ORANGE COUNTY BAR ASSOCIATION

RULES OF PROCEDURE FOR MANDATORY FEE ARBITRATION

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1. Introduction

The Orange County Bar Association ("OCBA") Mandatory Fee Arbitration ("MFA") Committee arbitrates disputes between attorneys and clients concerning the costs and fees charged for an attorney's professional services. The arbitration proceedings are conducted under the Mandatory Fee Arbitration Program ("Program") according to these Rules of Procedure ("Rules").

These Rules are intended to implement the mandatory fee arbitration provisions set forth in Business and Professions Code Sections 6200-6206 and the State Bar's Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs.

A. Purpose

The purpose of the OCBA MFA Program is to provide for a fair, speedy and impartial hearing and determination of fee disputes between attorneys and clients.

B. Chairperson(s) of the MFA Committee

The OCBA President shall appoint MFA Committee Chair(s) who shall exercise the powers and bear the responsibilities set forth in these Rules as may be necessary to carry out the functions of the MFA Program. Included in these powers is the determination of all questions of interpretation of these Rules and of procedure there under at any stage of the proceedings. With the consent of the OCBA President, the MFA Committee Chair(s) may appoint an MFA Advisory Committee.

C. Arbitrators

The membership of the MFA Committee for the Program shall be composed of both attorney arbitrators and non-attorney arbitrators.

Attorney Arbitrators:
Attorney arbitrators shall be members in good standing of the State Bar of California and the OCBA, and in the opinion of the OCBA possess the qualifications and characteristics necessary to function effectively as fair and impartial arbitrators.

Non-Attorney Arbitrators:
Non-Attorney Arbitrators shall be individuals who have not been licensed to practice law or otherwise affiliated with the legal profession and who in the opinion of the OCBA possess the qualifications and characteristics necessary to function effectively as fair and impartial arbitrators.

D. OCBA Staff

The Executive Director of the Association shall appoint an employee of the Association to function as administrator of the Program.

2. Notice of Client's Right to Arbitrate

A. Prior to or at the time of filing any court action or commencing any other proceeding through another arbitration organization against a client for the recovery of fees, an attorney must serve by first class mail, or have a process server deliver to the client the State Bar approved "Notice of Client's Right to Arbitrate" form [Bus. & Prof. Code § 6201(a)].

B. The client has thirty (30) days from receipt of the above-reference notice to request arbitration of the fee dispute by filing a completed PETITION TO ARBITRATE A FEE DISPUTE form with the Program administrator accompanied by the proper filing fee. The client waives the right to arbitrate if the client fails to file a request for arbitration within the thirty (30) day period.

C. If the "Notice of Client's Right To Arbitrate" form is not accompanied by a proof of service when it is received by the client or any other questionable circumstance should arise regarding the receipt of such notice, the MFA Committee has the authority to determine jurisdiction based on the evidence presented.

3. Court and other Fee Arbitration Proceedings

Any action or other proceeding shall be automatically stayed upon the filing and service of a request for mandatory fee arbitration or in the event the parties have otherwise consented to mandatory fee arbitration under this Program. [Bus. & Prof. Code § 6201(c).]

4. Determination of Jurisdiction

The MFA Committee has the authority to determine jurisdiction and shall decline to act if it determines a lack of jurisdiction.

A. Jurisdiction will normally be accepted if:

(1) at least one of the attorneys involved in the dispute has an office in Orange County; or

(2) at least one of the attorneys involved in the dispute maintained an office in Orange County at the time the services were performed; or

(3) a substantial amount of the legal services were performed in Orange County; or

(4) arbitration is not available at the local County Bar Association in the County where the attorney practices and the client resides in Orange County; or

(5) arbitration is available with the local County Bar Association in the County where the attorney practices but both parties, for good cause, desire to arbitrate the matter in Orange County and the local County Bar Association agrees to transfer jurisdiction to the OCBA.

B. The MFA Committee will not hear or settle disputes in which a client seeks relief for

damages on the basis of alleged malpractice or professional misconduct. The MFA Committee cannot hear or rule on any counter-claim for damages.

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 may be entitled, as provided in Bus. & Prof. Code § 6203(a). [See Rule 20(D).]

C. The MFA Committee has no jurisdiction over fees that are fixed by court order, the order of an administrative agency, or by statute.

D. 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 program shall adopt procedures to insure that such notice has been sent to the client.

E. The MFA Committee is only empowered to hear disputes over fees and costs in matters where there is an actual attorney-client relationship or other legal basis for the payment of fees and costs for professional services rendered. If the question of whether an attorney-client relationship (or other legal basis for the payment of fees and costs) exists between the parties is an issue in dispute, the MFA Committee will only proceed if the party contesting the relationship stipulates that the Committee may hear and decide that issue.

F. Unless the client has agreed in writing to arbitration of all disputes concerning fees, costs or both, arbitration shall be voluntary for the client and shall be mandatory for an attorney if commenced by a client. [Bus. & Prof. Code § 6200(c).]

G. The MFA Committee will only have jurisdiction over a dispute initiated by an attorney when all parties to the dispute have previously agreed in writing to arbitration of all disputes regarding fees, or sign a stipulation to that effect.

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

I. Subject to appropriate review, the MFA Committee Chair has discretion to decline to exercise the jurisdiction of the OCBA over any fee or cost dispute. Where jurisdiction is declined, the parties will be notified promptly of their right to proceed with fee arbitration before the State Bar of California, if applicable.

J. Neither the MFA Committee Chair nor any participant on the MFA Advisory Committee shall represent any party in any matter arbitrated by the OCBA.

5. Binding or Advisory - Effect of Arbitration

A. An arbitration award is binding only if both parties stipulate in writing to binding arbitration after the dispute has arisen. Consent to binding arbitration by one party may be withdrawn prior to the time consent to binding arbitration is given by the opposing party and such withdrawal must be received in writing by the OCBA at least (10) days prior to the date of the arbitration. If all parties have consented to binding arbitration, no party may thereafter withdraw that consent without the written agreement of all other parties. [Bus. & Prof. Code § 6204(a).]

A binding arbitration provision in an attorney-client fee agreement is not sufficient to make an arbitration binding. The parties must stipulate in writing to binding arbitration either at the time of filing or after a party has elected to arbitrate.

If the Petitioner has consented to binding arbitration, but the amount in controversy is thereafter materially changed as a result of new matter raised in the Reply of the Respondent, the Petitioner may thereafter withdraw his/her/its consent to binding arbitration, provided such withdrawal is communicated in writing to the OCBA within ten (10) days after service of the Reply on the Petitioner.

B. An advisory arbitration award is not binding on the parties and entitles either party to petition for a trial after arbitration. A "Rejection of Award and Request for Trial After Arbitration" must be filed within thirty (30) days from the date the award is mailed to the parties by the Program administrator. Rejection of the award should be filed with the court, *not* with the OCBA.

An advisory award becomes binding after thirty (30) days if neither party seeks trial after arbitration, pursuant to Bus. & Prof. Code Section 6203(b).

C. If either party objects to the determination of binding vs. non-binding arbitration the question will be determined by the arbitrator(s) on the date of the hearing, and such determination shall be made a part of the award.

D. A binding arbitration award is not subject to appeal. A binding arbitration award may be vacated or corrected by a court order only upon the grounds listed in California Code of Civil Procedure (CCP) Sections 1286.2 and 1286.6.

6. Initiation of Mandatory Fee Arbitration Proceedings

A. Mandatory Fee Arbitration is initiated, and is deemed "requested" when the petitioner files a written petition for arbitration on the approved form with the OCBA, pays the appropriate filing fee, and serves a copy of the petition on all other parties. The request shall contain enough information about the fee dispute to enable the MFA Committee to determine whether or not it has jurisdiction.

B. If the amount in dispute is less than $1,500.00, the Petitioner must agree to binding arbitration. The MFA Committee will not proceed to hear the matter if the amount in dispute is under $1,500.00 and the Petitioner does not stipulate to binding arbitration. In such an event, however, the Petitioner may file for arbitration with the State Bar program.

C. When notifying the attorney a petition has been filed, the OCBA shall also serve a copy of the approved State Bar Notice of Responsibility form.

D. Any response by the attorney to the petition for arbitration must be mailed to the OCBA and the petitioner within twenty (20) days of notification by the OCBA of the filing of the petition. In the event the attorney, or a client who has previously agreed in writing to MFA arbitration proceedings, 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 presented.

E. Any amendment to the petition for arbitration or the reply to the petition must be filed at least twenty (20) days prior to the arbitration hearing.

F. If the issues to be arbitrated are not clearly set forth in the petition, response or accompanying documents, the presiding arbitrator may request that the parties clarify the issues. The arbitrators may, in their discretion, decline to determine any issues not set forth in said documents.

7. Assignment of Arbitrators

The assignment of arbitrators shall be made by the MFA Committee Chair or by OCBA staff under the direction of the Executive Director.

A. If the amount in dispute is $10,000 or less the matter will be assigned to a single arbitrator. If the amount in dispute is more than $10,000 the matter will be assigned to a panel of three (3) arbitrators unless the parties to the arbitration agree in writing to have the matter heard by a single arbitrator.

B. When three (3) arbitrators are chosen, one shall be designated to be the presiding arbitrator. All three-person panels shall include one non-attorney arbitrator.

C. Bus. & Prof. Code Section 6200(e) provides that, at the request of the client, one attorney member of a three person panel or the sole arbitrator shall be an attorney who practices either civil or criminal law, consistent with the area of law practiced by the attorney whose services are in dispute. Any such requested designation by the client must be made at the time of filing the petition on the form provided by the OCBA.

D. All participants will be notified by the OCBA staff of the identity of the assigned arbitrator(s). Each party has the right to request the disqualification of one arbitrator without stating any cause. A request for disqualification should be received within ten (10) days of notification of the identity of the assigned arbitrator(s). Thereafter,

arbitrators may only be disqualified for cause, and any such request must state in writing the reason for disqualification. The MFA Committee Chair or his/her appointee shall make the final decision in resolving all requests to disqualify any arbitrator.

E. No MFA Committee member shall arbitrate a dispute if he/she has any financial or personal interest in the result of the arbitration or if the arbitrator determines that he/she is not qualified to arbitrate for any reason. A person appointed as arbitrator must promptly disclose to the parties and the Chair any past or present relationship with the parties, their counsel or associates, or any circumstance which might reasonably be the basis for a claim of bias or an appearance of bias. If disqualification of the arbitrator is not requested by one of the parties in writing within five (5) days after such disclosure, any claim of disqualification shall be considered waived. An arbitrator can decline to arbitrate a matter at any time. Whenever an arbitrator is disqualified a successor will immediately be appointed.

F. The MFA Committee Chair shall have the authority to reassign any pending case to a replacement arbitrator or panel at any time as may be appropriate. The MFA Committee Chair may reassign any arbitration to avoid undue delay.

G. The parties shall also be given the option of mediating their fee dispute, before the arbitration occurs, on the petition and reply forms. If all parties agree to mediate when the petition and reply forms are submitted, a mediator will be assigned. If the matter does not settle in mediation, it will proceed to arbitration and an arbitrator or panel of arbitrators will be assigned. These Rules shall apply to such cases.

8. Qualifications of Arbitrators

All attorney arbitrators of the MFA Committee shall be members in good standing with the OCBA and shall have at least four (4) years experience in the practice of law. All MFA Committee members must attend fee arbitrator training or have comparable arbitration experience.

9. Time Guidelines for Arbitration

All time schedules set forth in these Rules are advisory only. Failure to comply with the suggested time periods is not per se grounds for dismissal of the petition nor disqualification of the award, nor will it deprive the MFA Committee of jurisdiction over any proceeding.

A. The hearing date should be scheduled within thirty (30) days of assignment to allow for any continuance, postponement, or pre-hearing briefs or arguments, if any are permitted by the presiding arbitrator. Once set, no hearing should be postponed more than twice without the prior consent of MFA Committee Chair.

B. All post-hearing submissions should be completed within twenty (20) days after the close of the hearing, and the final award should be submitted by the presiding arbitrator to the MFA Committee Chair within sixty to ninety (60-90) days of assignment.

10. Contact With Arbitrators

A party or a representative of a party shall not communicate with an arbitrator regarding a pending matter before such arbitrator, except at scheduled hearings, or for the purposes of scheduling a hearing date or other administrative procedures, such as obtaining approval to issue a subpoena under Rule 18.

When contacting the arbitrator(s) for any other purposes, parties must submit their communication in writing with a copy to the OCBA, and to all other parties and their respective counsel, if any.

11. Notice of Hearing

When an arbitrator receives a case file, it shall be his/her duty to arrange a time and place for the arbitration hearing and to notify the parties, other panel members and the OCBA staff of that hearing not less than ten (10) days before the hearing date unless otherwise agreed upon by the parties. The arbitrators may communicate informally with the parties to the dispute in order to arrive at a mutually agreeable time and place for the hearing.

A form to request arbitration hearing dates will be sent by the OCBA to all parties. This form must be completed and returned to the designated arbitrator within the time period provided on the form. Failure to complete or return the form on time will constitute consent to the scheduling of the hearing at the sole discretion of the presiding arbitrator.

12. Continuance of Hearing

Hearing dates should be considered to be firm appointments. Once the hearing date has been set and the notice of hearing mailed, continuances are disfavored and should not be granted in the absence of good cause. It is the policy of the MFA Committee that no hearing should be postponed or continued more than twice.

Application for a continuance must be made as soon as possible after the need for a continuance arises, in writing to the presiding arbitrator and the OCBA. The presiding arbitrator shall make the final decision of granting or denying a continuance and shall be responsible for scheduling the new hearing date. In the event that the presiding arbitrator grants a continuance, the matter should be reset for hearing date no later than thirty (30) days from the original hearing date.

13. Representation by Counsel

Any party may be represented by counsel at his/her own expense. A party intending to be represented must notify the arbitrators and the OCBA of the name and address of counsel. All notices to which a party may be entitled will be mailed to their attorney on record in the OCBA files unless the attorney has provided written notification with a proof of service to all parties of his/her withdrawal. The OCBA must be notified in writing if an attorney of record with a fee arbitration case ceases to represent the party involved in the arbitration.

Counsel who represent a party in an arbitration are referred to Rule 3-700 of the Rules of Professional Conduct of the State Bar of California pertaining to all matters regarding withdrawal of representation.

14. Discovery

A client petitioning for arbitration is entitled to inspect, during normal business hours, the following documents and records in the possession of the attorney:

(1) The file relating to the matter in which the fee dispute arose;

(2) All time sheets or time records relating to the services performed by the attorney in the matter in which the fee dispute arose;

(3) All statements or billings, client ledger cards, bookkeeping or computer records relating to the matter in which the fee dispute arose;

(4) A copy of any written fee agreement or other contract for payment of legal services relating to the matter in which the fee dispute arose.

A request by the client to inspect any of the foregoing items must be in writing and must be given to the attorney within a reasonable period of time prior to the arbitration hearing. At the option of the attorney, he or she shall either allow the client to inspect and make copies of the materials, or provide full, complete and legible copies of the requested documents, all without charge to the client no later than five days from receipt of the request. If the attorney fails to comply with the client's request, the presiding arbitrator may, at his/her discretion, disallow the production of those documents at the hearing.

15. Recording the Hearing

No hearing may be tape recorded. Any party may provide for the attendance of a certified shorthand reporter at that party's expense in a binding arbitration. Every party shall be entitled to a copy of the reporter's transcripts of the testimony upon written request and payment of the charges therefore. No court reporter will be allowed to record a non-binding arbitration.

16. Interpreter

Any party may bring an interpreter to the hearing for assistance. Arrangements for an interpreter must be made by the party needing assistance at his/her/its own expense. It is recommended that any interpreter be court-approved, but it is not mandatory. The opposing party and the arbitrators must be notified in writing of the name of the interpreter at least five (5) days prior to the hearing.

17. Witnesses

If any party wishes to have witnesses appear on his or her behalf without subpoena, that party must submit their names and the expected time involved in direct examination, in

writing to the opposing party and the arbitrators at least seven (7) days prior to the hearing. Third-party witnesses shall normally be allowed to appear and testify telephonically.

18. Subpoena

The arbitrators, upon written application, may issue subpoenas directing the attendance of witnesses and/or production of relevant documents at the hearing. The MFA Program will provide blank subpoena forms to any party upon request. It is the party's responsibility to complete the subpoena(s), obtain the arbitrator's signature, and serve the subpoena(s) at least five(5) days in advance of the hearing. Further, it is the responsibility of the party serving the subpoena(s) to tender witness fees in the correct amount if requested pursuant to the laws of the State of California.

The application to the arbitrators must be in writing, provide the reason(s) why the particular evidence or witness is required at the hearing, and be delivered to the arbitrators at least fourteen (14) days prior to the hearing. The party shall also provide copies of the issued subpoena(s) to the MFA Program, the arbitrator(s) and the other parties in the matter. The original proof of service of the subpoena should be delivered to the arbitrators at the time of hearing.

The standard subpoena for the attendance of witnesses shall permit either personal attendance or telephonic attendance. Only upon good cause shown to the arbitrator in the written application, shall the subpoena direct personal attendance. The standard subpoena for the production of relevant documents shall direct production by mail, delivery or facsimile prior to the hearing.

If a witness fails to appear or if the documents fail to be produced at a hearing pursuant to a valid subpoena, the arbitrator has the discretion to continue the hearing to allow for the parties to arrange for the presence of the witness and/or documentary evidence, or to otherwise seek a judicial order compelling attendance or production.

19. Costs

An arbitration award may not grant attorney's fees or other costs incurred in the prosecution or defense of the fee arbitration proceedings, notwithstanding any contract between the parties providing for such an award of attorney's fees or other costs. [Bus. & Prof. Code § 6203(a).] All parties will bear their own costs except that the arbitrator may allocate the filing fee.

20. Hearing Procedure/ Rules of Evidence

A. The presiding arbitrator, or the panel by majority vote, shall rule on the admission and exclusion of evidence and on questions of procedure, and shall exercise all powers relating to the conduct of the hearing, including the order of presentation of evidence, the time allotted for evidence and oral argument, and length of hearing.

B. The presiding arbitrator shall administer oaths to witnesses and interpreters at the hearing. The parties to the arbitration are entitled to be heard, to present evidence

and to cross-examine witnesses appearing at the hearing. California Rules of Evidence and Rules of Judicial Procedure applicable in the courts of California need not be observed. Arbitrators may receive any evidence which they deem appropriate or reliable, including but not limited to evidence submitted by telephone during the hearing, provided speaker phone availability.

C. Any relevant attorney-client communications or work product between the client and the attorney who is a party to the arbitration may be disclosed at the arbitration or to settle the dispute or to enforce an arbitration award. In no event will any disclosure be considered a waiver of the confidential character of matters for any other purposes.

D. Parties are permitted to present testimony and documentary evidence which is relevant to the fee dispute. Any evidence relating to claims of malpractice and professional misconduct by the attorney shall be admissible only to the extent that those claims bear upon the fees, costs, or both, to which the attorney may be entitled. The panel may hear any evidence which is trustworthy and material to the fee dispute.

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

E. If a matter raised during the hearing, in the opinion of the arbitrators, constitutes substantial evidence of a violation of the Rules of Professional Conduct or violations of the applicable provisions of the Bus. Prof. Code, the arbitrators may refer the matter to the MFA Committee Chair for possible referral to the Chief Trial Counsel of the State Bar of California for disposition as the State Bar deems appropriate.

F. Hearings are closed to the public, except for witnesses while testifying and others who are directly participating in the proceeding. In the discretion of the presiding arbitrator, in addition to counsel, if any, the Client may be accompanied by at least one other person in the hearing room. OCBA MFA staff have an absolute right to attend the proceedings without notice, and have the same immunities as the arbitrators pursuant to the laws of the State of California. All attendees shall be subject to the rules governing confidentiality of the proceeding.

G. The presiding arbitrator may adjourn the hearing at any time if necessary.

H. The presiding arbitrator, at his/her own discretion, may hold the matter open after the hearing for later submissions. In such an event, both parties must be provided an equal opportunity to submit additional materials. A date must be set for final submission of the matter. Other than as directed by the presiding arbitrator, no evidence may be received or communicated to any panel member. Communication with any panel member is strictly forbidden following completion of the hearing itself.

21. Release of Documentary Evidence

A. All documents offered as evidence at the arbitration hearing will be marked as

exhibits and will be returned by the presiding arbitrator to the respective parties at the conclusion of the hearing unless an arbitrator elects to retain the documents for consideration in preparing the award. If an arbitrator has retained any documents, the parties are instructed to pick up their respective documents within thirty (30) days from the date of service of the award. The arbitrator(s) shall be entitled to destroy all documents in his/her possession sixty (60) days after the date of service of the award.

B. The OCBA will furnish to any party certified copies of any papers in its possession which may be required in judicial proceedings relating to the arbitration. This will be done upon written request at the expense of the requesting party.

22. Arbitration in the Absence of a Party

A. The arbitration may proceed in the absence of any party who, after given proper notice, fails to appear at the hearing or otherwise obtain a continuance. An adverse award shall not be issued against a party solely because of that party's non-appearance. Rather, the presiding arbitrator shall require the presentation of evidence sufficient to justify an award. A decision will be made on the basis of the evidence presented. An award may be made in favor of a party who is absent if the evidence so warrants.

B. Any party who resides 150 miles or more from the site of the hearing, or any party who is incarcerated at the time of the hearing, may waive personal appearance and submit testimony and exhibits by written declaration under penalty of perjury or, in the discretion of the presiding arbitrator, may appear by telephone.

C. Unless a subpoena has issued to compel his/her attendance, any party may appear solely through counsel or may otherwise request a waiver of his/her personal appearance. Any such request must be made in writing to the presiding arbitrator and the OCBA at least five (5) days prior to the hearing. If granted, the party may submit testimony and exhibits by written declaration under penalty of perjury or by telephone. The decision to permit testimony by declaration or by telephone shall be in the sole and absolute discretion of the presiding arbitrator.

D. Any party who has willfully failed to attend the arbitration hearing may not request a trial in civil court after a non-binding arbitration. The decision as to whether the party's non-attendance was willful is left to the discretion of the court, however the arbitrator(s) may include findings in the award as to the willful non-attendance of any party.

23. Arbitration in the Absence of an Arbitrator

If one member of an arbitration panel fails to appear for the hearing, or is unable to participate in the arbitration, the arbitration may proceed with a single arbitrator, with the stipulated written consent of the parties. Only the single arbitrator may then participate in the deliberations and the making of an award. If the parties do not agree to proceed in the absence of a three panel arbitration, the hearing shall be continued to a date on which all members of the panel can be present.

24. Death or Incompetency of a Party

In the event of death or incompetency of a party prior to the close of the hearing, the personal representative (as defined in Probate Code § 58 or such other applicable law or regulation) of the deceased party or the guardian or conservator of the incompetent party may be substituted in the place of the deceased or incompetent party and proceed to prosecute or defend the proceeding as the case may be.

25. Settlement of Disputes; Withdrawal of Arbitration

Upon written confirmation signed by both parties that a dispute has been settled prior to appearance by the parties at the hearing, the matter shall be dismissed by the OCBA in the absence of an assigned arbitrator(s), or by the arbitrator(s) if a notice of assignment of the arbitrator(s) has previously been served on the parties.

If the petitioner wishes to withdraw the dispute from binding arbitration before the MFA Committee and the matter has not settled, all parties must agree to the withdrawal. If the arbitration is non-binding, or after reasonable confirmation that all parties agree to the withdrawal, and for good cause shown, the matter shall be dismissed as set forth above.

If the parties settle their dispute during the course of the arbitration, the arbitrator may set forth the terms of the agreed settlement in an award. Such an award is referred to as a consent award.

26. Making and Content of Award

A. The arbitrator or presiding arbitrator of a panel is responsible for preparation of an award. The written award shall be in the format required by the MFA Program which includes the language set forth by the State Bar of California Guidelines and Minimum Standards.

B. In the case of an arbitration heard before a three-member panel, the decision of any two (2) of the arbitrators will be conclusive.

C. The award shall be in writing and signed by the arbitrator or by the arbitrators who are in agreement. The award should include a determination of all issues which were necessary in coming to a decision. Failure to comply with all requirements of this section shall not invalidate an award issued by an arbitrator or a panel. The award shall contain the following:

(1) The date of the hearing(s);

(2) The date of the award;

(3) Identity of those who were present at the hearing;

(5) Whether the award is binding or non-binding;

(6) The amount that the attorney claims the services were worth;

(7) The amount that the client claims the services were worth;

(8) The amount that has been previously paid to the attorney;

(9) The amount that the arbitrator(s) determines the services to be worth;

(10) The amount of the filing fee paid by petitioner and the allocation of that fee between petitioner and respondent. In the event no allocation of the filing fee is made in the award, the petitioner shall be responsible for the entire filing fee.

(11) Whether interest is awarded and the amount thereof. Arbitrators may award interest on the unpaid balance at a rate not to exceed the maximum interest rate that may be awarded on judgments in accordance with California law.

(12) If a refund is to be awarded to the client, there must be a clear statement indicating the amount to be refunded to the client and an individual attorney(s) must be designated as the responsible party;

(13) A clear statement of the award, including specific language that sets forth the amount of the award, if any, and which party is to pay it, and outlining what action must be taken by the parties.

D. The award may also include findings as to the willful non-attendance of any party in accordance with Rule 22D.

27. Processing the Award

A. The signed award shall be mailed to the OCBA staff within thirty (30) days following the final submission of the matter, unless additional time is granted by the MFA Committee Chair.

B. The OCBA staff will mail a signed copy of the award, together with the Notice of Rights After Arbitration in the form prepared by the State Bar of California together with the excerpts from the California Code of Civil Procedure and the excerpts from the California Business and Professions Code, with a proof of service, to each party to the arbitration by first class mail. The OCBA staff has fifteen (15) days in which to process the award after its receipt from the arbitrator(s) unless additional time is granted by the MFA Committee Chair.

After submission of the award, unless otherwise stated in these Rules, neither party shall communicate in any manner with an arbitrator. All post-award communications from the parties must be directed to the OCBA staff.

28. Correcting/Amending an Award

The arbitrators cannot rehear the case or reconsider their decision. The arbitrators can only correct an award for miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award or if the award is imperfect in a matter of form not affecting the merits of the controversy.

The grounds for any revision of the award shall be limited to those which are set forth in the Code of Civil Procedure Section 1286.6 (a)and(c).

A. An application for correction must be made in writing and must specifically state the ground therefore, signed by the requesting party and served on all other participants, the presiding arbitrator and the OCBA within ten (10) days from the date the Award was mailed by the OCBA staff.

   (1) Any other party may file an objection to the application for correction within ten (10) days thereafter.

   (2) If the presiding arbitrator makes any amendment or correction to the award, the modified award will be served by the OCBA on the interested parties.

   (3) If the award is not corrected and served within thirty (30) days from the filing of an application to correct the award, the application is considered denied.

B. The provisions of this section shall not operate to stay or otherwise postpone the time limit for the filing of a Rejection of Award and Request for Trial After Arbitration [see Rule 5(B)] if the award is non-binding.

29. Immunity

In any arbitration proceeding conducted by the Program, the arbitrators, as well as the Orange County Bar Association, its directors, officers and employees, have the same immunity which attaches in judicial proceedings. [Bus. & Prof. Code § 6200(f).] None of them may be called upon as a witness to give evidence produced at the arbitration hearing, or to any other aspect of the arbitration proceedings, and may not provide affirmative evidence by way of impeachment, or for any other purpose at any subsequent trial or civil proceeding. [Evid. Code § 703.5.]

30. Confidentiality

All matters which come to the attention of arbitrators while acting as members of the MFA Committee shall be considered strictly confidential and the content of same shall not be discussed with nor divulged to any person other than the involved parties, the OCBA staff or MFA Committee Chair.

Except as provided in Rule 20(E), the arbitration case file shall be kept confidential by the MFA Committee unless disclosure is required by law or by order of a court of competent jurisdiction.

31. Removal to State Bar Fee Arbitration Program

A client or an attorney who believes that he or she cannot obtain a fair and impartial hearing under these Rules shall be entitled to submit their dispute to the State Bar upon request. In a matter already pending before this program, the OCBA shall release jurisdiction of the matter upon notification of the State Bar's acceptance of said matter for arbitration.

The party seeking removal is responsible for providing the State Bar with the proper forms, filing fees and requested material(s) within the time limits set by the State Bar.

32. Enforcement of Award

Any award made pursuant to these Rules may be enforced in any court which has jurisdiction over the amount of the arbitration award, in the manner provided for in Section 6203 of the Business and Professions Code or as otherwise provided by law.

33. Service

Unless otherwise specifically stated in these Rules, service shall be made by personal delivery or by deposit in the United States mail, postage prepaid, addressed to the person to whom it is to be served, at that person's office or place of residence as last given. The service is completed at the time of deposit. The time for performance of any act will commence on the date service is completed and will not be extended for reason of service by mail.

34. Filing Fees

The OCBA Board of Directors establishes the filing fee schedule. The schedule of filing fees to be paid at the time of the filing of the petition for arbitration is as follows:

- $75 filing fee for any amount in dispute under or equal to $1,500
- 5% of amounts in dispute over $1,500 with a maximum of $5,000

35. Compensation of Arbitrators & Administrative Charges

A. No arbitrator will be entitled to compensation for services unless the hearing extends beyond one (1) day. A hearing of four (4) hours or less is considered a one-half day hearing. A hearing which extends beyond four (4) hours is considered a one-day hearing. Unless waived in writing, each arbitrator shall be compensated at the rate of $200 for each one-half day and $400 for each day after the first day of the hearing. Any compensation is to be paid equally by each party directly to each arbitrator, in advance, for each day of the hearing for which compensation is due. No compensation will be paid to any arbitrator for services outside of formal hearing sessions. Any disputes concerning compensation of the arbitrators shall be determined by the MFA Committee Chair his/her determination is binding upon all parties, including the arbitrators.

36. Refunds

A. The OCBA Mandatory Fee Arbitration Committee will retain a $75 non-refundable administrative fee on all cases filed regardless of disposition.

B. All requests for a refund of fees paid on cases that have been settled or otherwise withdrawn from the Program will be processed according to the following schedule:

- If a case has not been first assigned to an arbitrator, a panel of arbitrators or a mediator, 75% of filing fee will be refunded.
- If a case has been assigned and no hearing date or mediation session has been scheduled, 50% of the filing fee will be refunded.
- If a hearing date or mediation session has been scheduled, and both parties notify the OCBA and the arbitrator(s) or mediator in writing at least five (5) business days prior to the first hearing date or mediation session, 25% of the filing fee will be refunded.

There are no refunds thereafter. In no event will a refund of fees be granted if the parties have not settled their fee dispute and properly notified the OCBA in writing.

37. Retention of Files

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

Requests for documents from closed files must be in writing stating the reason for the request. A nominal administrative fee may be charged in cases where file storage retrieval and copying are necessary. This fee will be directly related to the actual administrative cost.

BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 3. PROFESSIONS AND VOCATIONS GENERALLY [5000 - 9998.11]

(Heading of Division 3 added by Stats. 1939, Ch. 30.)

CHAPTER 4. Attorneys [6000 - 6243]

(Chapter 4 added by Stats. 1939, Ch. 34.)

ARTICLE 8.5. Fee Agreements [6146 - 6149.5]

(Heading of Article 8.5 amended by Stats. 1986, Ch. 475, Sec. 5.)

6146.

(a) An attorney shall not contract for or collect a contingency fee for representing any person seeking damages in connection with an action for injury or damage against a health care provider based upon such person's alleged professional negligence in excess of the following limits:
(1) Forty percent of the first fifty thousand dollars ($50,000) recovered.
(2) Thirty-three and one-third percent of the next fifty thousand dollars ($50,000) recovered.
(3) Twenty-five percent of the next five hundred thousand dollars ($500,000) recovered.
(4) Fifteen percent of any amount on which the recovery exceeds six hundred thousand dollars ($600,000).
The limitations shall apply regardless of whether the recovery is by settlement, arbitration, or judgment, or whether the person for whom the recovery is made is a responsible adult, an infant, or a person of unsound mind.
(b) If periodic payments are awarded to the plaintiff pursuant to Section 667.7 of the Code of Civil Procedure, the court shall place a total value on these payments based upon the projected life expectancy of the plaintiff and include this amount in computing the total award from which attorney's fees are calculated under this section.
(c) For purposes of this section:
(1) "Recovered" means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim. Costs of medical care incurred by the plaintiff and the attorney's office-overhead costs or charges are not deductible disbursements or costs for such purpose.
(2) "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500), or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Health care provider" includes the legal representatives of a health care provider.
(3) "Professional negligence" is a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that the services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital.
(Amended by Stats. 1987, Ch. 1498, Sec. 2.)

6147.

(a) An attorney who contracts to represent a client on a contingency fee basis shall, at the time the contract is entered into, provide a duplicate copy of the contract, signed by both the attorney and the client, or the client's guardian or representative, to the plaintiff, or to the client's guardian or representative. The contract shall be in writing and shall include, but is not limited to, all of the following:
(1) A statement of the contingency fee rate that the client and attorney have agreed upon.

(2) A statement as to how disbursements and costs incurred in connection with the prosecution or settlement of the claim will affect the contingency fee and the client's recovery.
(3) A statement as to what extent, if any, the client could be required to pay any compensation to the attorney for related matters that arise out of their relationship not covered by their contingency fee contract. This may include any amounts collected for the plaintiff by the attorney.
(4) Unless the claim is subject to the provisions of Section 6146, a statement that the fee is not set by law but is negotiable between attorney and client.
(5) If the claim is subject to the provisions of Section 6146, a statement that the rates set forth in that section are the maximum limits for the contingency fee agreement, and that the attorney and client may negotiate a lower rate.
(b) Failure to comply with any provision of this section renders the agreement voidable at the option of the plaintiff, and the attorney shall thereupon be entitled to collect a reasonable fee.
(c) This section shall not apply to contingency fee contracts for the recovery of workers' compensation benefits.
(d) This section shall become operative on January 1, 2000.
(Amended (as amended by Stats. 1994, Ch. 479, Sec. 3) by Stats. 1996, Ch. 1104, Sec. 9. Effective January 1, 1997. Section operative January 1, 2000, by its own provisions.)

6147.5.

(a) Sections 6147 and 6148 shall not apply to contingency fee contracts for the recovery of claims between merchants as defined in Section 2104 of the Commercial Code, arising from the sale or lease of goods or services rendered, or money loaned for use, in the conduct of a business or profession if the merchant contracting for legal services employs 10 or more individuals.
(b) (1) In the instances in which no written contract for legal services exists as permitted by subdivision (a), an attorney shall not contract for or collect a contingency fee in excess of the following limits:
(A) Twenty percent of the first three hundred dollars ($300) collected.
(B) Eighteen percent of the next one thousand seven hundred dollars ($1,700) collected.
(C) Thirteen percent of sums collected in excess of two thousand dollars ($2,000).
(2) However, the following minimum charges may be charged and collected:
(A) Twenty-five dollars ($25) in collections of seventy-five dollars ($75) to one hundred twenty-five dollars ($125).
(B) Thirty-three and one-third percent of collections less than seventy-five dollars ($75).
(Added by Stats. 1990, Ch. 713, Sec. 1.)

6148.

(a) In any case not coming within Section 6147 in which it is reasonably foreseeable that total expense to a client, including attorney fees, will exceed one thousand dollars ($1,000), the contract for services in the case shall be in writing. At the time the contract is entered into, the attorney shall provide a duplicate copy of the contract signed by both the attorney and the client, or the client's guardian or representative, to the client or to the client's guardian or representative. The written contract shall contain all of the following:
(1) Any basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the case.
(2) The general nature of the legal services to be provided to the client.
(3) The respective responsibilities of the attorney and the client as to the performance of the contract.

(b) All bills rendered by an attorney to a client shall clearly state the basis thereof. Bills for the fee portion of the bill shall include the amount, rate, basis for calculation, or other method of determination of the attorney's fees and costs. Bills for the cost and expense portion of the bill shall clearly identify the costs and expenses incurred and the amount of the costs and expenses. Upon request by the client, the attorney shall provide a bill to the client no later than 10 days following the request unless the attorney has provided a bill to the client within 31 days prior to the request, in which case the attorney may provide a bill to the client no later than 31 days following the date the most recent bill was provided. The client is entitled to make similar requests at intervals of no less than 30 days following the initial request. In providing responses to client requests for billing information, the attorney may use billing data that is currently effective on the date of the request, or, if any fees or costs to that date cannot be accurately determined, they shall be described and estimated.
(c) Failure to comply with any provision of this section renders the agreement voidable at the option of the client, and the attorney shall, upon the agreement being voided, be entitled to collect a reasonable fee.
(d) This section shall not apply to any of the following:
(1) Services rendered in an emergency to avoid foreseeable prejudice to the rights or interests of the client or where a writing is otherwise impractical.
(2) An arrangement as to the fee implied by the fact that the attorney's services are of the same general kind as previously rendered to and paid for by the client.
(3) If the client knowingly states in writing, after full disclosure of this section, that a writing concerning fees is not required.
(4) If the client is a corporation.
(e) This section applies prospectively only to fee agreements following its operative date.
(f) This section shall become operative on January 1, 2000.
(Amended (as amended by Stats. 1994, Ch. 479, Sec. 5) by Stats. 1996, Ch. 1104, Sec. 11. Effective January 1, 1997. Section operative January 1, 2000, by its own provisions.)

6149.

A written fee contract shall be deemed to be a confidential communication within the meaning of subdivision (e) of Section 6068 and of Section 952 of the Evidence Code.
(Added by Stats. 1986, Ch. 475, Sec. 8.)

6149.5.

(a) Upon the payment of one hundred dollars ($100) or more in settlement of any third-party liability claim the insurer shall provide written notice to the claimant if both of the following apply:
(1) The claimant is a natural person.
(2) The payment is delivered to the claimant's lawyer or other representative by draft, check, or otherwise.
(b) For purposes of this section, "written notice" includes providing to the claimant a copy of the cover letter sent to the claimant's attorney or other representative that accompanied the settlement payment.
(c) This section shall not create any cause of action for any person against the insurer based upon the insurer's failure to provide the notice to a claimant required by this section. This section shall not create a defense for any party to any cause of action based upon the insurer's failure to provide this notice.
(Added by Stats. 1994, Ch. 479, Sec. 6. Effective January 1, 1995.)

BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 3. PROFESSIONS AND VOCATIONS GENERALLY [5000 - 9998.11] *(Heading of Division 3 added by Stats. 1939, Ch. 30.)*

CHAPTER 4. Attorneys [6000 - 6243] *(Chapter 4 added by Stats. 1939, Ch. 34.)*

ARTICLE 13. Arbitration of Attorney's Fees [6200 - 6206] *(Article 13 added by Stats. 1978, Ch. 719.)*

6200. (a) The board of trustees 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 the 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 trustees shall adopt rules to allow arbitration and mediation of attorney fee and cost disputes under this article to proceed under arbitration and mediation systems sponsored by local bar associations in this state. Rules of procedure promulgated by local bar associations are subject to review by the board or a committee designated by the board to ensure 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 trustees, an arbitrator or mediator, as well as the arbitrating association and its directors, officers, and employees, shall have the same immunity which attaches in judicial proceedings.

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

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

(2) Administer oaths and affirmations.

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

(h) Participation in mediation is a voluntary consensual process, based on direct negotiations between the attorney and his or her client, and is an extension of the negotiated settlement process. All discussions and offers of settlement are confidential and shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and may not be disclosed in any subsequent arbitration or other proceedings.

(Amended by Stats. 2015, Ch. 537, Sec. 17. Effective January 1, 2016.)

6201. (a) The rules adopted by the board of trustees 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 trustees 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 trustees 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 trustees 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.

(Amended by Stats. 2011, Ch. 417, Sec. 56. Effective January 1, 2012.)

6202. 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.

(Amended by Stats. 2004, Ch. 182, Sec. 1. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)

6203. (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 the claim. Nothing in this section shall be construed to prevent

the arbitrators from awarding the client a refund of unearned fees, costs, or both previously paid to the attorney.

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

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

(Amended by Stats. 2011, Ch. 417, Sec. 57. Effective January 1, 2012.)

6204. (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 trustees, 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 attorney's fees and costs incurred in the trial after arbitration, which allowance shall be fixed by the court. In fixing the attorney's 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.

(Amended by Stats. 2011, Ch. 417, Sec. 58. Effective January 1, 2012.)

6204.5. (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.

(Amended by Stats. 1996, Ch. 1104, Sec. 17. Effective January 1, 1997.)

6206. 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 trustees 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.

(Amended by Stats. 2011, Ch. 417, Sec. 59. Effective January 1, 2012.)

CODE OF CIVIL PROCEDURE - CCP

PART 3. OF SPECIAL PROCEEDINGS OF A CIVIL NATURE [1063 - 1822.60]

(Part 3 enacted 1872.)

TITLE 9. ARBITRATION [1280 - 1294.2]

(Title 9 repealed and added by Stats. 1961, Ch. 461.)

CHAPTER 4. Enforcement of the Award [1285 - 1288.8]

(Chapter 4 added by Stats. 1961, Ch. 461.)

ARTICLE 1. Confirmation, Correction or Vacation of the Award [1285 - 1287.6]

(Article 1 added by Stats. 1961, Ch. 461.)

1285.

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.
(Repealed and added by Stats. 1961, Ch. 461.)

1285.2.

A response to a petition under this chapter may request the court to dismiss the petition or to confirm, correct or vacate the award.
(Added by Stats. 1961, Ch. 461.)

1285.4.

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.
(Added by Stats. 1961, Ch. 461.)

1285.6.

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.
(Added by Stats. 1961, Ch. 461.)

1285.8.

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.
(Added by Stats. 1961, Ch. 461.)

1286.

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.
(Amended by Stats. 1978, Ch. 260.)

1286.2.

(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.
(Amended by Stats. 2001, Ch. 362, Sec. 7. Effective January 1, 2002.)

1286.4.

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.
(Added by Stats. 1961, Ch. 461.)

1286.6.

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.
(Added by Stats. 1961, Ch. 461.)

1286.8.

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 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 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.
(Added by Stats. 1961, Ch. 461.)

1287.

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 paragraph (4) or (5) of subdivision (a) 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.
(Amended by Stats. 2012, Ch. 162, Sec. 15. Effective January 1, 2013.)

1287.2.

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.
(Added by Stats. 1961, Ch. 461.)

1287.4.

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 of the same jurisdictional classification; and it may be enforced like any other judgment of the court in which it is entered, in an action of the same jurisdictional classification.
(Amended by Stats. 1998, Ch. 931, Sec. 124. Effective September 28, 1998.)

1287.6.

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.
(Added by Stats. 1961, Ch. 461.)