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April 8, 2008

Jill Sperber  
State Bar Office of Mandatory Fee Arbitration  
180 Howard Street, 6<sup>th</sup> Floor  
San Francisco, CA 94105

Re: Comment on Proposed Model Rule Changes

Dear Ms. Sperber:

As you know, I am the Chairman of the Nevada County Bar Association Mandatory Fee Arbitration Program. At a recent meeting of our Executive Committee, we discussed the proposed changes to the Model Rules set forth in your Memorandum dated February 14, 2008, and submit the following comments.

With respect to the proposed change to Model Rule 12, our program's filing fees are very low to accommodate the economic demographics in our small rural county, \$150 for fee disputes under \$10,000, and \$300 for fee disputes exceeding \$10,000. The filing fees paid are used by our Association to issue grants to local causes, including the public law library, lawyer referral service, and high school programs. Moreover, \$100 of each fee paid is a non-refundable administrative fee to cover (barely) the overhead of administering the program. We are not in favor of issuing refunds in the event a matter is instituted with our program, fees are paid, and the matter is transferred to the State Bar's arbitration program. The reasons are we earmark the funds for grant purposes and must retain the \$100 administrative fee. Instead of requiring a refund of fees paid in the event of a transfer, an alternative would be that, if a claimant seeks a refund based upon financial need, the claimant may apply to the State Bar for a fee waiver, especially if the fees collected by the local program are below a certain dollar amount, e.g., \$500 or even \$1,000.

With respect to the proposed change to Model Rule 37, our Program has not taken a formal position; however, we have the following ideas to convey for your consideration and are considering adopting a Local Rule that gives the arbitrator discretion in deciding whether to permit the proceedings to be recorded or reported. While we strive as a program to provide a level playing field for the parties involved and we appreciate that the presence of a reporter may unnecessarily intimidate a party or cause the non-requesting party to expend monies to order a transcript in order to protect their rights, we contemplated circumstances where a party may justifiably desire to have a proceeding reported. Such circumstances when a transcript may be of assistance to the parties include lengthy hearings, hearings that occur over an extended period of time, where post-hearing briefing may be ordered, or where a

Jill Sperber  
State Bar Office of Mandatory Fee Arbitration  
April 8, 2008  
Page Two

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party may wish to use the transcript as evidence of an admission by a party or inconsistent statements by a party in a later proceeding, including a proceeding in which malpractice claims are litigated. We also discussed whether we should adopt a rule requiring that the party requesting recordation of the proceeding provide a copy of the transcript to the non-requesting party at no cost.

Thank you for the opportunity to provide the above comments.

Yours truly,



Andrew A. Harris, Chairman/Administrator  
Nevada County Bar Association Mandatory Fee Arbitration

**Sperber, Jill**

**From:** Kathie Lustig [klustig@bendbroadband.com]  
**Sent:** Monday, April 14, 2008 7:41 PM  
**To:** Sperber, Jill  
**Subject:** MFA Public Comments

Dear Jill,

I have read your Feb 6, 2008 RE:Revision to Notice of Your Rights After Fee Arbitration Form memo with much interest and got a chuckle out of the paragraph mentioning my "frequent suggestions". You dont really mention what happens if you are never served these "rights" which means then you wouldn't have the link to the website to find out more.....such as the ability to have the award vacated or corrected.

With regards to your other public comment periods:

**Re: Proposed Revisions to the State Bar Model Rules of Procedure for Fee Arbitration's**

In "Background" I see you have added a new arbitration program in the state and how they "are encouraged, though not required", to adopt model rules to ensure that programs are in compliance with State Bar Guidelines and Minimum Standards for Operation.

It doesn't appear to me that much has been done in the way of statutory authority of the State Bar to enforce rules of procedure and/or address consequences to county bar when they are broken. It may be time to revisit that issue again with the legislature. It is disappointing to say the least that little has been done, if at all about this. Your government liaison made it quite clear the "State Bar" had no intention of changing this "statutory" authority issue.

I am curious, does the MFA Committee and the Board of Governors aware of the ultimate outcome of your investigation and my case?

I am happy to see that you are adding the language for awards to be vacated and/or corrected.

I do have great concerns that minimal language has been added on any early pre-hearing forms/rights that advises one about the necessity to file for a trial in non-binding arbitration when you disagree with the award.

I will say that I absolutely disagree with the language added to Rule 11.0. Specifically 11.2. No arbitration should be able to rule on anything without ability to appeal to the state bar.

**As for Article IV, Initiation of Arbitration Proceeding**

Additions I suggest:

1. I see no mention of the "Notice of Rights to Arbitration" RE: by whom the form is sent by. (sent by an attorney to client or otherwise) (should have web link on this to state bar and local bar web site)
2. "Request for Arbitration" form should be requested directly from County Bar by the client and

provided by the county bar along with rights, etc. before this form is actually filed. One must be informed of rights before they request an arbitration hearing.

3. The "Notice of Attorney Responsibility" form should be required to be sent to client.
4. Filing fee waiver should be available on web site and/or info included with initial Notice of Rights to Arbitration to client
5. I believe upon client's request they should have a right to a panel with a lay person even if the matter is less than \$1000
6. I see nothing that prohibits a committee chair from being the sole arbitrator to have authority over himself (FYI: Desmond Oneil is still up on SB County Bars web site.) Also see 39.9 (no mention of committee chair and arbitrator in the same proceeding to be judge and jury on this as in my case)
7. I personally strongly object to proposed changes in Rule 37.0. There is absolutely no reason there should be no record allowed to be made of the proceeding.
8. Rule 40.0 Correction of Award. I suggest spelling out statute (or portions of) or provide web link to statute.
9. Rule 40.2 Correction request filed should have more than 10 days especially in the event it was not served properly. In fact if errors are found, it should be corrected before it ever goes to trial.
10. Petition to Vacate should be extended if client never receives Notice of Rights After Arbitration
11. Last and most importantly "What happens if "they" (County Bars) don't follow there own rules?"

Well those are my comments for now. Take care. Ill be in touch further.