

AGENDA ITEM

MARCH 122
Request for Approval of
Proposed Rules of
Procedure for Fee
Arbitration by the Fresno
County Bar Association

DATE: February 8, 2007

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 Rules of Procedure for Fee Arbitrations by the Fresno County Bar Association

EXECUTIVE SUMMARY

The Fresno County Bar Association (FCBA) recently submitted new rules of procedure for fee arbitrations conducted by its mandatory fee arbitration program. The FCBA's proposed new rules of procedure consist of materially new rules to replace its current rules of procedure last approved by the Board in 1993. The proposed new rules essentially adopt the Model Rules of Procedure circulated by the Committee on Mandatory Fee Arbitration in March 2006 with some modifications. These new rules would clarify existing procedures, amend or add new rules to comport with current law, detail new procedures, or delete outdated provisions.

At its January 12, 2007 meeting, the State Bar's Committee on Mandatory Fee Arbitration (MFA) reviewed the FCBA's proposed Rules of Procedure for Fee Arbitrations and agreed to recommend their approval to the Board Committee on Regulation, Admission and Discipline (RAD) and the Board of Governors as being in compliance with the State Bar Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs ("Minimum Standards").

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

I. BACKGROUND:

Pursuant to Business and Professions Code section 6200, subdivision (d), local bar associations are authorized to sponsor mandatory fee arbitration programs. However, the local bar rules of procedure must 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.") Approval by the Board of Governors gives the local bar programs 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 the Fresno County Bar Association's (FCBA's) rules of procedure for fee arbitrations on April 16, 1993. In March 2006, the State Bar's MFA Committee circulated model rules of procedure for fee arbitrations to the local bar programs to provide them with a template of comprehensive, current rules of procedure consistent with recent developments in the law. The Board of Governors adopted the Model Rules of Procedure for Fee Arbitrations at its November 2006 meeting. The FCBA submitted proposed new rules of procedure for fee arbitrations based on the Model Rules to the State Bar's Mandatory Fee Arbitration Committee (MFA Committee) for consideration at its January 12 2007 meeting.

II. DISCUSSION:

The proposed new rules essentially adopt the Model Rules of Procedure with some modifications. Because the proposed new proposed rules of procedure are so materially different from the FCBA's current rules of procedure, it was determined that a redlined version comparing the current and proposed versions of the rules is of little assistance. A copy of the proposed new rules of procedure for FCBA is attached hereto as Attachment A.

At its January 12, 2007 meeting, the MFA Committee found that the proposed FCBA rules of procedure for fee arbitrations attached as Attachment A hereto comply with the applicable MFA statutes and are consistent with the Minimum Standards. As such, the MFA Committee agreed to recommend to the RAD Committee that the proposed Rules of Procedure for Fee Arbitrations of the FCBA be recommended to the Board of Governors for approval.

III. FISCAL AND PERSONNEL IMPACT:

None.

IV. BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT:

None.

V. PROPOSED RESOLUTIONS:

RAD Committee Resolution:

If the Board Committee on Regulation, Admissions and Discipline Oversight agrees with the request to recommend to the Board of Governors approval of the proposed Rules of Procedure for Fee Arbitrations by the Fresno County Bar Association, adoption of the following resolution would be appropriate:

"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 Fee Arbitrations by the Fresno County Bar Association in the form attached as Attachment A hereto.

Board of Governors Resolution:

If the Board of Governors agrees with the recommendation of the Regulation, Admissions and Discipline Oversight Committee to approve the Fresno County Bar Association 's proposed Rules of Procedure for Fee Arbitrations, adoption of the following resolution would be appropriate:

RESOLVED, upon recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, that the Board of Governors hereby approves the Rules of Procedure for Fee Arbitrations by the Fresno County Bar Association, in the form attached to these minutes and made a part hereof.