

**MEMBER/PUBLIC COMMENT**  
**The State Bar of California**  
**180 Howard Street, San Francisco, CA 94105-1639**  
<http://www.calbar.ca.gov>

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**PLEASE NOTE:** Publication for public comment is not, and shall not, be construed as a recommendation or approval by the Board of Governors of the materials published

**SUBJECT:** Proposed modification to the Rule 31 of the State Bar Rules of Procedure for Fee Arbitrations re: subpoenas.

**BACKGROUND:** Pursuant to Business and Professions Code § 6200, et seq., the Board of Trustees is charged with establishing, maintaining and administering a system and procedure for the arbitration of disputes concerning fees, costs, or both, charged by attorneys for their professional services. The Board of Trustees adopts rules of procedure to govern the arbitration of attorney fee and cost disputes. (Bus. & Prof. Code, § 6200, subd. (a).)

Contained within the MFA Rules is a provision for the issuance of subpoenas by the State Bar Presiding Arbitrator. The rule states that the Mandatory Fee Arbitration Program shall provide the blank subpoena forms to the requesting party and that the requesting party is responsible for the service of the subpoenas and any costs associated with the request.

**DISCUSSION/PROPOSAL:**

The Mandatory Fee Arbitration process is designed to be a quicker, cheaper and less formal venue for resolving fee disputes between attorneys and clients. It is a consumer protection program that benefits the citizens of California and members of the State Bar. The less formal nature of Mandatory Fee Arbitration is designed to help clients feel more comfortable with the process. Discovery is not allowed and no rules of evidence are applicable. Clients aren't required to be well-versed in legal procedure in order to have their matter heard in a fair and impartial manner.

The use of subpoenas in Fee Arbitration matters is infrequent and they are not enforceable in fee arbitration proceedings, although it is the opinion of the CMFA that subpoenas may be enforced by the appropriate civil court upon application by a party (see Arbitration Advisory 2002-01 "Imposition of Sanctions by Arbitrators in Conducting Fee Arbitration Matters" dated May 17, 2002 and Arbitration Advisory 2008-02 "Authority to Compel Compliance with Third-Party Subpoenas" dated May 25, 2008).

Currently, Rule 31.0 of the Rules of Procedure for Fee Arbitrations and the Enforcement of Awards by the State Bar of California states that the Presiding Arbitrator "may" issue subpoenas upon request and that the MFA "shall" issue the subpoena to the requesting party. The rule is interpreted to mean that the Presiding Arbitrator has discretion to issue subpoenas, but once the subpoena request is approved by Presiding Arbitration, the MFA must issue the subpoena. There is no requirement that the requesting party identify the rationale for requesting a subpoena.

The proposed rule modification makes the following modifications to the rule:

1. The requesting party must complete the form and submit it to the presiding arbitrator.
2. Upon a showing of good cause, the presiding arbitrator may sign the subpoena.
3. If the presiding arbitrator approves the subpoena, he will sign it and return it to the requesting party for service.
4. The requesting party is responsible for all costs associated with the subpoena.

**ANY KNOWN FISCAL/PERSONNEL IMPACT:** None

**ATTACHMENT:** Proposed Modification to Rule 31, Rules of Procedure for Fee Arbitrations and the Enforcement of Awards by the State Bar of California

**SOURCE:** Committee on Regulation, Admissions and Discipline Oversight

**DEADLINE:** 5:00 p.m., April 20, 2012

**DIRECT COMMENTS IN WRITING TO:** Susan Carlson  
Mandatory Fee Arbitration  
180 Howard Street, 6<sup>th</sup> Floor  
San Francisco, CA 94105  
FAX: (415) 538-2335  
[Susan.carlson@calbar.ca.gov](mailto:Susan.carlson@calbar.ca.gov)