

AGENDA ITEM

MAY 54-124
Request for Approval of
Proposed Rules of Procedure for
Fee Arbitrations by the
Tulare 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 Tulare 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 Tulare County Bar Association in the form attached as Attachment A hereto.

The Tulare County Bar Association (TCBA) has submitted new rules of procedure for fee arbitrations conducted by its mandatory fee arbitration program. The TCBA's proposed new rules of procedure consist of materially new rules to replace its current rules of procedure last approved by the Board in 1992. The proposed new rules essentially adopt the Model Rules of Procedure circulated by the Committee on Mandatory Fee Arbitration in March 2006 with several modifications. These new rules would clarify existing procedures, amend or add new rules to comport with current law, detail new procedures, or delete outdated provisions.

At its March 2, 2007 meeting, the State Bar's Committee on Mandatory Fee Arbitration (MFA) reviewed the TCBA's proposed Rules of Procedure for Fee Arbitrations and agreed to recommend their approval to the Board Committee on Regulation, Admission and 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 Tulare County Bar Association's (TCBA's) rules of procedure for fee arbitrations on July 10, 1992. 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 TCBA submitted proposed new rules of procedure for fee arbitrations based on the Model Rules 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 Model Rules of Procedure with some minor modifications. Because the proposed new proposed rules of procedure are so materially different from the TCBA'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 TCBA is attached hereto as Attachment A.

At its March 2, 2007 meeting, the MFA Committee found that the proposed rules of procedure for fee arbitrations attached as Attachment A hereto 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 TCBA be recommended to the Board of Governors for approval.

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 Tulare 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 Tulare 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.