

AGENDA ITEM

JULY 54-122
**Request for
Approval of
Revisions to Rules
for Conduct of
Arbitration of Fee
Disputes by the
Los Angeles County
Bar Association**

DATE: June 20, 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 Revisions to the Rules for Conduct of Arbitration of Fee Disputes and Other Related Matters by the Los Angeles County Bar Association

EXECUTIVE SUMMARY

This agenda item is before the RAD Committee and the Board to approve the proposed revisions to the Rules for Conduct of Arbitration of Fee Disputes and Other Related Matters by the Los Angeles County Bar Association in the form attached as Attachment A hereto.

The Los Angeles County Bar Association (LACBA)'s Dispute Resolution Services has submitted proposed revisions to the rules of procedure for fee arbitrations conducted by its mandatory fee arbitration program. The proposed rule revisions are intended to amend its current Rules for Conduct last approved in 2000. The proposed rule revisions track some of the Model Rules of Procedure for Fee Arbitrations with several modifications. These amendments would also clarify existing procedures or delete outdated provisions.

At its May 11, 2007 meeting, the State Bar's Committee on Mandatory Fee Arbitration (MFA) reviewed the LACBA's proposed rule revisions 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 of local bar rules 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.)

Several of LACBA's rules for conduct were last approved by this Committee (by CORD, RAD's functional predecessor) on June 9, 2000. 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 LACBA's Dispute Resolution Services submitted proposed amendments to its rules for fee arbitrations partly based on the Model Rules to the State Bar's Mandatory Fee Arbitration Committee (MFA Committee) and to correct outdated rules for consideration at its May 11, 2007 meeting.

II. DISCUSSION:

The proposed amendments to the LACBA rules track some of the Model Rules of Procedure with some minor modifications and reflect other desired changes, including deletion of outdated or legally incorrect rules. A copy of the proposed revisions comparing the proposed amendments to its current rules is shown in redlining and attached hereto as Attachment A.

The most significant proposed rule amendments are:

- A. Rule 6-limits on arbitration-deletes rule prohibiting non-client from initiating fee arbitration.
- B. Rule 8 (d)- clarifies that arbitration with the State Bar is possible if request made in compliance with State Bar rules, to eliminate the suggestion that a request for removal is granted automatically.
- C. Rule 9(a)-dollar threshold for three member arbitration panel-raises dollar threshold from \$7,500 to \$25, 000 and eliminates requirement that arbitration must be binding for a three member panel for disputes under \$20,000. The Minimum Standards provides that the threshold for a three -member panel must be "reasonable." (Min. Standard para.19.) This desired monetary threshold mirrors the growing trend by local bar association programs. This proposed amendment comports with the MFA Committee's recommendation for program neutrality on the issue of binding versus nonbinding arbitration. It also eliminates the possibility of a panel of only two arbitrators, since the statutory provision provides for either a sole or three- member panel.
- D. Rule 22-steonographic record-deletes rule permitting arbitrator to arrange for a record chargeable to a party or parties.
- E. Rule 23-interpreter-deletes rule permitting arbitrator to arrange for an interpreter chargeable to a party or parties.

- F. Rule 30-arbitration in the absence of a panel member-clarifies that parties can stipulate to one arbitrator but that two member panels are not permitted. Establishes procedure for program in the event that a stipulation to proceed with one arbitrator is not reached.
- G. Rule 37-delivery of award-provides for program review of award for procedural compliance before service of award, consistent with Model Rule 39.9.
- H. Rule 44-eliminates provision for two- member panel, an option that is not contemplated by the MFA statutes.

At its May 11, 2007 meeting, the MFA Committee found that the proposed revisions to the LACBA rules for fee arbitrations in the form attached here as Attachment A 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 for Conduct for the Arbitration of Fee Disputes of the LACBA 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 for Conduct of Arbitration of Fee Disputes and Other Related matters by the Los Angeles 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 Arbitration Programs.

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 for Conduct of Arbitration of Fee Disputes and Other Related matters by the Los Angeles 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 Arbitration Programs.