

AGENDA ITEM

NOVEMBER 54-121

Request for Approval of
Proposed Revisions to Fee
Arbitration and Mediation
Local Rules of the
San Diego County Bar
Association

DATE: October 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 Fee Arbitration and Mediation Local Rules
of the San Diego County Bar Association

EXECUTIVE SUMMARY

This agenda item is before the RAD Committee and the Board to approve the proposed revisions to the Fee Arbitration and Mediation Local Rules of the San Diego County Bar Association in the form attached as Attachment A hereto.

The San Diego County Bar Association (SDCBA) has submitted proposed revisions to rules of procedure for fee arbitrations conducted by its mandatory fee arbitration program. The SDCBA's proposed revisions would clarify several procedural requirements, add new rules to comport with current law and several recent amendments to the State Bar's Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs.

At its July 25 and September 25, 2008 meetings, the State Bar's Committee on Mandatory Fee Arbitration (MFA) reviewed the SDCBA's proposed revisions to its local rules for fee arbitrations and mediations. The MFA Committee agreed to recommend approval to the Board Committee on Regulation, Admission and Discipline (RAD) and the Board of Governors, subject to modifications which were since made by SDCBA, as being in compliance with the State Bar Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs ("Minimum Standards"). Accordingly, the proposed rule revisions set forth in Attachment A are submitted for approval by the Board of Governors.

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 that are approved by the Board of Governors. Approval by the

Board of Governors provides the local bar programs with jurisdiction to arbitrate and mediate 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 San Diego County Bar Association's (SDCBA's) rules of procedure for fee arbitrations in June 2006. In 2007, one rule was modified to reflect Board policy requiring program notice to clients of non-client requests for mandatory fee arbitration embodied in paragraph 13 of the Minimum Standards (rule 7.4). Since then, the Board approved revisions to the Model Rules of Procedure for Fee Arbitrations in July 2008. Although the Model Rules are not required to be adopted locally, they serve as a template for local bar programs to incorporate for their convenience and to ensure local program compliance with the Minimum Standards and the law. Although SDCBCA rules did not adopt the Model Rules, in response to the Model Rule revisions of 2008 and other 2007 amendments to the Minimum Standards, the SDCBA submitted proposed revisions to its fee arbitration and mediation local rules to the State Bar's MFA Committee for consideration at its July 25, 2008 meeting.

II. DISCUSSION:

At its July 25, 2008 meeting, the MFA Committee found that the proposed revisions to the rules of procedure for fee arbitrations and mediations were acceptable subject to several suggested changes to its rules including those on jurisdiction (rule 3.1) and on requests for dismissal (formerly rule 8.2.) Following the meeting, the SDCBA MFA program accepted the suggestions made by the MFA Committee. The rule revisions were approved by the SDCBA Board of Directors on September 9, 2008. After the changes were submitted and reviewed at the MFA Committee's September 25, 2008 meeting, the MFA Committee agreed to recommend to the RAD Committee that the proposed revisions to the fee arbitration and mediation local rules be recommended to the Board of Governors for approval. The proposed revisions to the fee arbitration and mediation local rules submitted by the SDCBA are set forth as Attachment A. The revisions are shown in redlining to compare the current rules and proposed rule amendments.

Summary of Key Revisions Proposed:

- Page 2, Rule 3.1- sets forth test used in Minimum Standards (para. 18) to determine disputes re proper venue and that original filing date will be used in event of transfer of case to another program.
- Page 3, Rule 5.0-clarifies that date of arbitration request determined by date of receipt or postmark in compliance with Minimum Standards (para.18.)
- Page 4, Rule 9.4-increases dollar threshold for assignment to a three member panel from \$10,000 to \$25,000. This increase accounts for inflation and reflects the relative difficulty for programs to assign three member rather than single member panels. The Minimum Standards require that any monetary threshold must be "reasonable." Since \$25,000 appears to be the growing trend for thresholds requested by local bars, the MFA Committee deems \$25,000 to be "reasonable."
- Page 5, Rule 10.9-adopts Model Rule 15 on prohibited ex parte contacts.
- Page 6, Rule 12.4-conforms to Model Rule 27. 2 on designation of representative at the hearing.
- Page 6, Rule 13- incorporates Minimum Standard paragraph 10 permitting either attorney arbitrator to serve as sole arbitrator upon stipulation by the parties and prohibiting two member panels.

- Page 7, Rule 15.6-incorporates parts of Model Rule 19 on settlement and withdrawal from arbitration.
- Page 10, Rule 22.0-incorporates Model Rule 12 on removal to the State Bar program.

III. FISCAL AND PERSONNEL IMPACT:

None.

IV. BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT:

None.

V. 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 proposed revisions to the Fee Arbitration and Mediation Local Rules of the San Diego 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 Arbitrations and Minimum Standards for Mediations.

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 proposed revisions to the Fee Arbitration and Mediation Local Rules of the San Diego 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 Arbitrations.