

AGENDA ITEM

NOVEMBER 54-122
Request for Approval of
Rules of Procedure for Fee
Arbitrations by the
San Bernardino County Bar
Association

DATE: October 15, 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 Fee Arbitrations by the San Bernardino
County Bar Association

EXECUTIVE SUMMARY

This agenda item is before the RAD Committee and the Board to approve new Rules of Procedure for Fee Arbitrations by the San Bernardino County Bar Association (SBCBA).

The SBCBA wishes to adopt the Model Rules of Procedure for Fee Arbitrations approved by the Board of Governors as revised July 11, 2008. The State Bar Model Rules serve as a template for local bar programs. They conform 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 September 25, 2008 meeting, the State Bar Mandatory Fee Arbitration (MFA) Committee reviewed the SBCBA's proposed rules and agreed to recommend their approval to the Board Committee on Regulation, Admission and Discipline (RAD) and the Board of Governors for approval. The MFA Committee finds the proposed new rules of procedure set forth in Attachment A to be in compliance with Minimum Standards and the MFA statutes and requests that the Board approve them.

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 (MFA) Program. (Minimum Standards, Para.1.)

The Board of Governors last approved the San Bernardino County Bar Association's (SBCBA's) rules of procedure in November 2006 with respect to a single rule amendment. Other than that amendment, the local rules were last approved by the State Bar Board on September 6, 1996. 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. On July 11, 2008, the Board approved revisions to the Model Rules to track 2007 amendments to the Minimum Standards, clarify existing procedures, and comport with the precise statutory language of the Business and Professions Code where appropriate.

The SBCBA submitted proposed new rules of procedure based upon the 2008 Model Rules to the State Bar's Mandatory Fee Arbitration Committee (MFA Committee) for consideration at its September 25, 2008 meeting.

II. DISCUSSION:

The proposed new rules submitted by the SBCBA essentially follow the Model 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 SBCBA proposes additional amendments to the current Model Rules regarding jurisdiction (rule 11) and fee waivers (rule 16).

Attachment A compares the Model Rules with the SBCBA's proposed changes shown by redlining text. 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 the Minimum Standards. The MFA Committee, therefore, recommends to the RAD Committee that the proposed new Rules of Procedure for Fee Arbitrations of the SBCBA be recommended to the Board of Governors for approval.

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 San Bernardino 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 San Bernardino 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.