

**Summary of 2007 Year-end Accomplishments of the
Committee on Mandatory Fee Arbitration
Submitted by Jill Sperber, Director
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BACKGROUND

This report covers the accomplishments of the State Bar Committee on Mandatory Fee Arbitration (MFA) for Year 2007. The following summary is categorized according to the activities set forth in the Committee's 2007 Work Plan dated November 14, 2005.

SUMMARY OF KEY ACCOMPLISHMENTS

Year-end highlights include:

- Amendments to the State Bar's Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs including new standards authorizing mandatory fee arbitration between non-client and attorneys, procedure for deciding venue, preservation of the filing date in the event of inter-program transfer, and definition of lay arbitrator.
- New Checklist for Awards for fee arbitrators. Distributed to local bar programs and posted on the State Bar website.
- New advanced curriculum for current fee arbitrators following the new Checklist for Awards.
- Board approval of new rules of procedure for 11 local bar MFA programs during Board Year 2006-07 and three additional local bar MFA programs during Board Year 2007-08 to date.
- Consumer-friendly amendments to the Notice of Client's Right to Arbitration form approved by the Board of Governors.
- Improvements to the State Bar consumer information pamphlet about the MFA Program. Distributed statewide and posted on the website.
- Recommended changes to the Notice of Your Rights After Arbitration form released by RAD Committee for 90-day public comment.
- New mentoring teams to support local bar programs.
- Two new arbitration advisories for fee arbitrators
- Three new program advisories for local bar program administrators
- Ten fee arbitrator training programs for local bar associations offering MCLE credit attended by a total of 470 members.
- Three MCLE programs for the State Bar's 2007 Annual Meeting.
- Active outreach to and collaboration with State Bar stakeholders.

Background:

- The Committee on Mandatory Fee Arbitration (MFA) oversees the State Bar's Mandatory Fee Arbitration Program, including 45 local bar MFA programs

statewide. The MFA Committee held six regular business meetings in 2007. Subcommittee or individual members present their work or projects to the Committee for approval. In addition, the local bar MFA programs submit proposed amendments to their rules of procedure or new rules to the Committee for its recommendation to the State Bar's Regulation, Admissions and Discipline Oversight (RAD) Committee and Board of Governors for approval of the rules.

- The State Bar's MFA Program handles fee arbitration requests and client's requests for enforcement of awards filed with the State Bar Office of Mandatory Fee Arbitration. Through the State Bar's Presiding Arbitrator, who is a member of the Committee, the State Bar's MFA program is also subject to the Committee's policy oversight.

1. Oversight of and Support for State Bar and Local MFA Programs

- This year, the Committee completed an extensive review of the applicable laws and ethical considerations surrounding non-clients in mandatory fee arbitration. By successfully collaborating with representatives of the internal and external entities that expressed initial opposition through public comment to the Committee's original proposal, the Committee developed consensus language to accommodate the various concerns expressed. This effort resulted in a new minimum standard of the State Bar Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs and represents the culmination of two years of public comment and review of the issue. In addition, the Committee obtained approval of other amendments to the State Bar Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs that help define rights of parties and other administrative considerations.
- The Committee developed a new Checklist for Awards for the local bar programs to assist their fee arbitrators in writing an enforceable award. The Checklist is a step-by-step analytical approach to determining a fee dispute. The Checklist is also posted on the State Bar's website.
- In Board Year 2006-07, the Committee recommended approval of eleven local bar programs' rules of procedure for fee arbitrations. In Board Year 2007-08 to date, the Committee recommended approval of an additional three local bar program's rules. A great majority of these programs chose to follow the State Bar's Model Rules of Procedure developed by the MFA Committee to assist the local bars with the rule approval process.
- The Committee proposed revisions to the Notice of Client's Right to Arbitration. This form is usually a client's first introduction to the existence of the MFA

program. The revisions approved by the Board address important rights and responsibilities not clearly articulated in the previous iteration of the form.

- The Committee added important information to the consumer information pamphlet “What Can the Mandatory Fee Arbitration Program Do For Me?” This pamphlet is distributed to all the local bar programs and posted on the State Bar’s website. A Spanish-language version of the form is being developed for the first time.

2. Arbitration Advisories/Program Advisories

- The Committee provides written guidance to fee arbitrators in the form of arbitration advisories. These advisories help arbitrators with their analysis of recurring legal issues that arise in fee arbitration matters by framing issues and interpreting available legal authority. The advisories are distributed at the fee arbitrator training programs sponsored by the Committee and are posted on the State Bar’s website. In 2007, the Committee issued two arbitration advisories for publication:
 - 1) No. 07-01 Arbitral Immunity; and
 - 2) No. 07-02 Preservation of Client Confidences in Arbitrations Involving Parties other than the Client.
- The Committee distributes program advisories to assist local bar program administrators with administrative and procedural issues that arise in MFA cases. This year, the Committee issued the following three program advisories:
 - 1) Adding Additional Attorneys as Respondent Parties in Mandatory Fee Arbitration;
 - 2) Minimum Standard Paragraph 13 Revisions and Ensuring Program Notice to Client of Request for Mandatory Fee Arbitration Between Non-Client and Client’s Attorney and
 - 3) Educating Attorneys About Automatic Stay of Civil Action for Fees and Costs and Responsibility to Give Notice of Stay to Court.

3. Educational Programs

- The Committee presented a record ten (10) fee arbitrator training programs throughout the state for local bar programs. The programs are three hours each and offer free MCLE credit to members as an incentive to recruit new fee arbitrators for the local bar programs and to encourage fee arbitrators to stay current in the law. The State Bar’s MFA office prepares and distributes complimentary resource binders. This year, programs were hosted by the

following local bar associations: San Fernando Valley (to help establish its new program), Placer, Tulare, Fresno, San Mateo, San Diego, Santa Clara, Los Angeles, Sonoma, and Napa Counties. The Los Angeles program was for lay arbitrators only. The program in Santa Clara was the Committee's launch of its new advanced training for current arbitrators.

- The Committee sponsored three programs at the State Bar Annual Meeting 2007: 1) "Keeping it Real-How to Make (Most) Clients Happy with your Bill"-one hour program; 2) "Lawyers Getting Paid Ethically: Not an Oxymoron"-two hours; and 3) "Fee Arbitrator Training-Everything You Want to Know"-three hours.
- At the request of the Napa and Marin County Bar Associations, the Committee Chair gave two lunch hour MCLE programs covering attorney fee agreements and best practices for billing statements.
- The Committee, through its Director, responded to a client's written complaint about an award issued by a local bar MFA program. The Director issued Findings in her report delivered to the MFA Committee and the local bar program's Committee Chair. To avoid similar problems, the Committee will develop a sample arbitration award template for local bar use.
- The Committee, through its Vice Chair, appeared before the RAD Committee and other Board members on March 8, 2007 supporting a non-client's right to initiate mandatory fee arbitration.

4. Other

1. Through the educational outreach efforts of the Committee, the State Bar's Mandatory Fee Arbitration Panel added 54 new fee arbitrators in 2007, for a total of 433 arbitrators.

2. Due to the Committee's recruitment efforts, the 2006-07 and the 2007-08 Committee membership is fairly diverse with outstanding credentials and relevant MFA work or volunteer experience.

3. The Presiding Arbitrator, a member of the Committee, and his Assistant Presiding Arbitrators, one of whom also sits on the Committee, issued various awards, rulings, and orders in the State Bar's fee arbitration cases and requests for enforcement of award matters.

4. At the June 2007 retreat of the Executives of California Legal Associations (ECLA), the Program's Director was a guest speaker to address recent developments in the MFA Program.

5. The Program's Director was a panelist at the ABA's National Forum on Client

Protection at its May 2007 Forum to discuss California's MFA program.

6. The Program's Director also became a member of the American Bar Association's Committee on Client Protection in 2007 and serves as a liaison for the State Bar.

7. The Committee's officers responded to communications from parties and arbitrators about the MFA Program as needed.

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

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| BACKGROUND |
| Sub-entity Name: Committee on Mandatory Fee Arbitration |
| Chair: Joel Mark |
| State Bar Staff: Jill Sperber |
| Date: January 23, 2008 |

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

BACKGROUND

Sub-entity Name: Committee on Mandatory Fee Arbitration

Committee Background:

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:

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.
3. Review and update the State Bar approved sample written fee agreement forms for State Bar members
4. Issue arbitration advisories, which provide guidance to fee arbitrators on various aspects of the law.
5. Issue program advisories for local bar staff and propose Judicial Council forms for use in civil actions relating to attorney-client fee disputes.
6. 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.
7. 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.

Perform such other functions relevant to the committee’s subject area as the Board of Governors may from time to time assign.

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

| Proposed Activities | |
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| <u>Activity 1</u> | <u>Status/Time Frame:</u> |
| <p>A. Review /analyze legislation and case law relating to the Mandatory Fee Arbitration Program and attorney's fees; and</p> <p>B. Review and propose amendments to the MFA statutes.</p> | <p>A. Ongoing; and</p> <p>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.</p> |

| Performance Indicators |
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| <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. |
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| Proposed Activity Budget |
|---------------------------------|
| Unknown. |

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FY 2009 Committee on Mandatory Fee Arbitration Work Plan

| Proposed Activities | |
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| <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 |
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| <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 | |
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| <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 |
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| <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 |
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| <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> |

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

| Proposed Activities | |
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| <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 |
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| <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 |
|---------------------------------|
| Unkown. |

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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 also actively educates consumers about their rights post-arbitration by providing written materials on the subject through advisories, notices and pamphlets. The MFA Program operates on the premise that consumers appear in pro per and need not hire another attorney 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.