

AGENDA ITEM

MAY 54-122
Request for Approval of
Proposed Rules of Procedure for
Fee Arbitrations by the
Alameda County Bar
Association

DATE: April 16, 2007

TO: Members of the Board Committee on Regulation, Admissions and Discipline Oversight
Members of the Board of Governors

FROM: Jill Sperber, Director, Office of Mandatory Fee Arbitration

SUBJECT: Request for Approval of Proposed Rules of Procedure for Fee Arbitrations by the Alameda County Bar Association

EXECUTIVE SUMMARY

This agenda item is before the RAD Committee and the Board to approve the proposed new Rules of Procedure for Fee Arbitrations by the ACBA form attached as Attachment A hereto.

The Alameda County Bar Association (ACBA) has submitted new rules of procedure for fee arbitrations conducted by its mandatory fee arbitration program. The ACBA's proposed new rules of procedure consist of materially new rules to replace its current rules of procedure last approved by the Board in 1997. The proposed new rules essentially adopt the Model Rules of Procedure circulated by the Committee on Mandatory Fee Arbitration in March 2006 with several additional rules and modifications to some Model Rules. These new rules would clarify existing procedures, amend or add new rules to comport with current law, detail procedures and summarize MFA statutes.

At its March 2, 2007 meeting, the State Bar's Committee on Mandatory Fee Arbitration (MFA) reviewed the ACBA's proposed Rules of Procedure for Fee Arbitrations and agreed, subject to several modifications that were made by ACBA subsequent to the meeting, to recommend approval of the rules to the Board Committee on Regulation, Admissions & Discipline (RAD) and the Board of Governors as being in compliance with the State Bar Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs ("Minimum Standards").

I. BACKGROUND:

Pursuant to Business and Professions Code section 6200, subdivision (d), local bar associations are authorized to sponsor mandatory fee arbitration programs. However, the local bar rules of procedure must comply with Business and Professions Code sections 6200-6206 and the State Bar's Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs ("Minimum Standards.") Approval by the Board of Governors gives the local bar programs jurisdiction to arbitrate fee disputes submitted under the auspices of the Mandatory Fee Arbitration Program. (Minimum Standards, Para.1.)

The Board of Governors last approved the Alameda County Bar Association's (ACBA's) rules of procedure for fee arbitrations on December 12, 1997. In March 2006, the State Bar's MFA Committee circulated Model Rules of Procedure for Fee Arbitrations to the local bar programs to provide them with a template of comprehensive, current rules of procedure consistent with recent developments in the law. The Board of Governors adopted the Model Rules of Procedure for Fee Arbitrations at its November 2006 meeting. The ACBA submitted proposed new rules of procedure for fee arbitrations to the State Bar's Mandatory Fee Arbitration Committee (MFA Committee) for consideration at its March 2, 2007 meeting.

II. DISCUSSION:

The proposed new rules essentially adopt the same framework and the majority of the Model Rules of Procedure. However, in an effort to incorporate some of the rights and responsibilities of the client and the attorney in fee arbitrations stated in the MFA statutes (Bus. & Prof. Code § 6200 *et seq.*), rules of professional conduct, and case law, the ACBA has include some new definitions, new rules of procedure and modifications to some of the State Bar's Model Rules. Other proposed rules clarify or customize existing procedures for the ACBA's particular program.

Examples of proposed new rules of procedure for the ACBA not included in the State Bar's Model Rules are:

Arbitration clauses (Rule 2(b))
Immunity (Rule 5(b))
Client's right to the file (Rule 8(h))
Submission of documents (Rule 8(i))
Enforcement of awards (Rule 11).

To facilitate the rule review process, the ACBA provided to the MFA Committee explanatory charts and a redlined version of its proposed rules comparing them to the Model Rules. The MFA Committee discussed each proposed new rule and revision of the Model Rules to ensure that they are consistent with the MFA statutes and the Minimum Standards. At its March 2, 2007 meeting, the MFA Committee found that, subject to several modifications that the ACBA subsequently adopted after the meeting, the proposed rules of procedure for fee arbitrations comply with the applicable MFA statutes and are consistent with the Minimum Standards. As such, the MFA Committee agreed to recommend to the RAD Committee that the proposed Rules of Procedure for Fee Arbitrations of the ACBA be recommended to the Board of Governors for approval.

Because the proposed new proposed rules of procedure are so materially different from the ACBA's current rules of procedure, it was determined that a redlined version comparing the current and proposed versions of the rules is of little assistance. A copy of the proposed new rules of procedure for ACBA is attached hereto as Attachment A.

III. FISCAL AND PERSONNEL IMPACT:

None.

IV. BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT:

None.

V. PROPOSED RESOLUTIONS:

For the Regulation, Admissions & Discipline Committee:

RESOLVED, that, the Board Committee on Regulation, Admissions and Discipline Oversight hereby recommends that the Board of Governors resolve to approve the Rules of Procedure for Fee Arbitrations by the Alameda County Bar Association in the form attached as Attachment A hereto as being in compliance with Business and Professions Code sections 6200-6206 and the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitrations.

For the Board of Governors:

RESOLVED, that, upon recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, the Board of Governors hereby approves the Rules of Procedure for Fee Arbitrations by the Alameda County Bar Association in the form attached as Attachment A hereto as being in compliance with Business and Professions Code sections 6200-6206 and the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitrations.