

**AMENDED RULES OF PROCEDURE FOR FEE RESOLUTION  
BY THE DESERT BAR ASSOCIATION**

**ARTICLE I.  
DEFINITIONS**

**RULE 1.0 DEFINITIONS:** As used in these Rules:

1.1 **ARBITRATION PACKET:** Packet of materials including instructions, forms and information for requesting fee arbitration.

1.2 **ASSIGNEE:** A person to whom a claim, right or property is transferred. Often, an attorney appoints a collection agency as an assignee for a particular debt.

1.3 **CHAIR:** A Desert Bar committee member assigned by The Desert Bar Association to be responsible for the Desert Bar Mandatory Fee Arbitration Program.

1.4 **ARBITRATION ADMINISTRATOR:** The person assigned by the Fee Arbitration Chair to be the administrator of the Desert Bar Association Mandatory Fee Arbitration Program.

1.5 **HEARING PANEL:** One or three arbitrators assigned to hear the fee dispute and to issue the award.

1.6 **ATTORNEY-CLIENT PRIVILEGE:** Confidential communications between attorney and client which may be protected from disclosure.

1.7 **AWARD:** The decision of the arbitrator or arbitrators in the fee resolution matter.

1.8 **CLIENT:** A person who directly or through an authorized representative consults, retains or secures legal service or advice from a lawyer in the lawyer's professional capacity.

1.9 **FILE:** Desert Bar Association's fee arbitration records and papers in a specific case.

1.10 **WITH PREJUDICE:** An action or order that is final (e.g. dismissal), wherein no new request to arbitrate may be filed).

1.11 **WITHOUT PREJUDICE:** An action or order (e.g. dismissal) that does not forbid the party from beginning the activity again (filing a new request for arbitration).

## ARTICLE II.

### ARBITRATION GENERALLY

#### RULE 2.0 **ARBITRATION MANDATORY FOR ATTORNEYS.**

2.1 Arbitration under Business and Professions Code Sections 6200-6206 is voluntary for a client and mandatory for an attorney if commenced by a client.

#### RULE 3.0 **ATTORNEY'S FAILURE TO RESPOND OR PARTICIPATE.**

3.1 If an attorney fails to respond to a request for arbitration or refuses to participate, the arbitration will proceed as scheduled and a decision will be made on the basis of the evidence presented.

#### RULE 4.0 **NOTICE.**

4.1 Prior to or at the time of service of summons or claim in an action against the client for the recovery of fees, costs or both for professional services rendered, the attorney shall forward to the client the approved State Bar form, issued by the Desert Bar, entitled "Notice of Client's Right to Arbitration." Failure to give this notice shall be a ground for dismissal of the action.

#### RULE 5.0 **DISPUTES COVERED.**

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

5.2 Disputes where the attorney is also admitted to practice in another jurisdiction or where the attorney is only admitted to practice in another jurisdiction, and s/he maintains no office in the Coachella Valley, and no material portion of the services were rendered in the Coachella Valley;

5.3 Disputes where the client seeks affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct;

5.4 Disputes where the fees and/or costs to be paid by the client or on the client's behalf have been determined pursuant to statute or court order; or

5.5 Disputes where the request for arbitration is made by a person who is not the client of the attorney.

#### RULE 6.0 **BINDING ARBITRATION.**

6.1 Arbitration is not binding unless all parties agree **in writing** that it will be binding. If any party does not agree, any party may request a trial after arbitration in a civil court pursuant to Business and Professions Code Section 6204 within thirty (30) days after the arbitration award has been mailed. If a trial after arbitration is not requested, the award automatically becomes binding 30 days after the award is mailed, 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 will be 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.

6.2 If all parties agree in writing that the arbitration is binding, the award is binding and there can be no appeal in a civil court. A binding award may be corrected, vacated or confirmed pursuant to Code of Civil Procedure Section 1285, et seq.

6.3 At any time prior to the actual taking of evidence at the hearing, the parties may agree in writing to be bound by the award. After all parties have agreed in writing to be bound by an arbitration award, a party may not withdraw from that agreement.

**RULE 7.0 RIGHT TO COUNSEL.**

7.1 Either party, at his/her own expense, may be represented by an attorney.

**RULE 8.0 WAIVER OF RIGHT TO REQUEST OR MAINTAIN ARBITRATION.**

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

8.2 Answers a complaint in a civil action before filing a request for arbitration, if a notice of the right to arbitrate was given pursuant to Rule 4.0.

8.3 Commences an action or files any pleading seeking judicial resolution of a fee dispute and/or cost dispute or seeking affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct.

8.4 Fails to send to the Desert Bar a written request **for arbitration that is postmarked** on or before the 30th day from receipt of the form entitled "Notice of Client's Right to Arbitration" given pursuant to Rule 4.0; or

8.5 Fails to send to the Desert Bar a request for arbitration on the approved **Desert Bar** form that is:

(a) postmarked within 15 days from the date of the letter from the Desert Bar mailing the arbitration packet in response to a timely request by the client as defined by Rule 8.3 of these rules; or

(b) postmarked on or before the 30th day from receipt of the form entitled "Notice of Client's Right to Arbitration" given pursuant to Rule 4.0, whichever is later.

**RULE 9.0 STAY OF PROCEEDINGS.**

9.1 If an attorney, or the attorney's assignee commences an action to collect fees and/or costs in any court, the client may seek to stay the action by filing a copy of a request for arbitration on the approved Desert Bar form, issued by the Desert Bar, with the court, together with the original form entitled "Notice that Action Has Been Stayed", and by complying with any such additional requirements as the court may direct.

**ARTICLE II  
DESERT BAR PROGRAM**

**RULE 10.0 DETERMINATION OF JURISDICTION.**

10.1 The Desert Bar shall reject any request for arbitration when it is clear from the face of the request that the provisions of the State Bar Act, Article 13, have not been met.

10.2 Within fifteen (15) days from mailing of notice that jurisdiction has not been accepted, a party may file a written request for reconsideration. The Chair shall rule on the request for reconsideration.

10.3 For good cause, the Chair may assign the matter to a hearing panel to take evidence and make a determination of whether jurisdiction should be accepted.

10.4 There is no appeal of the Chair's decision.

**RULE 11.0 VENUE.**

11.1 A fee dispute will only be heard by the Desert Bar if the majority of the legal services were performed within the Desert Judicial District (Coachella Valley, Morongo Valley, Joshua Tree and 29 Palms).

**RULE 12.0 EFFECT OF TIME PENDENCY REQUIREMENTS.**

12.1 The Desert Bar Association shall not lose jurisdiction, nor shall any arbitration be dismissed, or any award be modified in any way, solely because of the Desert Bar's failure to comply with time requirements as set forth in these Rules.

ARTICLE IV  
INITIATION OF ARBITRATION PROCEEDING

**RULE 13.0 REQUEST FOR ARBITRATION.**

13.1 Arbitration is initiated by filing with the Desert Bar Association a written "Request for arbitration" on the approved Desert Bar form and paying the appropriate filing fee as established by the Desert Bar. Service of the request on the other party shall be made by the Desert Bar. There will be no refund of filing fees, except for those provided for under Rule 16.3.

13.2 At the time of service of the request on the attorney, the Desert Bar shall also serve a copy of the approved State Bar "Notice of Attorney Responsibility" form.

13.3 The party requesting arbitration may amend the request up to fifteen (15) days after mailing it to the Desert Bar, unless a request for clarification is made by the Desert Bar. Thereafter, it may be amended only with the approval of the fee arbitration Chair or by the lead or sole arbitrator if a notice of assignment of the arbitrator(s) has been served on the parties.

13.4 For good cause shown, the client may include, as a party to the arbitration, any person who is not the client of the attorney but who may be liable for or entitled to a refund of the attorney's fees and/or costs. The request for arbitration must be signed by the client and any other party included by the client.

**RULE 14.0 REQUEST FOR FILING FEE WAIVER.**

**14.1 Each party seeking arbitration must pay the \$125.00 filing fee requirement. The Desert Bar does not offer a fee waiver to any participant.**

**RULE 15.0 RESPONSE TO REQUEST FOR ARBITRATION.**

15.1 The attorney's reply to a Request for Arbitration, together with any response to the issue of the attorney's responsibility for any award that refunds fees and/or costs to the client, shall be filed within thirty (30) days of the service of the request, unless an extension of time to reply is obtained from the Fee Arbitration Chair.

15.2 If the attorney seeks arbitration, arbitration shall proceed only if the client files a written Consent within thirty (30) days of service of the request.

15.3 All Consents and Replies shall be on the approved Desert Bar forms and filed with the Desert Bar, Fee Arbitration Committee.

**RULE 16.0 SETTLEMENT OF DISPUTES; WITHDRAWAL FROM ARBITRATION.**

16.1 Upon confirmation that a dispute has been settled the matter shall be dismissed by the Desert Bar, Fee Arbitration Chair, in the absence of an assigned hearing panel, or by the panel if a notice of assignment of the hearing panel has been served on the parties.

16.2 If the client wishes to withdraw from a binding arbitration and the matter has not been settled, all parties must agree to the matter being withdrawn. If the arbitration is nonbinding, or after reasonable confirmation that all parties agree to the withdrawal, and for good cause shown, the matter shall be dismissed as set forth in subsection 16.1 above.

16.3 If the matter is settled before the request is accepted for filing by the Desert Bar, 100% of the filing fee shall be refunded to the party who paid it. If the matter is settled after filing but before assignment of a panel, the Desert Bar shall retain the filing fee paid. The Desert Bar does not refund filing fees to either party. **Any settlement agreement must be signed by both parties before it will be accepted by the Desert Bar.**

**RULE 17.0 CONSOLIDATIONS.**

17.1 The Chair shall rule on all written requests to consolidate two or more separate arbitration requests.

**ARTICLE V.  
PANELS**

**RULE 18.0 APPOINTMENT OF PANEL.**

18.1 For each dispute a panel shall be assigned by the Fee Arbitration Chair or Arbitration Administrator from the Desert Bar pool of arbitrators. A panel shall consist of one (1) attorney arbitrator for disputes involving \$35,000.00 or less and for disputes of any amount where the arbitrator's award is non-binding. At the request of any party to the dispute, three (3) arbitrators will be assigned to hear a dispute involving \$35,000.00, or more, provided all parties have stipulated that the award of the panel will be binding. One member of the three-member panel will be a public (non-lawyer) member, and one of the attorney members will be designated as Lead Arbitrator. Any vacancy, by way of disqualification or inability to serve may be filled by the Chair. **(Effective April 1, 2001.)**

18.2 Upon the client's request, the Chair 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. Such a request must be submitted by the client at the time the written "Request for Arbitration" on the approved Desert Bar form is submitted to the Desert Bar.

18.3 If a fee dispute involves \$500.00 or less, the arbitration may be decided by the Chair, or at the discretion of the Chair, an Assistant Chair. Each party shall submit all supporting documents and

a complete statement of the reasons for the dispute, and/or response under penalty of perjury; the client shall do so at the time of the submission of the request or consent to arbitrate, the attorney at the time of the response or request to arbitrate. Each party will have 30 days from the date of service of the initial statement or response to reply. The record shall thereafter be forwarded to the Chair or Assistant Chair for action, who may require either or both parties to submit additional information within 30 days. The client shall be informed of this rule at the time of the Desert Bar's mailing to the client of the arbitration packet.

**RULE 19.0 NOTICE OF APPOINTMENT OF PANEL.**

19.1 A notice identifying the arbitrator(s) who will hear the dispute shall be served on the parties within sixty (60) days after the completed arbitration request, including the filing fee or order granting a request for waiver of fee, and response has been received. If no response is received, said notice will be served within sixty (60) days of the date on which the time to file the response expired.

**RULE 20.0 CHALLENGE-DISQUALIFICATION OF ARBITRATOR(S).**

20.1 Each party may disqualify one arbitrator without cause and shall have unlimited challenges for cause. Any disqualification or challenge of an arbitrator shall be ineffective unless made in writing and served on the Desert Bar within fifteen (15) days of the service of the "Notice of Assignment of Panel" or substitute arbitrator(s) if there is a disqualification or allowed challenge. An arbitrator who believes that he/she cannot render a fair and impartial decision or who believes that there is an appearance that he/she cannot render a fair and impartial decision, shall disqualify him/herself or shall accede to a reasonable challenge. If an arbitrator does not disqualify himself/herself, the challenge shall be decided by the Fee Arbitration Chair.

**RULE 21.0 DISCHARGE OF ARBITRATOR OR PANEL.**

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

**RULE 21.2 CONTACTS WITH ARBITRATORS.**

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

(a) At scheduled hearings; or

(b) In writing with a copy to all other parties, and their respective counsel, if any, and the Desert Bar Association Fee Resolution Committee; or

(c) For the purpose of scheduling a hearing date or other administrative procedures;  
or

(d) For the purpose of obtaining the issuance of a subpoena under Rule 26.0; or

- (e) In an emergency.

**ARTICLE VI.  
THE HEARING**

**RULE 22.0 CONFIDENTIALITY.**

22.1 All hearings shall be closed to the public. However, at the discretion of the panel and in the absence of any objections by the parties, witnesses and other such persons as may be necessary to the conduct of the hearing may be present during the hearing.

22.2 The 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.

22.3 The arbitration award is public; the arbitration case file, including the request, reply, exhibits and transcripts, remains confidential.

**RULE 23.0 WAIVER OF PERSONAL APPEARANCE.**

23.1 Any party may waive personal appearance and submit to the panel testimony and exhibits by written declaration under penalty of perjury.

23.2 Any party unable to attend a hearing may designate a lawyer or non-lawyer representative.

23.3 A waiver of appearance and/or designation of a representative and the submission of testimony by written declaration pursuant to this rule shall be filed with the Fee Arbitration Committee at least ten (10) days prior to the hearing.

**RULE 24.0 DEATH OR INCOMPETENCY OF A PARTY.**

24.1 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 25.0 DISCOVERY.**

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

**RULE 26.0 SUBPOENAS.**

26.1 The Fee Arbitration Chair shall, for good cause shown, issue subpoenas and/or subpoenas duces tecum at the request of a party. The Desert Bar shall mail the subpoenas to the requesting party who shall be responsible for obtaining the Fee Arbitration Chair's signature and for service of the subpoenas. Any request for subpoenas must be received by the Desert Bar no later than 10 days before the scheduled hearing date. The party requesting subpoenas will be responsible for any witness fees and

costs.

**RULE 27.0 COMMENCEMENT OF HEARING; NOTICE; ATTENDANCE**

27.1 The hearing shall commence within forty-five (45) days after service of the "Notice of Assignment of Panel", unless there has been a disqualification or allowed challenge, in which case there shall be a fifteen (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 adjourned or continued for good cause shown except in the instance where the adjournment or continuance is for thirty (30) days or more, in which case the adjournment or continuance must be decided by the Fee Arbitration Chair.

27.2 The Fee Arbitration Committee shall serve written notice of hearing on each party at the address as shown in the Notice of Assignment of Panel, within fifteen (15) days of its assignment and at least fifteen (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 failure of either party to attend, the hearing shall proceed as scheduled and a decision made on the basis of evidence.

27.3 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.

27.4 An award may be made in favor of a party who is absent if the evidence so warrants. If neither party attends, the panel may terminate the arbitration by making an award that neither party is entitled to any relief.

27.5 Any party who willfully fails to appear at the arbitration hearing as provided for under the rules of procedure governing this proceeding, shall not be entitled to a trial in the civil court after a non-binding arbitration. The arbitrator(s) may include findings in the award as to the willfulness of any party's non-attendance at the hearing.

27.6 If one of the panel members fails to appear, upon stipulation of the parties, the hearing may proceed with the lead arbitrator acting as the sole arbitrator. Under no circumstances will the hearing proceed with two arbitrators.

**RULE 28.0 STIPULATIONS ENCOURAGED.**

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

**RULE 29.0 OATHS.**

29.1 All testimony shall be given under oath or affirmation, to be administered by the Panel Chair.

**RULE 30.0 EVIDENCE.**

30.1 Any relevant evidence shall be admitted if it is the sort of evidence on 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 31.0 MANNER OF PROOF.**

31.1 The parties shall present their proof in a manner determined by the panel.

**RULE 32.0 INTERPRETER.**

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

**RULE 33.0 TRANSCRIPTS.**

33.1 Any party may provide for the attendance of a certified shorthand reporter at that party's expense. Every party to the arbitration shall be entitled to a copy of said reporter's transcript of the testimony upon written request and payment of the expense thereof.

**ARTICLE VII.**

**AWARD**

**RULE 34.0 AWARD.**

34.1 The award shall be made within fifteen (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.

34.2 The award shall be in writing. It shall include a determination of all the questions submitted to the panel, the decision of which is necessary in order to determine the controversy, including the name of the responsible attorney (a). Arbitrators are encouraged, where appropriate, to file findings of fact with their awards. At the discretion of the Arbitrators, the award may also include findings as to the willfulness of any party's non-attendance at the hearing.

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

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: \$ \_\_\_\_\_

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 [name], shall pay \$ \_\_\_\_\_  
Attorney [name]: \$ \_\_\_\_\_

Of which client is found to have paid:

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

(b) Attorney [name] shall refund to \$ \_\_\_\_\_  
Client [name]: \$ \_\_\_\_\_

**OR**

Nothing further shall be paid by either attorney or client.

34.4 The award may include an award of fees and/or costs previously paid to the attorney.

34.5 Whenever there are three arbitrators, a majority vote shall be sufficient for all decisions of the arbitrators, including the award.

34.6 Evidence relating to claims of malpractice and professional misconduct 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, therefor.

34.7 The award shall be signed by the arbitrators concurring therein.

34.8 The award may include an allocation of the filing fee and any fee paid by the client for filing a stay with the court, however, it shall not include an award for any other costs of the arbitration, including attorney's fees resulting from the arbitration proceeding.

34.9 The panel shall forward the original of the signed copy to the Desert Bar, which shall serve a copy of the award by mail on each party together with a Notice of post-arbitration rights approved by the State Bar Board of Governors. The panel shall return all exhibits and documents to the parties who submitted them.

**RULE 35.0 CORRECTION OF AWARD BY ARBITRATOR(S).**

35.1 The arbitrator(s) may correct the award only on the grounds set forth in the Code of Civil Procedure Section 1286.6 (a) and (c), and 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 an award is rendered, which is thirty (30) days after the award is mailed to the parties.

**RULE 36.0 ENFORCEMENT OF THE ARBITRATION AWARD.**

36.1 In any fee arbitration conducted by the Desert Bar 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. This article shall apply to any arbitration in which a written request was received on or after January 1, 1994.

**ARTICLE VIII.  
SERVICE; ADDRESS**

**RULE 37.0 SERVICE.**

37.1 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 1013a(3), postage paid, addressed to the person on whom it is to be served, at his or her address as last given on any document which has been filed in the arbitration. The client shall keep the Fee Resolution Committee advised of his/her current address.

37.2 Unless otherwise specifically stated in these rules, service on an individual attorney shall be at the latest address given on any document which has been filed in the arbitration. If the fee dispute is with a law firm, service shall be on the address as shown in the request for arbitration form unless the law firm designates an attorney to be responsible for the arbitration, then service shall be on the designee's

address last given on any document which has been filed in the arbitration. Service shall be in accordance with subsection 43.1 above.

37.3 If either party is represented by counsel, service shall be on the counsel, unless specifically indicated by either party that service is to be on counsel and the party. Service shall be in accordance with subsections 37.1 and 37.2 of these Rules.

37.4 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.

37.5 Where a facsimile transmission ("fax") is used to communicate with the Desert Bar or to file any document, it will not be considered received unless the Desert Bar also receives within 5 days of the date of the transmission, the original of the faxed document.

37.6 Relevant material received by the Fee Arbitration Committee shall be forwarded to the opposite party by the Fee Arbitration Committee.

#### **RULE 38.0 MATTERS FOR THE STATE BAR**

38.1 A client or an attorney who believes that he or she cannot obtain a fair and impartial hearing under the Procedural Rules of the Desert Bar Association shall be entitled to a hearing through a State Bar panel upon protest. In a matter already pending before the Fee Arbitration Committee, the Desert Bar Association shall release jurisdiction of the matter upon notification of the State Bar's acceptance of said matter for arbitration.

#### **RULE 39.0 MEANS OF CONTACT.**

39.1 Whenever these rules indicate that a copy of any form or other matter be sent to the Desert Bar, Fee Arbitration Committee, the item should be addressed as follows:

**DESERT BAR ASSOCIATION**  
*Fee Resolution Committee*  
**Post Office Box 2540**  
**Indio, CA 92202-2450**

39.2 Telephone Contact for the Desert Bar Association is: **(760) 360-1734.**