

AGENDA ITEM

MAY 54-122
Request for
Approval of
Proposed Revisions
to Rules of
Procedure for the
Conduct of Fee
Arbitrations by the
Nevada County Bar
Association

DATE: April 16, 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 Revisions to the Rules of Procedure for the Conduct of Fee Arbitrations by the Nevada County Bar Association

EXECUTIVE SUMMARY

This agenda item is before the RAD Committee and the Board to approve the proposed revisions to the Rules of Procedure for Fee Arbitrations by the Nevada County Bar Association in the form attached as Attachment A hereto.

The Nevada County Bar Association (NCBA) has submitted several revisions to its rules of procedure for fee arbitrations by its mandatory fee arbitration program. The NCBA's rules of procedure were last amended in 2006. The current proposed revisions to the rules would 1) conform to 2007 amendments to the State Bar's Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs and 2) increase program filing fees and refund structures.

At its March 28, 2008 meeting, the State Bar's Committee on Mandatory Fee Arbitration (MFA) reviewed the NCBA's proposed rule 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 rule revisions to be 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 Nevada County Bar Association's (NCBA's) rules of procedure in June 2006. In 2007, the Board of Governors approved amendments to the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs. To comply with these amendments, several NCBA rules needed to be revised. In addition, after evaluating the administrative costs of providing fee arbitration, the NCBA decided to increase its filing fee and refund structure.

II. DISCUSSION:

Most of the proposed NCBA rule revisions comport with the State Bar's amendments to the Minimum Standards approved by the Board in 2007 as follows:

Rule I.G.B: new wording from Minimum Standard Paragraph 18 on the program's determination of venue and maintaining the original filing date in the event of transfer to another program.

Rule II.A.3: new language taken verbatim from Minimum Standard 13 on the duty of the program to notify the client of fee arbitration requested between a non-client and the client's attorney.

Rule III.A.3: change rule to prohibit arbitration with only two panel members reflecting the amendment to Minimum Standard 10.

In addition, the NCBA has determined that an increase in its filing fee and refund structure is required to cover the administrative costs of providing fee arbitration. The proposed \$150 and \$300 flat filing fees (depending on the amount in dispute) and non-refundable fee are still nominal and below the average filing and refund structure for most local bar programs. The requirement in the Minimum Standards that filing fees and refund be "reasonably related to the amount in dispute and the cost of providing the service and not be in such an amount as to discourage the use of the service" (Paragraph 17) is clearly met.

At its March 28, 2008 meeting, the MFA Committee found that the proposed rule revisions 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 revisions to the Rules of Procedure for Fee Arbitrations of the NCBA be approved. A copy of the proposed revisions to the rules of procedure for NCBA are attached hereto as Attachment A and shown in redlining.

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 revisions to the Rules of Procedure for the Conduct of Fee Arbitrations by the Nevada 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 the Conduct of Fee Arbitrations by the Nevada 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.