

AGENDA ITEM

NOVEMBER 54-123
**Request for
Approval of
Proposed Revisions
to Rules of
Procedure for the
Hearing of Fee
Arbitrations and
Mediations by the
Contra Costa
County Bar
Association**

DATE: October 15, 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 Rules of Procedure for the Hearing of Fee Arbitrations and Mediations by the Contra Costa 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 Contra Costa County Bar Association in the form attached as Attachment A hereto.

The Contra Costa County Bar Association (CCCBA) has submitted proposed revisions to rules of procedure for fee arbitrations conducted by its mandatory fee arbitration program. The CCCBA's proposed revisions would clarify several procedural requirements, add new rules to comport with current law and several recent amendments to the State Bar's Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs, and refine various internal administrative and jurisdictional requirements.

At its September 27, 2007 meeting, the State Bar's Committee on Mandatory Fee Arbitration (MFA) reviewed the CCCBA's proposed revisions to the 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, subject to modifications which were since made by CCCBA, as being in compliance with the State Bar Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs and the Minimum Standards for Mediation ("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. The programs must have local bar rules of procedure that 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") and be approved by the Board of Governors. Approval by the Board of Governors provides the local bar programs with jurisdiction to arbitrate and mediate fee disputes submitted under the auspices of the Mandatory Fee Arbitration Program. (Minimum Standards, Para.1.)

The Board of Governors last approved revisions to the Contra Costa County Bar Association's (CCCBA's) rules of procedure for fee arbitrations in July 2005. At that time, substantial revisions were made to incorporate some language from the State Bar's Model Rules of Procedure for Fee Arbitration not then approved by the Board of Governors. Since then, in November 2006, the Board approved the State Bar's Model Rules of Procedure for Fee Arbitrations ("Model Rules") 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 also approved several significant amendments to the State Bar's Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitrations ("Minimum Standards") in March and July of 2007. In response to these amendments and several advisories of the MFA Committee, the CCCBA submitted proposed amendments to its rules of procedure for fee arbitrations and mediations to the MFA Committee for consideration at its September 27, 2007 meeting.

II. DISCUSSION:

The proposed revisions to the rules submitted by the CCCBA are in redlining to compare the current and proposed amendments as set forth in Attachment A. At its September 27, 2007 meeting, the MFA Committee found that the proposed amendments to the rules of procedure for fee arbitrations and mediations were acceptable subject to several suggested changes. Following the meeting, the CCCBA MFA program accepted the suggestions made by the MFA Committee. As such, the MFA Committee agreed to recommend to the RAD Committee that the proposed revisions to the Rules of Procedure for the Hearing of Fee Arbitrations and Mediations of the CCCBA be recommended to the Board of Governors for approval.

Summary of Key Revisions Proposed:

- Page 3 Rule 1(e)-new language indicates that a Judicial Council form is required to notify the court of automatic stay in any pending action or other proceeding. Also, the plaintiff has the duty to notify the court of stay if the defendant has not appeared or is not subject to the court's jurisdiction. This reflects the requirements of Business & Professions Code section 6201(b) and (c) and Rule 3.650, California Rules of Court as discussed in a Program Advisory issued by the MFA Committee.
- Page 5 Rule 2(b)-new language incorporates paragraph 13 of the Minimum Standards relating to MFA cases between non-clients and attorneys, including duty of program to notify client of MFA proceeding.

- Page 6 Rule 2(d)-clarifies that jurisdiction by the program includes if the majority of legal services were provided in the county. Rule 3(d)(2) contains new language incorporating new paragraph 18 of the Minimum Standards. This new standard discusses which program determines venue and establishes that the original filing date is preserved in the event the case transfers to another program.
- Page 6 Rule 2(e)-new language clarifies that CCCBA will not assume jurisdiction if the respondent attorney is a current CCCBA MFA committee member or CCCBA Board member. This clarification is appropriate to eliminate actual or potential unfairness of a hearing held by the local bar program in this circumstance.
- Page 10 Rule 3(h)(2)-new rule provides for a non-refundable filing fee of \$100 where the attorney requests MFA but the client does not consent. Non-refundable administrative costs are not covered in the statute or the Minimum Standards as long as the filing fee and refund schedule are “reasonably related to the amount in dispute” and not in “such an amount as to discourage the use of the service.” (Para. 17, Minimum Standards.)
- Page 17 Rule 8(c)-increases minimum of hours of mediation training required of fee mediators from the minimum of 25 hours (Paragraph 2, Minimum Standards for Mediation) to 40 hours. Current mediators are grandfathered in.
- Page 18 Rule 8(g)(1)-moderately increases amount of time for mediator to contact parties and set mediation. The Minimum Standards do not prescribe a time period for either of these acts. The extensions sought remain consistent with ensuring a “fair speedy and impartial mediation procedure suitable to the circumstances” required by Paragraph 1 of the Minimum Standards for Mediation.

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 proposed revisions to the Rules of Procedure for the Hearing of Fee Arbitrations and Mediations by the Contra Costa 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 and Minimum Standards for Mediations.

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 proposed revisions to the Rules of Procedure for the Hearing of Fee Arbitrations and Mediations by the Contra Costa 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.