

**Summary of 2008 Year-end Accomplishments of the  
Committee on Mandatory Fee Arbitration  
Submitted by Jill Sperber, Director  
State Bar Office of Mandatory Fee Arbitration**

Tel: 415-538-2023

[jill.sperber@calbar.ca.gov](mailto:jill.sperber@calbar.ca.gov)

This report covers the accomplishments of the State Bar Committee on Mandatory Fee Arbitration (MFA) for Year 2008. The following summary also tracks the action areas and related tasks set forth in the MFA Committee's 2008 Action Plan.

**I. SUMMARY OF KEY ACCOMPLISHMENTS**

Year-end highlights include:

- § Revised the State Bar's Model Rules of Procedure including new rules that track the 2007 amendments to the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs including fee arbitration between non-client and attorneys, procedure for deciding venue, preservation of the filing date in the event of inter-program transfer, and definition of lay arbitrator.
- § Made consumer-friendly amendments to the Notice of Your Rights After Arbitration form approved by the Board of Governors.
- § Launched new advanced fee arbitrator training for local bar program fee arbitrators using the new award checklist developed last year to help standardize written awards.
- § Obtained Board approval of new or amended rules of procedure for five (5) local bar MFA programs.
- § Published two new arbitration advisories for fee arbitrators (also posted on website)
- § Issued three new program advisories for local bar program administrators
- § Presented record high number of fee arbitrator training programs for 11 local bar associations providing free MCLE credit for 200 attorney attendees.
- § Hosted two roundtable programs for local bar MFA program administrators and committee chairpersons well attended by various local bar program representatives.
- § Presented two MCLE programs for the State Bar's 2008 Annual Meeting.
- § Approved state's first Spanish-language version of the Notice of Client's Right to Arbitration form for local bar program use.
- § Developed guidelines for assessing requests for waiver of program filing fees and a first-ever fee waiver request application form for local bar programs.

**II. Background of the Mandatory Fee Arbitration Committee:**

- § Consisting of 16 attorney and public members, the Committee on Mandatory Fee Arbitration (MFA) oversees the State Bar's MFA Program and the 45 local bar

MFA programs statewide. The MFA Committee held six regular business meetings in 2008. Subcommittees or individual members present their work or projects to the Committee for approval. The MFA Committee reports to the Regulation, Admissions and Discipline Oversight (RAD) Committee.

§ The local bar MFA programs submit proposed amendments to or new rules of procedure to the MFA Committee for its recommendation to the State Bar's Regulation, Admissions and Discipline Oversight (RAD) Committee and Board of Governors for approval of the rules. The MFA Committee developed the state's first Model Rules of Procedure for Fee Arbitrations, approved by the Board, to serve as a template for local bar programs to expedite the rule approval process, increase local bar compliance with MFA statutes and minimum standards, and promote inter-program uniformity.

§ Some documents drafted by the MFA Committee are required by statute to be approved by the Board of Governors to ensure that minimum standards for local bar programs are met. The MFA Committee ensures that the documents are consistent with current law.

§ The State Bar's MFA Program handles fee arbitration requests and client's requests for enforcement of awards that require the attorney to refund attorney's fees and/or costs. Through the State Bar's Presiding Arbitrator, who is a member of the Committee, the State Bar's MFA program is also subject to the Committee's policy oversight.

### III. Summary of 2008 Action Plan Goals Met

#### A. Encourage Fee Arbitrator Training and Continuing Education

§ **Required Fee Arbitrator Training:** The Committee presented a nine fee arbitrator training programs throughout the state for local bar programs. The programs are three hours each and offer free MCLE credit to members as an incentive to recruit new few arbitrators for the local bar programs and to encourage fee arbitrators to stay current in the law. The State Bar's MFA office prepares and distributes complimentary training materials. This year, programs were hosted by the following local bar programs: Alameda, Los Angeles, San Luis Obispo, Sacramento, Orange, Monterey, Solano, Kern, and Santa Monica. About 200 attorneys received free MCLE credit in 2008.

§ **Advanced Fee Arbitrator Training:** New curriculum based on the new Checklist for Awards developed by the MFA Committee last year for the local bar programs to assist their fee arbitrators in writing an enforceable award. Two programs received this new advanced course: Beverly Hills Bar and Sonoma County Bar.

§ **CLE Courses for Attorneys:** The MFA Committee presented two CLE courses for the 2008 Annual Meeting to prepare attorneys to meet the legal and ethical requirements for addressing fee disputes with a client. A member of the MFA

Committee and Director of the MFA Program also presented a CLE brown bag course on attorney's fees issues for the Family Law Section of the Alameda County Bar Association.

§ **Arbitration Advisories:** The Committee provides written guidance to fee arbitrators in the form of arbitration advisories. These advisories help arbitrators with their analysis of recurring legal issues that arise in fee arbitration matters by framing issues and interpreting available legal authority. The advisories are distributed at the fee arbitrator training programs sponsored by the Committee and are posted on the State Bar's website. Recently, several published federal court opinions have cited as supporting authority an arbitration advisory issued by the Committee. In 2008, the MFA Committee published these advisories:

No. 08-01 Timing of Agreements to Binding Fee Arbitration; and  
No. 08-02 Authority to Compel Compliance with Third-Party Subpoenas.

§ **Consumer friendly Notice of Rights amendments:** The Committee obtained Board approval of consumer- friendly revisions to the Notice of Your Rights After Arbitration. This form was amended and approved by the Board this year to address important rights and responsibilities, including specific reference to applicable Judicial Council forms, not clearly articulated in the previous iteration of the form.

## **B. Ensure that Local Bars Update their Rules of Procedure**

§ The Committee obtained approval of other amendments to the State Bar Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs that help define rights of parties and other administrative considerations.

§ The MFA Committee members mentored local bar programs by offering direct support to local bar administrators regarding rule updating and provided updates to the MFA Committee.

§ In 2008, the Board of Governors approved amendments to or new rules of procedure for five local bar associations. A great majority of these programs chose to follow the State Bar's Model Rules of Procedure developed by the MFA Committee to assist the local bars with the rule approval process.

## **C. Other examples of Promoting Compliance with Fee Arbitration Statutes and Rules by Local Bar Arbitrators and Programs**

§ **Program Advisories:** The Committee distributes program advisories to assist local bar program administrators with administrative and procedural issues that arise in MFA cases. In 2008, the Committee issued the following three program advisories:

- 1) Deciding Requests for Waiver of Arbitration Filing Fees;
- 2) How to Proceed when a Party Denies the Existence of Attorney-Client Relationship; and
- 3) Venue for Mandatory Fee Arbitration Cases when Attorney Seeks to Enforce "Choice of Venue" Clause in Fee Agreement.

§ **Local Bar Administrator Roundtables:** The Committee, through the Director, hosted two local bar roundtables to teach and support local bar program administrators and chairpersons about best practices and current developments. These daytime programs were held in southern and northern California to accommodate local bar staff.

#### **D. Other Achievements**

a. Through the educational outreach efforts of the Committee, the State Bar's Mandatory Fee Arbitration Panel added 37 new fee arbitrators in 2008, for a total of 454 arbitrators.

b. Due to the Committee's recruitment efforts, the 2007-08 and 2008-09 Committee membership is fairly diverse with individuals possessing relevant MFA work or volunteer experience.

c. The Presiding Arbitrator, a member of the Committee, and his Assistant Presiding Arbitrators, one of whom also sits on the Committee, issued various awards, rulings, and orders in the State Bar's fee arbitration cases and requests for enforcement of award matters.

d. The Program's Director was a speaker at the ABA's National Forum on Client Protection in May 2008 Forum to showcase California's MFA program.

e. The Program's Director is a member of the American Bar Association's Committee on Client Protection and serves as a liaison for the State Bar of California and is the only fee arbitration representative on that Committee.

f. The Director responded to daily inquiries and the MFA Committee Chairperson responded to written inquiries from members, fee arbitration parties, and fee arbitrators about the MFA Program.