

Sperber, Jill

From: Emily Day [eday@cccba.org]
Sent: Tuesday, March 09, 2010 10:43 AM
To: Sperber, Jill
Subject: Public Comment Proposed Revisions to the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs-request for public comment concerning proposed paragraphs 16 and 19.

Dear Ms. Sperber,

I have read the RAD and I understand the points that it makes. I just find it odd that after 20 plus years of the current system working that now all these objections arise. Frankly, if you can change 19 to the assignment of a three-member panel not being contingent on a party's waiver of the right to non-binding arbitration, why can't you just as easily make it contingent on the agreement to binding arbitration? Or any other viewpoint?

B&P 6200 (d) Rules of procedure promulgated by the local bar associations are subject to review by the (State Bar) board...to insure that they provide a fair, impartial, and speedy hearing and award.

Somehow it has now been determined binding or non-binding issues now fall into the fair and impartial field of the board's purview. But according to the RAD they can't even decide what is a fair monetary threshold. It doesn't even say who has rejected "as not reasonable the thresholds higher than \$25,000" even if the MFA Committee has "accepted" these amounts?

The impact of the proposed changes to the speedy field has been marginalized. Where do you find volunteers (especially lay people) to give their time and expertise to settle disputes of strangers. The last several times I have sent out recruitment notices, I have had zero response. I am using 3 or 4 lay arbitrator volunteers who have been working with the program for years. It is not their job, they are doing it out of a commitment to community service or the kindness of their hearts or some other unknown reason. To me the reality of the burden of running the fee arbitration program locally is being denied. The binding agreement and the monetary threshold is a fair and impartial way to provide this service.

There is a financial impact on the programs and on the volunteers. The program will have to spend more money to find and train lay volunteers. And the volunteers are not getting paid - which they know. But what they may not know is that every time a party (client or attorney) pulls some delay tactic then they suffer a greater loss of time. If they are retired that may not be a big factor, but if they are giving up time from their vocation or vacation time then that adds up.

And the time the program administrator has to spend on the assignments increases. Suddenly a part-time program becomes a full-time responsibility. In reality a new employee may be needed to keep up with the work but economically that is not feasible. Stress costs money too. Or, the filing fees which I consider reasonable right now may have to be increased. Or, the parties may have to start paying the arbitrators for their time. Fiscal Impact: Plenty.

If Code of Civil Procedure 1284 can be used for the fee arbitration program. What is stopping the use of CCP 1282 and just assigning single neutral arbitrator to each case regardless of the amount in dispute and whether or not it is binding or non-binding?

6200(e)(1) "If the panel is composed of three members..." All these years and no reasoning as to when three are assigned except as determined by local rules.

And if a panel of three arbitrators can be assigned to a case where the fee in dispute is over \$10,000 (or whatever the unknown one allows as reasonable) how do you explain that to the clients who have disputes under that amount that they cannot have 3 arbitrators? The logic I have been using all these years is that it is a large amount of money in dispute and the parties have agreed to binding arbitration so they have no recourse in court after the fact. So, now what would be the rational?

These are my opinions. Of course, any changes would be instituted by the local program.

Paragraph 19: Include a new statement prohibiting the program from placing, as a condition to entitlement to a three member panel, a party's waiver of the right to non-binding fee arbitration. The current requirement that any monetary threshold for obtaining a three member panel be "reasonable" is the only appropriate standard that should control. Any program's additional requirement that a party (or both parties) also agree to binding arbitration, even when the monetary threshold has been met, in order to obtain a three member panel is contrary to the mandatory fee arbitration statutory scheme which guarantees the right to non-binding fee arbitration and collateral right to a new trial.

FISCAL/PERSONNEL IMPACT: None.

19. A monetary threshold above which three-member panels will be used must be reasonable. The program may not condition the assignment of a three-member panel on a party's waiver of the right to non-binding arbitration.

Very truly yours,

Emily Day
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