

AGENDA ITEM

MAY
**Request for
Approval of
Proposed Rule
Amendment of
Procedure for Fee
Arbitration by the
North Santa Barbara
Bar Association**

DATE: April 12, 2010

TO: Members of the Discipline Oversight Committee (DOC)

FROM: Jill Sperber, Director, Office of Mandatory Fee Arbitration

SUBJECT: Request for Approval of Proposed Rule Amendment of Procedure for Fee Arbitrations by the North Santa Barbara Bar Association

EXECUTIVE SUMMARY

This agenda item is before your Committee to approve a single proposed rule amendment of the Northern Santa Barbara Bar Association's Rules of Procedure for Fee Arbitrations in the form attached as Attachment A hereto.

The Northern Santa Barbara County Bar Association wishes to raise the dollar threshold that must be in dispute entitling parties to a three member panel from over \$10,000 to over \$20,000.

The Committee agreed to recommend approval of the rule amendment to your Committee 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 North Santa Barbara Bar Association's rules of procedure for fee arbitrations in 2007. On March 16, 2010, the local bar submitted a single proposed rule amendment to the State Bar's Mandatory Fee Arbitration Committee (MFA Committee) for consideration at its March 26, 2010 meeting. The amendment to rule 21.1 would increase the dollar threshold that must be in dispute to obtain a three member panel, from over \$10,000 to over \$20,000 as follows:

RULE 21.0 Appointment Of Panel

21.1 For each dispute, the Program shall assign a hearing panel from the program's roster of fee arbitrators. A hearing panel shall consist of one attorney arbitrator if the amount in dispute is \$20,000 or less and three arbitrators if the amount in dispute is more than \$20,000, one of which shall be a non-lawyer. An attorney arbitrator shall be designated as Panel Chair. If the amount in dispute is more than \$20,000, the parties may agree, in writing, to have the matter heard by a single attorney arbitrator.

II. DISCUSSION:

Under the MFA statute, parties may have their fee disputes arbitrated by single or three member panels. A three member panel must, by statute, consist of two lawyers and a non-lawyer. (Bus. & Prof. Code §6200 (e)(1). The Minimum Standards provide that any dollar threshold used for a three member panel "must be reasonable." (Minimum Standards, para.19.) When the MFA Program was created thirty years ago, the most common three member dollar threshold was \$7,500. It was later increased by some programs, including the State Bar's own MFA program, to \$10,000. In the past couple of years, the Board has approved higher dollar thresholds for other local bar programs up to \$25,000 to keep pace with inflation.

At its March 26, 2010 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 Discipline Oversight Committee that the proposed amendment to rule 21.1 be approved.

III. FISCAL AND PERSONNEL IMPACT:

None.

IV. BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT:

None.

V. PROPOSED RESOLUTION:

If your Committee agrees with the recommendation to approve the amendment to rule 21.1 of the North Santa Barbara Bar Association's rules of procedure for fee arbitrations, the following resolution would be appropriate:

RESOLVED, that, the Board Discipline Oversight Committee hereby approves the proposed amendment to rule 21.1, Rules of Procedure for Fee Arbitrations by the North Santa Barbara 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.