

AGENDA ITEM

MAY 54-121
Request for
Approval of Rules of
Procedure for
Mandatory Fee
Arbitration by the
Sacramento County
Bar Association

DATE: April 22, 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 Rules of Procedure for Mandatory Fee Arbitration
by the Sacramento County Bar Association

EXECUTIVE SUMMARY

This agenda item is before the RAD Committee and the Board to approve new Rules of Procedure for Mandatory Fee Arbitration by the Sacramento County Bar Association.

The Sacramento County Bar Association (SCBA) wishes to adopt the Model Rules of Procedure for Fee Arbitrations approved by the Board of Governors in November 2006. It also proposes here to adopt most of the amendments to the Model Rules released by the RAD Committee for public comment. The State Bar Mandatory Fee Arbitration (MFA) Committee recommended the pending Model Rule amendments to track the 2007 amendments to the State Bar Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs ("Minimum Standards"), clarify procedures, and reflect the statutory language from the Business and Professions Code where appropriate.

At its January 25, 2008 meeting, the MFA Committee reviewed the SCBA's proposed rules and agreed to recommend their approval, subject to subsequent inclusion of many of the amendments to the Model Rules pending public comment, to the Board Committee on Regulation, Admission and Discipline (RAD) and the Board of Governors. The MFA Committee found the proposed new rules of procedure set forth in Attachment A to be in compliance with Minimum Standards and the MFA statutes.

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") that are 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 the Sacramento County Bar Association's (SCBA's) rules of procedure in May 1994. In November 2006, the Board of Governors approved Model Rules of Procedure for Fee Arbitrations ("Model Rules") to provide local bar arbitration programs with a template of comprehensive, current rules of procedure that comply with the MFA statutes, the Minimum Standards and recent developments in the law. The SCBA 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 January 25, 2008 meeting.

At the RAD Committee's March 6, 2008 meeting, the MFA Committee requested that amendments to the Model Rules be released for public comment. These amendments were recommended to track 2007 amendments to the Minimum Standards approved by the Board, clarify existing procedures, and to comport with precise statutory language of the Business and Professions Code where appropriate. The SCBA's proposed new rules incorporate most of the proposed changes to the Model Rules recommended by the MFA Committee, which are pending public comment.

II. DISCUSSION:

The proposed new rules submitted by the SCBA essentially follow the Rules of Procedure for Fee Arbitrations with some modifications to reflect its filing fee structure (rule 15.3), refund of filing fees (rule 19.3), and delete optional rule 21.3 [authorizes arbitrations without a hearing for fee disputes under \$1,000]. The SCBA proposes additional amendments to the current Model Rules following most but not all of the proposed changes to the Model Rules released for public comment. The public comment period ends May 9, 2008. The SCBA wishes to retain the original versions of Model Rules 37 (transcripts or recordings) and 38.3 (party bear own costs.) and not follow the proposed changes for those Model Rules.

At its January 25, 2008 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 Minimum Standards. The MFA Committee recommends to the RAD Committee that the proposed new Rules of Procedure for Fee Arbitrations of the SCBA be recommended to the Board of Governors for approval.

Because SCBA's proposed new rules of procedure are so materially different from its current rules, it was determined that a redlined version comparing its current and proposed versions of the rules is of little assistance. However, a redlined version comparing the 2006 State Bar Model Rules of Procedure with all of SCBA's proposed changes

to them , including those that following most of the pending amendments to the Model Rules out for public comment, is set forth in Attachment A.¹

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 Mandatory Fee Arbitration by the Sacramento 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 Arbitration Programs.

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 Mandatory Fee Arbitration by the Sacramento 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 Arbitration Programs.

¹ Although the redlined text compares the current Model Rules with proposed changes, rules 27.2 and 19.3 of the SCBA proposal show redlined text but do not alter existing Model Rule language. This occurred because the "track changes" function used to create this document did not permit isolated rejection of highlighted changes to retain original text. Similarly, renumbering of rules under Definitions in Article 1 should have been reflected in redlined text but will be included in the final version of SCBA's rules.