

AGENDA ITEM

MAY

Revisions to State Bar
Rules of Procedure for
Fee Arbitrations and
Enforcement of Awards-
Request for Public
Comment

DATE: April 19, 2010

TO: Members of the State Bar Board Committee on Regulation, Admissions & Discipline Oversight

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

SUBJECT: Proposed Revisions to the Rules of Procedure for Fee Arbitrations and Enforcement of Awards by the State Bar of California – Request for Release for Public Comment

Executive Summary

The Rules of Procedure for Fee Arbitrations and the Enforcement of Awards by the State Bar of California (MFA rules of procedure) govern the State Bar's Mandatory Fee Arbitration (MFA) Program. Proposed amendments to the State Bar's rules of procedure are sought to conform to recent amendments to the State Bar's Model Rules of Procedure for Fee Arbitrations approved by the Board of Governors in March 2010. This agenda item is presented for the RAD committee to release for a public comment period of 30 days proposed revisions to the State Bar's rules of procedure for its mandatory own fee arbitration program in the form set forth in Attachment A. Questions about this item should be directed to Jill Sperber (415) 538-2023 or jill.sperber@calbar.ca.gov.

I. BACKGROUND

Pursuant to Business and Professions Code section 6200, *et seq.*, the Board of Governors is charged with establishing, maintaining and administering a system and procedure for the arbitration of disputes concerning fees, costs, or both, charged by attorneys for their professional services. The Board of Governors adopts rules of procedure to govern the arbitration of attorney fee and cost disputes. (Bus. & Prof. Code, § 6200, subd. (a).)

The State Bar's Committee on Mandatory Fee Arbitration ("MFA Committee") oversees the Mandatory Fee Arbitration Program administered by the State Bar and the 45 approved local bar association MFA programs. As one of its duties, the MFA

Committee reviews and makes recommendations to the Board of Governors regarding proposed revisions to the State Bar's own MFA Program's rules of procedure for fee arbitrations. The State Bar's MFA rules of procedure, like those promulgated by local bar association MFA programs, are subject to review by the Board of Governors to "...ensure that they provide for a fair, impartial and speedy hearing and award" (Bus. & Prof. Code, § 6200, subd. (d)). The rules of procedure must also be consistent with the MFA statutes and the State Bar's Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs ("Minimum Standards").

The State Bar's MFA rules of procedure for its own program were last revised June 1, 2009.

II. DISCUSSION

At its March 2010 meeting, the State Bar Board of Governors approved amendments to the Model Rules of Procedure for Fee Arbitrations following their return from public comment. As part of that agenda item, the Board also approved any amendments proposed by the local bar programs made to conform to the March 2010 Model Rule revisions without requiring the programs to submit their proposed amendments to the Board for approval. However, the State Bar's own MFA program was inadvertently not specified in the Board's resolution. As a result, it was determined that the amendments to the State Bar's MFA rules of procedure proposed to conform with the March 2010 Model Rule revisions are required to be circulated for public comment prior to their adoption by the Board.

A. Proposed Revisions to the Model Rules of Procedure for Fee Arbitrations

1. **Definition of non-lawyer arbitrator**-Rule 1.10: new definition to comply with Minimum Standard para. 20.
2. **Expand definition of trial**-Rule 1.15: add language to define trial as both court trial and private arbitration following non-binding MFA as established in *Schatz v. Allen Matkins* (2009) 45 Cal.4th 557.
3. **Requirement to provide client with notice of right to MFA**-Rule 2.1: New rule complies with Minimum Standard para. 4 which sets forth the statutory requirement that a lawyer deliver the Notice of Client's Right to Arbitration prior to or at time of commencement of an action or proceeding to collect attorney's fees.
4. **Notice of Attorney Responsibility**-Rule 15.2: rule confirms that service must be made before notice of appointment of panel consistent with Minimum Standard para.14.
5. **Dismissal "without prejudice"**-Rule 20.1: protects party's right to re-file for MFA in the event that the parties' settlement agreement is not followed.

6. Requirement that retired judge serving as fee arbitrator have active membership status-Rule 22.5: conforms to Minimum Standard para.21.

7. Automatic post-award interest-Rule 41.3: tracks award template awarding automatic post-award interest, deleting automatic pre-award interest, which is allowed but less frequently awarded. Companion change to the Minimum Standards also requested for public comment.

8. Include option to request amendment in addition to correction of award-Rule 42.1: as confirmed in *Karton v. Segreto* (2009) 176 Cal. App.4th 1, parties are entitled to seek correction or amendment from the arbitration panel, and after 30 days from service of the award, from the court via a petition as provided by statute.

9. Referral of attorney misconduct by arbitration provider permitted-Rule 53: added to provide optional rule implementing Minimum Standard para. 6, authorizing referral of attorney misconduct to the State Bar's Office of Intake.

III. FISCAL/PERSONNEL IMPACT

None.

IV. IMPACT ON BOARD BOOK/ADMINISTRATIVE MANUAL

None.

V. RULES IMPACT

Should the Board approve the proposed revisions following return from public comment, Title III, division 4, Chapter 2 would be revised accordingly.

VI. PROPOSED RESOLUTIONS

If the Discipline Oversight Committee agrees with the request to authorize release of the proposed revisions to the State Bar rules of procedure for fee arbitrations set forth in Attachment A for a 30 day public comment period, adoption of the following resolutions would be appropriate:

RESOLVED, that the Discipline Oversight Committee authorized release for public comment for a period of 30 days the proposed revisions to the Rules of Procedure for Fee Arbitrations and the Enforcement of Awards by the State Bar of California, in the form attached hereto as Attachment A; and it is

FURTHER RESOLVED, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed revisions.