

AGENDA ITEM

JULY 54-123
Request for
Approval of Rules of
Procedure for Fee
Arbitration by the
Yuba-Sutter Bar
Association

DATE: June 18, 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 Rules of Procedure for Fee Arbitrations by the Yuba-Sutter 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 Yuba- Sutter Bar Association (YSBA). The YSBA wishes to adopt most of the Model Rules of Procedure for Fee Arbitrations approved by the Board of Governors. The State Bar Model Rules serve as a template for local bar programs and conform to the State Bar's 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 March 27 and May 27, 2009 meetings, the State Bar Mandatory Fee Arbitration (MFA) Committee reviewed the YSBA's proposed rules. The MFA Committee suggested modifications where appropriate. The Committee agreed to recommend approval of the rules subject to certain modifications being made, to the your Committee and the Board of Governors for approval. The YSBA made the recommended modifications. 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.

Inquiries about this item may be directed to Jill Sperber (415)538-2023 or jill.sperber@calbar.ca.gov.

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 Yuba Sutter Bar Association's (YSBA's) rules of procedure in May 1998. 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 Yuba Sutter Bar Association 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 March 27, 2009 meeting. The MFA Committee recommended certain modifications, and inclusion of some Model Rules deleted from the proposal. The rules returned to its May 27, 2009 meeting for consideration. At the May meeting, the MFA Committee voted to submit the rules to the Board for approval, while noting that some rules needed further clarification. After the May meeting, the local bar incorporated the recommended changes to its rule proposal.

II. DISCUSSION:

The proposed new rules submitted by the YSBA essentially follow the Model Rules of Procedure for Fee Arbitrations with some expected modifications to accommodate local procedures. The rules delete optional Model Rule 21.3 [authorizes arbitrations without a hearing for fee disputes under \$1,000] and portions of other model rules stated elsewhere in the rules. The YSBA proposes an additional amendment to Model Rule 26.3 regarding confidentiality of the program's file (rule 26.3) to comport with State Bar rule 27.3 recently approved by the Board as follows:

~~The arbitration award is public; T~~he arbitration case file, including the request, reply, exhibits and transcripts, as well as and the award itself are to remain confidential. ~~remains confidential.~~

~~A~~ The Absent a court order compelling disclosure of the award, the Program may not disclose provide a copy of the award to any -individuals or entity that was ~~who were not a parties to the arbitration proceeding.~~

An award shall remain confidential except as may be necessary in connection with a judicial challenge to, confirmation or enforcement of, the award, or as otherwise required by law or judicial decision.

Attachment A compares the current Model Rules with the YSBA's proposed changes shown by redlining. At its May 27, 2009 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 recommends to the RAD Committee that the proposed new Rules of Procedure for Fee Arbitrations of the YSBA 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 Yuba Sutter 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 Yuba Sutter 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.