

The State Bar of California
FY 2009 Committee on Mandatory Fee Arbitration Work Plan

BACKGROUND
Sub-entity Name: Committee on Mandatory Fee Arbitration
Chair: Joel Mark
State Bar Staff: Jill Sperber
Date: January 23, 2008
<p>Committee Background:</p> <p>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 fee 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 complimentary 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. Review and update the State Bar approved sample written fee agreement forms for State Bar members3. Issue arbitration advisories, which provide guidance to fee arbitrators on various aspects of the law.

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<ol style="list-style-type: none"> 4. Issue program advisories for local bar staff and propose Judicial Council forms for use in civil actions relating to attorney-client fee disputes. 5. Review and revise Model Rules of Procedure for Fee Arbitrations. The Model Rules serve as a template for local bar programs and ensure that the rules comport with the MFA statutes and current law. 6. 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. <p>Perform such other functions relevant to the committee's subject area as the Board of Governors may from time to time assign.</p>

Proposed Activities	
<u>Activity 1</u>	<u>Status/Time Frame:</u>
<ol style="list-style-type: none"> A. Review /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. 	<ol style="list-style-type: none"> 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 2008.

Performance Indicators
<ul style="list-style-type: none"> • Participate with the Board and/or the Legislature as a resource; Develop advisories that address new cases; Board adoption of proposed amendments to the MFA statutes as part of its legislative agenda for 2008 may carry over to 2009. • Develop CLE programs on recent developments in attorney's fees law for the State Bar Annual Meeting or local bar programs.

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 issues raised by members, arbitrators, and local bar MFA programs; 2. Review local bar proposed rules of procedure to ensure compliance with MFA statutes, the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs and case law; 3. Foster mentoring teams to work directly with local bar programs. 4. Continue revising the Model Rules of Procedure as new law develops. <p>B. Oversee the State Bar's MFA Program. Support the work of State Bar's volunteer Presiding Arbitrator and Assistant Presiding Arbitrators.</p>	<p>A.1. Ongoing;</p> <p>A.2. A growing number of local bar MFA programs are updating the local bar rules of procedure usually by adopting the State Bar's Model Rules effective 2006. Some local bar MFA programs will undoubtedly lag behind, resulting in Committee review and Board approval of local bar rules in 2008-09.</p> <p>A.3. Ongoing.</p> <p>A.4. Revisions will be proposed in 2007-8 Board year and may carry over.</p> <p>B. To meet the increased workload of the Presiding Arbitrator and replace Assistant Presiding Arbitrators who resign, the Committee should recruit qualified Assistant Presiding Arbitrators.</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 local programs are operating in compliance with the law and applicable Guidelines and Minimum Standards; • Maintain sufficient number of Assistant Presiding Arbitrators to assist the State Bar's MFA Program. • Partner as mentors with local bar MFA programs.

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 basic and more advanced 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. Annual Meeting September 10-13, 2009

Performance Indicators
<ul style="list-style-type: none"> A. Continue to offer on average 8 fee arbitrator training programs annually throughout the state reaching all programs that request training; members receive CLE credits B. Steady number of applications from new fee arbitrators for the local bar and State Bar MFA programs. C. Present several State Bar Annual Meeting 2009 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>Fee arbitration programs, averaging 40-50 attendees, 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 expenses to program speakers who volunteer their time and do not otherwise receive compensation. In 2008-09, the Committee will experiment with reducing the written materials for program attendees. Applicants who are appointed to the State Bar MFA Department will receive binders.</p> <p>For the State Bar Annual Meeting program, the budget must cover the cost for travel expense reimbursement for 3-4 speakers at about \$1,000-2,000 depending on the location of the Annual Meeting, the number of courses presented, and whether speakers require lodging based on the residence and assigned program times.</p>

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Proposed Activities	
<u>Activity 4</u>	<u>Status/Time Frame:</u>
A. Issue Arbitration Advisories B. Revise State Bar Sample Fee Agreements as needed C. Issue Program Advisories D. Revise Model Rules of Procedure E. Propose revised or new Judicial Council forms	Ongoing/as need for all.

Performance Indicators
<ul style="list-style-type: none"> • Distribution of arbitration advisories to fee arbitrators and use of advisories by the public, the members, the courts and MFA parties • Use of sample fee agreements approved by members • Distribution of program advisories and reliance upon them by local bar administrators • Current model rules of procedure adopted by local bar programs • Liaison with Judicial Council staff regarding Judicial Council forms used in post-fee arbitration litigation.

Proposed Activity Budget
Unknown

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Proposed Activity Budget
How Activities Addresses State Bar Strategic Plan

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Proposed Activity Budget

The Mandatory Fee Arbitration Program clearly meets Goal 1 regarding protection of the public and holding lawyers to high professional standards. The MFA Program in California, established in 1978 by statute, requires lawyers to arbitrate a fee dispute if requested by the client, making it one of only a handful of states where fee arbitration is mandatory for the attorney. The Program 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 activity in providing oversight of the 45 local MFA programs ensures inter-program administrative consistency, the provision of uniform training and continuing education of fee arbitrators, and local bar program compliance with the law. The Committee's work in this area fosters State Bar leadership and accountability (Goal 4.)

The Committee oversight of the MFA Program assists members (Goal 2) and Stakeholders (Goal 4) by providing members and legal consumers with a neutral, speedy, confidential, and cost-effective forum to resolve attorney fee and cost disputes. 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 (Goal 2.2, professional development of members). 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 sample fee agreements available to members without charge, consistent with Strategies 2.2 and 2.3, professional development of and communication with members.

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, unlike some local bars, does not have a minimum dollar threshold for hearing fee disputes. The State Bar MFA Program also provides for fee waivers for petitioners unable to pay a filing fee (including incarcerated clients) when a local program does not offer fee waiver.

The Committee is actively educates consumers about their post-arbitration rights by providing written materials on the subject through advisories, notices and pamphlets. The MFA Program operates on the premise that consumers often appear in pro per to arbitrate a fee dispute against the former attorney. The Committee develops strategies to improve court access and services for pro per clients involved in fee disputes with their lawyers (Goal 3 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 through collaboration between the Program and 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.

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How Activity Addresses Sub-entity Charge

The State Bar is charged by statute with establishing and maintaining a mandatory fee arbitration procedure concerning fee and cost disputes between clients and attorneys. (Bus. & Prof. Code § 6200.) By tracking relevant legislation and developments in the law, 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 and Board of Governors 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).)

By issuing arbitration advisories and developing 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.

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Recommended New Strategic Initiatives For Board Consideration

Name of Initiative: Review/Update Arbitration Advisories and Case Summaries

Purpose: State Bar advisories on legal issues and case summaries of relevant law are provided at State Bar training programs for fee arbitrators, distributed to local bar programs and posted on the State Bar website. Reviewing and updating legal authorities is needed to provide accurate information.

Responsible Entity: Committee on Mandatory Fee Arbitration

Connection to Strategic Plan: Ensure that Mandatory Fee Arbitration adheres to developments in the law; educate members and stakeholders (local bar associations) accurately about the legal issues affecting fee arbitration.

Desired Outcome(s): Complete review and updating as needed.

Fiscal and Staff Implications: none.

Proposed Performance Measures: Completion of review and updating as needed.

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

Yes [X] No [] If no, please explain.

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PROPOSED BUDGET¹ <i>(Combined Proposed Activity Budgets plus Staff Costs)</i>				
Items	2007 Budget	2007 Outlook	2008 Budget	2009 Proposed
Estimated Staff Time Required FTE: Temporary Consultant				
Travel Staff	6,000	2,466	6,100	6,000
Travel Volunteer	12,300	10,558	12,500	15,000
Travel Others (e.g. Annual Meeting speakers for MCLE presentations)	3,300	0	3,350	1,000
Meeting Room Rental	1,525	350	1,525	1,500
Catering	2,800	2,885	2,850	3,250
Postage	1,000	26 ²	1,025	1,000
Telephone	525	0 ³	525	500
In house Copier Usage	5,000	4,437	5,000	5,000
Other Professional Services Outside Printing Outside Design In House Printing Delivery Services	3,000	490 576 405	3,050	2,500
TOTAL Operating Expense				
Reimbursement to Local Bars ⁴	70,000	54,000	70,000	70,000

¹ The State Bar's Mandatory Fee Arbitration Office staffs the Committee and administrates the State Bar's Fee Arbitration Program, which is also overseen by the MFA Committee. Until recently, the cost center (10502) for the Mandatory Fee Arbitration Offices also included MFA Committee costs. For example, the 2007 proposed budget reflects the estimation of Committee costs subsumed by the total budget for the Mandatory Fee Arbitration program. Effective January 1, 2007, new cost center 10503 was created to reflect the budget for MFA Committee activities, to the extent they can be isolated from the general costs charged to the Mandatory Fee Arbitration Program.

² Most of the postage costs for Committee use appears to have been allocated in 2007 to cost center 10502.

³ Telephone costs for the Committee appears to have been subsumed by cost center 10502.

⁴ The State Bar reimburses local bar associations a flat rate per fee arbitration case assigned by a local bar fee arbitration program. Payments to local bar programs are made on a quarterly basis according to quarterly requests for reimbursement

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made by the participating programs. Effective January 1, 2007, the Board approved an increase in the flat rate from \$24 to \$36 per case and approved a \$70,000 budget for Cost Center 10501. The actual budget fluctuates annually and quarterly, as reimbursement depends upon a number of variables, including the number of cases assigned to arbitration for the immediately preceding quarter, the number of participating bars (reimbursement contracts with the State Bar are not required), and timely receipt of reimbursement requests from the bar programs.