

AGENDA ITEM

NOVEMBER 54-122

**Request for
Approval of
Proposed Rules of
Procedure for the
Resolution of Fee
Disputes
(Arbitration and
Mediation) by the
Santa Monica 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 Rules of Procedure for the Resolution of
Fee Disputes (Arbitration and Mediation) by the Santa Monica Bar
Association**

EXECUTIVE SUMMARY

This agenda item is before the RAD Committee and the Board to approve the proposed new Rules of Procedure for the Resolution of Fee Disputes (Arbitration and Mediation) by the Santa Monica Bar Association in the form attached as Attachment A hereto.

The Santa Monica Bar Association (SMBA) has submitted new rules of procedure for fee arbitrations and mediations conducted by its mandatory fee arbitration program. The SMBA's proposed new rules of procedure consist of materially new rules to replace its current rules of procedure. The proposed new rules essentially adopt the Model Rules of Procedure for Fee Arbitrations approved by the Board of Governors with several modifications and additions. 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would clarify existing procedures, amend or add new rules to comport with current law, detail new procedures, or delete outdated provisions.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 July 20, 2007 meeting, the State Bar's Committee on Mandatory Fee Arbitration (MFA) reviewed the SMBA's proposed Rules of Procedure for the Resolution of Fee Disputes and agreed to recommend their approval to the Board Committee on Regulation, Admission and Discipline (RAD) and the Board of Governors, subject to certain changes which were since made by SMBA, 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. 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 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 Santa Monica Bar Association's (SMBA's) rules of procedure in 2001. In November 2006, the Board of Governors 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 SMBA submitted proposed new rules of procedure based upon the Model Rules to the State Bar's Mandatory Fee Arbitration Committee (MFA Committee) for consideration at its July 20, 2007 meeting.

II. DISCUSSION:

The proposed new rules submitted by the SMBA essentially follow the State Bar Model Rules of Procedure for Fee Arbitrations with some modifications. Because the proposed new proposed rules of procedure are so materially different from the SMBA'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 SMBA is attached hereto as Attachment A.

At its July 20, 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. The MFA Committee discussed the minor modifications and additions sought by the SMBA and found that they are consistent with the Minimum Standards. As such, the MFA Committee agreed to recommend to the RAD Committee that the proposed new Rules of Procedure for Fee Arbitrations of the NSBCBA be recommended to the Board of Governors for approval.

III. FISCAL AND PERSONNEL IMPACT:

None.

IV. BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT:

None

V. RULES AND REGULATIONS IMPACT:

None.

VI. 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 the Resolution of Fee Disputes (Arbitration and Mediation) by the San Mateo 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 the Resolution of Fee Disputes (Arbitration and Mediation) by the Santa Monica 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.