

AGENDA ITEM

MARCH 54-121
Request for
Approval of
Proposed Rules of
Procedure for Fee
Arbitrations by the
San Mateo County
Bar Association

DATE: February 8, 2008

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 San Mateo 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 San Mateo County Bar Association in the form attached as Attachment A hereto.

The San Mateo County Bar Association (SMCBA) has submitted new rules of procedure for fee arbitrations by its mandatory fee arbitration program. The SMCBA's proposed new rules of procedure consist of new rules to replace its current rules of procedure and are based on the Model Rules of Procedure for Fee Arbitrations approved by the Board of Governors. The 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would clarify existing procedures, amend or add new rules to comport with current law, detail new procedures, or delete outdated provisions.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 November 30, 2007 meeting, the State Bar's Committee on Mandatory Fee Arbitration (MFA) reviewed the SMCBA'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. The MFA Committee found the proposed rules 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 several revisions to the San Mateo County Bar Association's (SMCBA's) rules of procedure in October 2003. In November 2006, the Board of Governors approved the State Bar's Model Rules of Procedure for Fee Arbitrations ("Model Rules") to provide the local bar programs with a template of comprehensive, current rules of procedure consistent with recent developments in the law. The SMCBA 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 November 30, 2007 meeting.

II. DISCUSSION:

The proposed new rules submitted by the SMCBA essentially follow the State Bar Model Rules of Procedure for Fee Arbitrations. Because the proposed new rules of procedure are so materially different from the SMCBA's current rules of procedure, it was determined that a redlined version comparing the current and proposed rules would be of little assistance. A copy of the proposed new rules of procedure for SMCBA is attached hereto as Attachment A.

At its November 30, 2007 meeting, the MFA Committee found that the proposed rules of procedure for fee arbitrations attached as Attachment A, comply with the MFA statutes (Bus. & Prof. Code § 6200 *et seq.*) and are consistent with the Minimum Standards. The MFA Committee agreed to ask the RAD Committee to recommend to the Board of Governors that the proposed new Rules of Procedure for Fee Arbitrations of the SMCBA be approved.

III. FISCAL AND PERSONNEL IMPACT:

None.

IV. BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT:

None

V. STATE BAR RULES IMPACT:

None.

VI. STRATEGIC IMPACT:

None.

VII. 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 San Mateo 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 San Mateo 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.