8.

§1288. Enacted 1872. Repealed 1961 ch. 461.

A new §1288 follows.

§1288. Time to File Petition for Court Review.

A petition to confirm an award shall be served and filed not later than four years after the date of service of a signed copy of the award on the petitioner. A petition to vacate an award or correct an award shall be served and filed not later than 100 days after the date of the service of a signed copy of the award on petitioner. **Leg.H.** 1961 ch.461.

Ref.: Cal fms Pl & Pr, "Arbitration," Eminent Domain."

§1288.2 Time for Filing Response.

A response requesting that an award be vacated or that an award be corrected shall be served and filed not later than 100 days after the date of service of a signed copy of the award upon:

- (a) The respondent if he was a party to the arbitration; or
- (b) The respondent's representative if the respondent was not a party to the arbitration. **Leg.H.** 1961 ch.461.

Ref.: Cal fms Pl & Pr, "Arbitration," Eminent Domain."

§1288.4 Petition at Least Ten Days After Service of Award.

No petition may be served and filed under this chapter until at least 10 days after service of the signed copy of the award upon the petitioner. **Leg.H.** 1961 ch.461.

Ref.: Cal fms Pl & Pr, "Arbitration."

§1288.6 No Filing While Petition for Correction Pending.

If an application is made to the arbitrators for correction of the award, a petition may not be served and filed under this chapter until the determination of that application. **Leg.H.** 1961 ch. 461.

Ref.: Cal fms Pl & Pr, "Arbitration."

§1288.8 Date of Service of Award When Petition for Correction Filed.

If an application is made to the arbitrators for correction of the award, the date of service of the award for the purposes of this article shall be deemed to be whichever of the following dates is the earlier:

- (a) The date of service upon the petitioner of a signed copy of the correction of the award or of the denial of the application.
- (b) The date that such application is deemed to be denied under Section 1284. **Leg.H.** 1961 ch. 461.

Ref.: Cal fms Pl & Pr, "Arbitration."

§1289. Enacted 1872. Repealed 1961. ch.461.

Notice of Your Rights After Fee Arbitration

(Revised October 5, 2001; rev. July 11, 2008; rev. Nov. 16, 2009)

The arbitrator's award deciding your fee dispute is enclosed. Please read the award carefully.

This notice will explain the rights you may have now that the arbitration is completed. To understand your rights, you must first determine whether the award is **binding** or **non-binding**, which should be stated in the award.

If you are not satisfied with the award, you should follow the instructions below to protect your rights to seek relief in court. If you are satisfied with the award, please see Part 1E below if your award is non-binding or Part 2C and D if your award was binding or has become binding. If you are unsure of your rights or have questions after reading this pamphlet, you should consult an attorney.

Each of the procedures described in this Notice has an important deadline. You may lose your legal rights if you miss these deadlines.

PART 1 - Rights After Non-Binding Arbitration

If the arbitration award is non-binding, you may have a right to a new trial in court. At the trial, you will have the opportunity to present evidence to a judge who will issue a new decision about the fee dispute without regard to the arbitration award. However, if you did not appear at your fee arbitration hearing, you will have to prove to the court that you had a good reason for not being there. If the court determines that your failure to appear was willful, you may not be entitled to a trial after arbitration.

The court will charge a filing fee or first appearance fee unless you are unable to pay them and request a waiver of fees and costs. Use Judicial Council Form FW-001 INFO [Information Sheet on Waiver of Court Fees and Costs, FW-001 [Application for Waiver of Court Fees and Costs] and FW-003 [Order on Application for Waiver of Court Fees and Costs]. These forms are available online at www.courtinfo.ca.gov and at the court clerk's office.

Although you are generally entitled to a trial after non-binding arbitration without explaining your reasons for doing so, you may prefer to petition to correct the award, or vacate the award and have a new arbitration with a new arbitration panel. See Part 2B below for further information on the remedies for correcting and vacating an arbitration award. Since these remedies apply only on proof of specified grounds, you may wish to preserve your right to trial in court in case the court denies these remedies. To

(Effective December 1, 2009)

You may file in small claims court if the amount of money in controversy involves no more than \$5,000. Otherwise, the superior court is the proper court.

(b) How to file a lawsuit.

A lawsuit is brought by filing papers with the court. The bar association does not have papers or forms to use. If you are filing a lawsuit in small claims court, you should file Judicial Council forms SC-100 [Plaintiffs Claim and Order to Go to Small Claims Court] and SC-101 [Attorney Fee Dispute (After Arbitration)]. You should also file SC-104 [Proof of Service.] If you are filing a lawsuit in the superior court, you may need a lawyer's help to file your papers. Judicial Council form ADR-104 [Rejection of Award and Request for Trial After Attorney-Client Fee Arbitration] should be filed with the superior court. Even if you are not seeking monies from the other party, to reject an award, you still must file a lawsuit, unless you choose to vacate the award if certain requirements are met as set forth in Part 2B below.

Judicial Council forms are available online at www.courtinfo.ca.gov and at the court clerk's office.

D. DO I RISK ANYTHING BY FILING FOR A TRIAL IN COURT?

Yes. After a new trial, the court may make a decision that is less favorable to you than the arbitration award. The losing party in court may be ordered to pay the prevailing party's attorney's fees and costs. You will be the losing party if you do no better in court than you did in the arbitration.

E. EXCEPTION TO RIGHT TO NEW TRIAL IN COURT: PRE-EXISTING PRIVATE ARBITRATION AGREEMENT

There is an exception to your right to a new trial in court following non-binding mandatory fee arbitration if the attorney and client previously agreed to resolve disputes over fees and costs through private arbitration. If such an agreement exists, and either party acts to reject the award in court within the required 30 day time period after service of the award, either party may be entitled to resolve the dispute through the agreed upon private arbitration instead of a new trial in court.

F. WHAT IF I AM SATISFIED WITH THE AWARD?

If you are satisfied with the award, wait 30 days. The non-binding award will become binding automatically if the other party does not file for a trial in court within the 30 day period after service of the award. Once the award becomes binding, see Part 2C and D to find out what to do next.

(Effective December 1, 2009)

PART 2 - Rights after Binding Arbitration

A. WHAT ARE MY RIGHTS IF THE ARBITRATION AWARD IS BINDING?

If the arbitration award is **binding**, there is no right to a new trial in court or other arbitration. Even so, a binding award can be corrected or vacated (overturned) by a court, but only on limited grounds as set forth in Code of Civil Procedure section 1286.2 (see attached excerpts of the statute). If an award is vacated, the court may order a new arbitration with the same bar association with a new arbitration panel.

B. WHAT IF I AM DISSATISFIED WITH A BINDING AWARD?

A court has the power to vacate (overturn) an arbitration award, but only on very narrow grounds. The statutory grounds for vacating an award (Code of Civil Procedure section 1286.2) are limited to the following:

- The award was procured by corruption, fraud or other undue means.
- There was corruption in any of the arbitrators.
- The rights of the party were substantially prejudiced by misconduct of an arbitrator.
- The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.
- The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefore or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title.
- An arbitrator making the award either (1) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware; or (2) was subject to disqualification upon grounds specified in Section 1281.91 but failed upon receipt of timely demand to disqualify himself or herself as required by that provision.

A court can also correct obvious mistakes in the award, such as an arithmetic miscalculation or evident mistake in the description of any person, thing or property referred to in the award.

If you think you are entitled to correct or vacate the arbitration award, please follow the instructions below to protect your rights.

(1) What must I do to vacate or correct a binding arbitration award?

You must file a **petition** in the **proper court**. Part 2B subsection (3) below describes this process.

(Effective December 1, 2009)

C. WHAT IF I AM SATISFIED WITH THE ARBITRATION AWARD AND AM OWED MONEY?

If the arbitration award grants you an amount for fees or costs or both, you should write the other party a letter and demand payment of the award amount. If you are not paid, and you are the client, you have the right to ask the State Bar of California to assist you in enforcing the award. If you want the State Bar to assist you and:

- (1) 100 days have passed from service of the award and the award is binding or became binding if neither party filed for a trial within 30 days of service of a non-binding award, or
- (2) the award has become a final judgment following a trial after arbitration or a petition to vacate, correct or confirm the award, and
- (3) the award was served less than four years ago

You may request a form for enforcement of the award by contacting the following office:

The State Bar of California
Mandatory Fee Arbitration Program
180 Howard Street, 6th Floor
San Francisco, CA 94105
(415) 538-2020

You will be required to complete a State Bar "Client's Request for Enforcement of an Arbitration Award" form. This form is available online at www.calbar.ca.gov. The attorney on the other side will be given an opportunity to respond to your request and agree to a payment plan. He or she will also be able to ask for an opportunity to prove that he or she is not responsible for paying you or is financially unable to pay the award.

The State Bar Court may place the opposing attorney on involuntary inactive status until the award is paid. An attorney on inactive status is not entitled to practice law. (Business and Professions Code section 6203(d)). Any party may contact the State Bar at the address above for a copy of the rules that govern this procedure.

Any party who is owed money has the right to request court orders allowing that party to take property or money from the other party's paycheck, and/or bank accounts. To get those court orders, you must first obtain a judgment confirming the arbitration award.

(1) How do I obtain a judgment confirming the arbitration award?

(Effective December 1, 2009)

California Code of Civil Procedure. The first excerpt, from the Business and Professions Code, is the law that governs fee arbitrations between attorneys and their clients, as well as the authority to request a trial following non-binding arbitration. The second excerpt, from the Code of Civil Procedure, sets forth the law on confirming, vacating or correcting arbitration awards.

You can find further information at your county law library or online at www.calbar.ca.gov. You may download Judicial Council forms at: <http://www.courtinfo.ca.gov/forms>.

WATCH THOSE DEADLINES!

The deadlines we have explained in this notice are important. You can lose certain rights if you do not act before the deadlines pass.

(Effective December 1, 2009)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Excerpt from the California Code of Civil Procedure

CHAPTER 4 ENFORCEMENT OF THE AWARD

Art. 1. Confirmation, Correction or Vacation of the Award

§ 1285-1287.6

Art. 2 Limitations of Time §§ 1288-1288.8

ARTICLE 1

Confirmation, Correction or Vacation of the Award

Filing Petition for Court Review of Award. §1285.

Response to Petition. §1285.2.

Content of Petition. §1285.4.

Contents of Response. §1285.6.

Grounds on Request to Vacate or Correct. §1285.8.

Action by Court. §1286.

Grounds for Vacating Award. §1286.2.

Requisites for Vacating Award. §1286.4.

Grounds for Correcting Award. §1286.6.

Requisites for Correcting Award. §1286.8.

Order for Rehearing. §1287.

Dismissal of Proceedings. §1287.2.

Judgment Confirming Award. §1287.4.

Effect of Unconfirmed or Unvacated Award. §1287.6.

1285. Filing Petition for Court Review of Award

Any party to an arbitration in which an award has been made may petition the court to confirm, correct or vacate the award. The petition shall name as respondents all parties to the arbitration and may name as respondents any other persons bound by the arbitration award.

1285.2. Response to Petition

A response to a petition under this chapter may request the court to dismiss the petition or to confirm, correct or vacate the award.

1285.4. Content of Petition

A petition under this chapter shall:

(a) Set forth the substance of or have attached a copy of the agreement to arbitrate unless the petitioner denies the existence of such an agreement.

(b) Set forth names of the arbitrators.

(c) Set forth or have attached a copy of the award and the written opinion of the arbitrators, if any.

1285.6. Contents of Response

Unless a copy thereof is set forth in or attached to the petition, a response to a petition under this chapter shall:

(a) Set forth the substance of or have attached a copy of the agreement to arbitrate unless the respondent denies the existence of such an agreement.

(b) Set forth the names of the arbitrators.

(c) Set forth or have attached a copy of the award and the written opinion of the arbitrators, if any.

§ 1285.8. Grounds on Request to Vacate or Correct

A petition to correct or vacate an award, or a response requesting such relief, shall set forth the grounds on which the request for such relief is based.

§ 1286. Action by Court

If a petition or response under this chapter is duly served and filed, the court shall confirm the award as made, whether rendered in this state or another state, unless in accordance with this chapter it corrects the award and confirms it as corrected, vacates the award or dismisses the proceedings.

§ 1286.2. Grounds for Vacating Award

(a) Subject to Section 1286.4, the court shall vacate the award if the court determines any of the following:

(1) The award was procured by corruption, fraud or other undue means.

(2) There was corruption in any of the arbitrators.

(3) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator.

(4) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.

(5) The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title.

(6) An arbitrator making the award either: (A) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware; or (B) was subject to disqualification upon grounds specified in Section 1281.91 but failed upon receipt of timely demand to disqualify himself or herself as required by that provision. However, this subdivision does not apply to arbitration proceedings conducted under a collective bargaining agreement between employers and employees or between their respective representatives.

(b) Petitions to vacate an arbitration award pursuant to Section 1285 are subject to the provisions of Section 128.7.

§ 1286.4. Requisites for Vacating Award

The court may not vacate an award unless:

(a) A petition or response requesting that the award be vacated has been duly served and filed; or

(b) A petition or response requesting that the award be corrected has been duly served and filed and;

(1) All petitioners and respondents are before the court; or

(2) All petitioners and respondents have been given reasonable notice that the court will be requested at the hearing to vacate the award or that the court on its own motion has determined to vacate the award and all petitioners and respondents have been given an opportunity to show why the award should not be vacated.