

AGENDA ITEM

NOVEMBER 54-123

Request for Approval of Local
Bar Rule Revisions Adopting
July 2008 Model Rule
Amendments

DATE: October 23, 2008

TO: Members, Board Committee on Regulation, Admission & Discipline Oversight
Members, Board of Governors

FROM: Jill Sperber, Director, Office of Mandatory Fee Arbitration

SUBJECT: Request for Approval of Local Bar Rule Revisions Adopting the July 2008 Amendments to the Model Rules of Procedure for Fee Arbitrations

EXECUTIVE SUMMARY

Mandatory fee arbitration (MFA) in California is available through 45 local bar association programs in addition to the State Bar fee arbitration program. Rules of procedure for the local bar programs must be approved by the State Bar Board of Governors to establish jurisdiction to arbitrate fee disputes under Business & Professions Code section 6200, *et seq.*(Article 13).

Until fairly recently, local bar programs operated under vastly different rules even though they were approved by the Board in prior years as being in compliance with the State Bar's Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs. To increase inter-program uniformity and assist local bars with updating their local rules, the Model Rules of Procedure for Fee Arbitrations were approved by the Board of Governors in November 2006 to serve as a template for local bar programs to adopt. Since then, over half of the local bars have adopted the Model Rules in their entirety while others have included some Model Rules. Still other programs are in the process of revising local rules.

At its July 11, 2008 meeting, the Board of Governors approved amendments to the Model Rules. As a result, some local bar programs that adopted the Model Rules in whole or in part wish to update their local rules using the July 2008 Model Rule amendments. To avoid submitting such proposed local bar rule revisions to the Board independently for approval, it is requested here that the Board resolve that local bar rule revisions that comply with the July 2008 Model Rule amendments as set forth in Attachment A are deemed approved upon certification of compliance by the State Bar's Director of Office of Mandatory Fee Arbitration.

I. BACKGROUND

Pursuant to Article 13, Arbitration of Attorney's Fees (Business and Professions Code section 6200 *et seq.*), the Board of Governors is charged with establishing, maintaining and administering a system and procedure for the arbitration of disputes concerning fees, costs, or both, charged by attorneys for professional services. The statutory scheme for Mandatory Fee Arbitration (MFA) provides for fee arbitration services through local bar associations in addition to the State Bar. The Board of Governors adopts rules of procedure to govern the arbitration of attorney fee and cost disputes sponsored by local bar associations to confer jurisdiction to the local bar programs and ensure that they provide for a "...fair, impartial, and speedy hearing." (Bus. & Prof. Code § 6200 (d).) At present, California has 45 approved local bar fee arbitration programs in addition to the State Bar's program.

The State Bar's Guidelines and Minimum Standards for the Operation of Fee Arbitration Programs ("Minimum Standards") establish the essential minimal provisions that must be included in

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all local bar program rules of procedure to establish their jurisdiction for Article 13 fee arbitrations.

Despite this guidance provided to the local programs, until fairly recently, local bar programs operated under vastly different rules, some of which were found by the MFA Committee to be outdated and, in some cases, inconsistent with the MFA statutes and the Minimum Standards.

To achieve greater inter-program uniformity, expedite review of local bar rule revisions, and encourage compliance with the MFA statutes and the Minimum Standards, the MFA Committee developed Model Rules of Procedure for Fee Arbitrations. The Board of Governors approved the Model Rules in November 2006. Although local bar programs are not required to adopt the Model Rules, the MFA Committee has strongly encouraged them to consider adopting them with minor modifications to address the particular bar program's circumstances where appropriate. To date, over half of the local bar programs have adopted the Model Rules in their entirety, while others have adopted some Model Rules to complement their local rules. Still other programs are in the process of local rules revision.

II. SUMMARY OF PROPOSAL

On July 11, 2008, the Board of Governors approved various amendments to the Model Rules. These amendments, shown by redlining, are set forth in Attachment A. As a result, some local bar programs wish to obtain Board approval of revisions to their local rules to include the July 2008 Model Rule amendments.

To avoid submitting individual bar program requests for Board approval of rule revisions that adopt the July 2008 Model Rule amendments, the MFA Committee requests that the Board, upon recommendation by the RAD Committee, approve prospectively those local bar rule revisions upon certification of compliance by the State Bar's Director of Office of Mandatory Fee Arbitration.

III. FISCAL AND PERSONNEL IMPACT

None.

IV. BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

None.

VI. EFFECTIVE DATE OF APPROVAL

The effective date of approval of the resolution would be the date of the Board's action. The local bar programs would be able to effectuate their rule revisions any time after the date of certification of compliance by the State Bar's Director of the Office of Mandatory Fee Arbitration.

VII. PROPOSED RESOLUTIONS

For the RAD Committee:

RESOLVED, that the Board Committee on Regulation, Admissions and Discipline Oversight (RAD Committee) hereby recommends that the Board of Governors approve revisions by local bar associations to their local fee arbitration rules that conform with the July 2008 amendments to the Model Rules of Procedure for Fee Arbitrations upon certification of compliance by the State Bar's Director of Office of Mandatory Fee Arbitration.

For the Board of Governors:

RESOLVED, that upon the recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, the Board of Governors hereby approves revisions by local bar associations to their local fee arbitration rules that conform with the July 2008 amendments to the Model Rules of Procedure for Fee Arbitrations upon certification of compliance by the State Bar's Director of Office of Mandatory Fee Arbitration.