

AGENDA ITEM

MAY 54-122
**Request for
Approval of
Proposed Revision
to Filing Fee
Schedule in the
Sonoma County Bar
Association's Fee
Arbitration Rules of
Procedure**

DATE: April 14, 2009

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 Revision to Filing Fee Schedule in the Sonoma County Bar Association's Fee Arbitration Rules of Procedure

EXECUTIVE SUMMARY

This agenda item is before the RAD Committee and the Board to approve a proposed increase in the filing fee schedule set forth in the Sonoma County Bar Association's Rules of Procedure for Fee Arbitrations in the form attached as Attachment A hereto.

The proposed fee schedule would provide for an increased base administrative fee and provide for an additional percentage of either 5% or 7% the amount in dispute with an increased upper cap of \$7,500, instead of \$5,000. A similar fee schedule was approved by the Board for a neighboring local bar program in 2005.

At its March 27, 2009 meeting, the State Bar's Committee on Mandatory Fee Arbitration (MFA) reviewed the Sonoma Bar Association's proposed revision to its filing fee schedule. 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 the local bar program, as being in compliance with the State Bar Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs and Minimum Standards for Mediation ("Minimum Standards"). The proposed rule revision is 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 (MFA) 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 and Minimum Standards for Mediation ("Minimum Standards"). The statute provides that local bar rules of procedure are approved by the Board of Governors. (Bus. & Prof. Code §6200(d.) 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 statute further provides that "rules may include provision for a filing fee, in such amount as the board may, from time to time, determine." (Bus. & Prof. Code §6200(a).) The Minimum Standards, in turn, provide that the filing fee schedule be "reasonably related to the amount in dispute and the cost of providing the service and shall not be in such an amount as to discourage the use of the service." (Minimum Standards, para. 17.) In fee arbitration matters, the person requesting the fee arbitration generally pays a filing fee to the arbitration program, unless the individual has qualified for a fee waiver. The fee arbitrator is authorized by statute to reallocate the filing fee in the arbitration award. (Bus. & Prof. Code §6203(a).)

II. PROPOSAL:

The Sonoma County Bar Program's fee arbitration rules of procedure, including its filing fee schedule, were last revised in 2005. This year, the Sonoma County Bar Association (SCBA) submitted a proposed revision to its filing fee structure set forth in Rule 8.4 for review by the MFA Committee. The proposed fee schedule would increase the base administrative fee to a maximum of \$500 and would increase the additional percentage of the amount in dispute to 5% and 7%. However, the maximum filing fee would be \$7,500 as the upper cap, up from \$5,000.

III. DISCUSSION

At its March 27, 2009 meeting, the MFA Committee found that the proposed revision to rule 8.4 is acceptable subject to several suggested changes. Following the meetings, the SCBA accepted the suggestions made by the MFA Committee. The MFA Committee also noted that Sonoma's neighbor, the Marin County Bar Association, adopted an almost identical fee structure for its MFA program in 2005. Subject to the agreed upon changes, the MFA Committee agreed to recommend to the RAD Committee that the proposed revisions to the local rule 8.4 be recommended to the Board of Governors for approval. The proposed revisions to the fee arbitration and mediation local rules submitted by the BASF are set forth as Attachment A (see enclosure to letter dated April 14, 2009.) The filing fee proposed revisions are shown in redlining to compare the current rules and proposed rule amendments pending Board approval.

IV. FISCAL AND PERSONNEL IMPACT:

None.

V. BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT:

None.

VI. 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 revision to the filing fee schedule set forth in rule 8. 4, the Rules of Procedure for Fee Arbitrations of the Sonoma 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.

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 revision to the filing fee schedule set forth in rule 8.4, the Rules of Procedure for Fee Arbitrations of the Sonoma 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.