

AGENDA ITEM

NOV 54-121
**Request for
Approval of
Proposed Rules of
Procedure for Fee
Arbitrations by the
Kern County Bar
Association**

DATE: October 9, 2009

TO: Members of the Discipline Oversight Committee (DOC)
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 Kern County Bar Association

EXECUTIVE SUMMARY

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

The Kern County Bar Association (KCBA) has submitted new rules of procedure for fee arbitrations conducted by its mandatory fee arbitration program. The KCBA's proposed new rules of procedure consist of materially new rules to replace its current rules of procedure last approved by the Board in 1998. The proposed new rules essentially adopt the State Bar's Model Rules of Procedure approved by the Board of Governors.

At its July 31, 2009 meeting, the State Bar's Committee on Mandatory Fee Arbitration (MFA) reviewed the KCBA's proposed Rules of Procedure for Fee Arbitrations and agreed to recommend their approval to the Board Committee on Regulation, Admissions and Discipline (then RAD, now DOC) 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"). Any questions about this item should be directed to Director 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' local 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 Kern County Bar Association's (KCBA's) rules of procedure for fee arbitrations in February of 1998. The Board of Governors adopted the Model Rules of Procedure for Fee Arbitrations at its November 2006 meeting. The Model Rules were further revised in July 2008. The Model Rules provide the local bar programs with a template incorporating best administrative practices and procedures consistent with the mandatory fee arbitration (MFA) statutes and case law developments. The KCBA 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 July 31, 2009 meeting.

II. DISCUSSION:

The proposed new rules essentially adopt the Model Rules of Procedure with some minor modifications-such as the filing fee- customized for the local bar. Because the proposed new rules of procedure are so materially different from the KCBA'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 the KCBA program is attached hereto as Attachment A.

At its July 31, 2009 meeting, the MFA Committee found that the proposed rules of procedure for fee arbitrations attached as Attachment A comply with the MFA statutes and are consistent with the Minimum Standards. As such, the MFA Committee agreed to recommend to the RAD Committee (now DOC) that the proposed Rules of Procedure for Fee Arbitrations of the KCBA 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:

For the Discipline Oversight Committee:

RESOLVED, that, the Board Discipline Oversight Committee hereby recommends that the Board of Governors resolve to approve the Rules of Procedure for Fee Arbitrations by the Kern 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 Discipline Oversight Committee, the Board of Governors hereby approves the Rules of Procedure for Fee Arbitrations by the Kern 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.