

The State Bar of California
FY 2008 Committee on Mandatory Fee Arbitration Work Plan

BACKGROUND
Sub-entity Name: Committee on Mandatory Fee Arbitration
Chair: Michael J. Fish
State Bar Staff: Jill Sperber
Date: January 9, 2007
<p>Committee Background: The Committee on Mandatory Fee Arbitration (“MFA”) is composed of 16 persons appointed by the Board of Governors. Its membership consists of lawyer and public members (three to five members must be non-lawyers) with expertise or an interest in policy issues affecting the administration of the Mandatory Fee Arbitration Program established by the Business and Professions Code section 6200 et seq. Members also participate in continuing education and training of the state’s fee arbitrators, provide guidance to the 45 local bar fee arbitration programs, track and report on legal developments affecting fee arbitration and mediation, and develop appropriate amendments to the State Bar’s sample written fee agreements. The charge of the committee is as follows:</p> <ol style="list-style-type: none">1. Oversight of the Mandatory Fee Arbitration Program established by the Business & Professions Code 6200-6206, including review, recommendation and comment on any proposed legislation and case law which affects the Program and attorney’s fees in general. There are 45 local MFA programs authorized by the State Bar Board that provide mandatory fee arbitration and/or fee mediation. Local bar rules of procedure are reviewed and forwarded by the Committee to the Board of Governors for approval. The Committee also provides free fee arbitrator trainings and guidance in the form of written advisories and correspondence to local bar MFA program staff, fee arbitrators and parties on legal, administrative, and procedural matters.2. Oversight of the State Bar’s Mandatory Fee Arbitration Department. The State Bar’s program has jurisdiction over fee disputes in the 20 counties that have no local fee arbitration program, where the program lacks jurisdiction and in any county where a party asserts that he/she cannot receive a fair hearing before a local program. The State Bar also has exclusive jurisdiction to enforce unpaid arbitration awards against attorneys pursuant to Bus. & Prof. Code §6203(d). The State Bar’s volunteer Presiding Arbitrator, who is a member of the MFA Committee, issues orders, represents the State Bar and oversees case administration for the Department.

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3. Provide free fee arbitrator training, offering MCLE credit and resource materials to State Bar members as an incentive to volunteer with the local and State Bar MFA programs. Training programs open to the public to recruit fee arbitrators. The Committee offers on average 8 programs annually in different counties throughout the state.
4. Perform such other functions relevant to the committee's subject area as the Board of Governors may from time to time assign.
5. Review and update the State Bar approved sample written fee agreement forms for State Bar members
6. Draft arbitration advisories, which provide guidance to fee arbitrators on various aspects of the law. Also draft program advisories for local bar staff and propose Judicial Council forms for use in civil actions relating to attorney-client fee disputes. In 2006, the Board approved the Committee's Model Rules of Procedure for Fee Arbitrations. The Model Rules serve as a template and ensure that the rules comport with the statutes and current law.

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Proposed Activities	
<u>Activity 1</u>	<u>Status/Time Frame:</u>
A. Review and analyze legislation and case law relating to the Mandatory Fee Arbitration Program and attorney's fees; and B. Review and propose amendments to the MFA statutes.	A. Ongoing; and B. Committee approved statutory revisions to B & P sections 6200-6206 and other statutes related to MFA to include in the State Bar's legislative agenda for 2007.

Performance Indicators
<ul style="list-style-type: none"> • Participate with the Board and/or the Legislature as a resource; Board adoption of proposed amendments to the MFA statutes as part of its legislative agenda for 2007 which may carry over to 2008. • Develop CLE programs on attorney's fees law for the State Bar Annual Meeting. • Issue arbitration advisories to keep fee arbitrators abreast of current developments in fee arbitration law.

Proposed Activity Budget
Unknown

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Proposed Activities	
<u>Activity 2</u>	<u>Status/Time Frame:</u>
<p>A. Oversee the local bar MFA programs:</p> <ol style="list-style-type: none"> 1. Review and analyze legal and administrative questions raised by members, arbitrators, and local bar MFA programs; 2. Review local bar proposed revisions to their rules of procedure to ensure compliance with the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs; 3. Foster the work of mentoring teams formed on the Committee to work directly with the local bar programs. 4. Continue working with the Model Rules of Procedure as new law develops. <p style="padding-left: 40px;">B. Oversee the State Bar's MFA Program.</p> <ol style="list-style-type: none"> 1. Support the State Bar's volunteer Presiding Arbitrator and Assistant Presiding Arbitrators in their work for the State bar MFA program 	<p>A. Ongoing;</p> <p>Many local bar association MFA programs are updating the local bar rules of procedure. This is an ongoing project. While a majority of this work is being accomplished in the 2005-06 and 2006-07 Board years, some local bar MFA programs will lag behind, requiring Board approval of local bar rules in 2007-08;</p> <p>B. In recent years, the workload of the Presiding Arbitrator has been increasing steadily. To meet the increased workload and replace current Assistant Presiding Arbitrators who resign, the Committee should recruit more Assistant Presiding Arbitrators to keep up with the workload.</p>

Performance Indicators
<ul style="list-style-type: none"> • Issue arbitration advisories (posted on State bar website and printed in the fee arbitrator training binders) and program advisories (distributed to local bar staff and MFA Chairpersons) to explain arbitral duties and compliance with legal requirements; • Obtain Board approval of local bar rule revisions to ensure that the programs are operating in compliance with the law and applicable Guidelines and Minimum Standards; • Request the Board to appoint a Presiding Arbitrator and a sufficient number of Assistant Presiding Arbitrators to assist the State Bar's MFA Program. • Partner as mentors for the local bar MFA programs to better assist the local bar staff.

Proposed Activity Budget
Unknown.

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Proposed Activities	
<u>Activity 3</u>	<u>Status/Time Frame:</u>
<ul style="list-style-type: none"> A. Offer year-round programs to train fee arbitrators throughout the state, hosted by the local bar MFA programs, including free CLE credit and resource materials; B. Offer local bar member CLE courses to educate attorneys about their rights and responsibilities regarding the ethical and legal collection of attorney's fees; C. Present CLE programs, including State Bar Annual Meeting programs to educate members about their rights and responsibilities in collecting attorney's fees. 	<ul style="list-style-type: none"> A. Ongoing; B. Ongoing; C, State Bar Annual Meeting 2008

Performance Indicators
<ul style="list-style-type: none"> A. Continue to offer 8 fee arbitrator training programs annually throughout the state; B. Recruit new fee arbitrators for the local bar and State Bar MFA programs. Attorneys who attend fee arbitrator programs are entitled to claim 2.75 hours of CLE credit, enabling more members to meet their CLE requirements. C. Present several State Bar Annual Meeting 2008 programs and additional CLE programs for members on the MFA program, fee agreements, and developments in the law on the ethical and legal collection of attorney's fees.

Proposed Activity Budget
<p>The programs typically average about 40-50 people in attendance. Each training program can cost up to \$600 based on the following factors: produce and assemble materials into binders, rent a facility if the local bar does not provide a venue, and pay travel reimbursements to program speakers from the Committee who volunteer their time. For 8 programs in 2008, the anticipated budget for this activity is slightly under \$5,000.</p> <p>For the State Bar Annual Meeting program, the budget must cover the cost for three speakers' travel reimbursement for about \$1,000-2,000 depending on the location of the Annual Meeting, the number of courses, and whether speakers require lodging based on the time slots for the programs assigned by State Bar staff for the Annual meeting.</p>

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Proposed Activities	
<u>Activity 4</u>	<u>Status/Time Frame:</u>
A. Issue Arbitration Advisories; B. Revisions to the State Bar Sample Fee Agreements; C. Revisions to the Model Rules of Procedure D. Revisions to or new Judicial Council forms	Ongoing for all.

Performance Indicators
<ul style="list-style-type: none"> • Issuance of arbitration advisories which are posted on the State Bar website for fee arbitrators but may also be accessed by the public, the members and MFA parties; • Committee recommendations to revise the sample fee agreements approved by the Board as appropriate; • Participation with staff to the Judicial Council regarding Judicial Council forms used in post-fee arbitration litigation.

Proposed Activity Budget
Unknown.

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How Activities Address State Bar Strategic Plan

The Mandatory Fee Arbitration Program clearly meets Goal 1 regarding protection of the public and holding lawyers to high professional standards. The MFA Program, established by statute, requires lawyers to arbitrate fee disputes with their clients. It operates as a key consumer protection program for consumers of legal services in California. The Program, through the issuance of arbitration awards after a hearing, holds lawyers accountable for refunding unearned fees to clients and benefits attorneys who have enforceable written fee agreements and maintain required billing practices, while diverting pure attorney fee disputes out of the attorney disciplinary system. Awards may require the client to pay the attorney's fees or require the attorney to refund unearned fees to the client. The Committee's activities in providing oversight of the 45 local MFA programs ensures consistency in the administration of the Program between the programs and the provision of uniform training and continuing education of fee arbitrators, the majority of whom are volunteer members of the Bar.

The MFA Program assists members (Goal 2) by providing them with a neutral, speedy, confidential, and cost-effective forum to resolve fee disputes with their clients. The Committee regularly touts the benefits of the MFA Program to the members through various educational programs and encourages attorneys to participate by volunteering as a fee arbitrator (Strategy 2.2, professional development). Free CLE-approved fee arbitrator training programs presented by the Committee educate members about their duties and responsibilities as fee arbitrators and as members, the legal and ethical approach to collecting attorney's fees from clients.

Over the past few years, the Committee has made great strides to make the arbitrator training materials and the sample fee agreements available to members without charge on the State Bar's website, consistent with Strategies 2.2 and 2.3, professional development of and communication with members.

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How Activities Address State Bar Strategic Plan

The MFA Program meets Goal 3 (equal access to justice) by ensuring that even the smallest attorney-client fee disputes can be arbitrated through the State Bar MFA program which does not have a minimum dollar threshold for hearing fee disputes, unlike some local bars. The State Bar MFA Program also provides for fee waivers for petitioners unable to pay a filing fee (including incarcerated clients). The Committee is also active in educating consumers on their post-arbitration litigation rights by providing written materials on the subject through advisories, notices and pamphlets. The MFA Program operates on the premise that consumers appear in pro per and need not hire another attorney to arbitrate a fee dispute against the former attorney. The Program Director is a regular speaker with various judicial staffing groups throughout the state to improve court access and services for pro per clients involved in fee disputes with their lawyers (Strategy 3.4-alternative dispute resolution and 3.6-court access and services for self-represented litigants). These activities also further Strategy 4.5 improving intergovernmental relations.

The Committee's activities meet Goal 4 because the MFA Program staff collaborates with other departments of the State Bar (Client Security Fund, Discipline, Membership Records) to coordinate resolution of client complaints and attorney regulation.

The Committee's activities meet Goal 4 on stakeholder relations by working with and supporting the local bar associations. Its fee arbitrator training and CLE seminars recruit new arbitrators for the local bar programs (Strategy 4.1), provide public information about the activities of the State Bar's MFA Program and other resources through the use of technology (website, live training), written materials (arbitration advisories, training binders) and in-person communication (arbitrator training programs and CLE seminars). Effective 2007, the MFA Committee will form mentoring teams to work directly with individual bar staff and chairpersons and ascertain their input about improving State Bar support.

The State Bar is charged by statute with maintaining a mandatory fee arbitration program. By tracking legislation and case law developments on the issues surrounding attorney's fees and fee arbitration, the Committee's charge is furthered by providing oversight of the MFA program and educating the programs about developments in the law.

By recommending to the RAD Committee the proposed revisions to the local bar programs' rules of procedure for fee arbitrations, the Committee helps the State Bar discharge its statutory duty to review local bar rules to insure that "they provide for a fair, impartial, and speedy hearing and award." (Bus & Prof. Code § 6200(d).)

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How Activities Address Sub-entity Charge

By promulgating arbitration advisories and Model Rules of Procedure, the Committee provides guidance to fee arbitrators and local bar MFA program administrators on issues of law, which in turn promotes overall consistency between programs, highest levels of competency; assists attorneys to comply with professional requirements; and improves the administration of and access to justice.

By presenting fee arbitrator training programs and CLE programs, the Committee promotes uniformity of administration and decisions among fee arbitrators. By educating members about their professional responsibilities, the Committee encourages member access to State Bar resources, empowers members to collect their fees and suggests preventative measures for members to avoid malpractice, having unenforceable fee agreements, and disciplinary complaints by clients.

Are activities within legislative and judicial restrictions imposed on the State Bar
(*Keller, Hudson, Brosterhous, etc.*)?

Yes No If no, please explain.

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PROPOSED BUDGET¹ <i>(Combined Proposed Activity Budgets plus Staff Costs)</i>			
Items	2006 Budget	2007 Budget	2008 Proposed
Estimated Staff Time Required FTE: Temporary Consultant	.50	.50	.50
Travel Staff	2,500	6,000	6,100
Travel Volunteer	15,000	12,300	12,500
Travel Others (e.g. Annual Meeting speakers for MCLE presentations)	2,000	3,300	3,350
Meeting Room Rental	1,500	1,500	1,525
Catering	3,500	2,800	2,850
Postage	650	1,000	1,025
Telephone	500	500	525
Copier Allocation	500	500	500
Other: Professional Services Outside Printing Outside Design In House Printing Office Supply	1,000	3,000	3,050
TOTAL Operating Expense	27,150	30,900	31,425
Reimbursement to Local Bars²	60,000	70,000	70,000

¹ Committee costs for each category are subsumed within the total budget for each item chargeable to Cost Center 10502, the cost center for the Mandatory Fee Arbitration program. The fee arbitration program, in addition to staffing the Committee, also staffs the State Bar fee arbitration program, processes requests for assistance in enforcement of unpaid awards rendered against attorneys, and is the main call center for the public, local bar associations, and members about fee arbitration questions and concerns. From January 1, 2007 going forward, a new cost center 10503 will be used to allocate Committee expenses whenever possible.

² Local bar reimbursements are based on a flat per fee arbitration case assigned by a local bar mandatory fee arbitration program. The cost center for this expense is 10501. Until 2007, when the flat rate was \$24 per case, the Board budgeted \$60,000 annually for this expense. In 2006, the Board approved an increase in the rate to \$36 effective January 1, 2007 and approved \$70,000 as the budget for this item. Actual expenses paid for local bar reimbursement fluctuates annually, depend on a number of variables, including the number of participating local bars, the number of cases assigned per quarter and timely receipt of quarterly reimbursement requests from the participating bar associations who choose to have a contract with the State Bar for this purpose.