

AGENDA ITEM

JULY
**Request for
Approval of new
Rules of Procedure
for Fee Arbitrations
and Fee Mediation
by the
Ventura County Bar
Association**

DATE: June 23, 2010

TO: Members of the Discipline Oversight Committee (DOC)

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

SUBJECT: Request for Approval of new Rules of Procedure for Fee Arbitrations and Fee Mediation by the Ventura County Bar Association

EXECUTIVE SUMMARY

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

The Ventura County Bar Association (VCBA) has submitted new rules of procedure for fee arbitrations fee mediation conducted by its mandatory fee arbitration program. The VCBA's proposed new rules of procedure consist of materially new rules to replace its current rules of procedure last approved by the Board in 2004. The proposed new arbitration rules essentially adopt the State Bar's Model Rules of Procedure for Fee Arbitration approved by the Board of Governors, last revised in March 2010.

The State Bar's Committee on Mandatory Fee Arbitration (MFA) reviewed the VCBA's proposed Rules of Procedure. Subject to non-substantive rule changes subsequently made, the Committee agreed to recommend approval of the rules 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") and the Minimum Standards on Fee Mediation. 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.") Programs that also offer fee mediation must have rules of procedure that comply with the Minimum Standards for Fee Mediation. Approval by the Board of Governors (or its designee, the Discipline Oversight Committee) 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 Ventura County Bar Association's (VCBA's) rules of procedure for fee arbitrations in 2004. Over a decade later, the Board of Governors adopted the Model Rules of Procedure for Fee Arbitrations effective November 2006. Model Rules are intended to promote uniformity and best practices among the 45 local bar MFA programs. The Model Rules also provide the local bar programs with a template incorporating administrative procedures consistent with the MFA statutes and case law developments. The Model Rules were further revised in July 2008 and March 2010.

The VCBA 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 May 21, 2010 meeting. The MFA Committee agreed to recommend their approval subject to several non-substantive recommended changes which VCBA subsequently made.

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 VCBA'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 VCBA program is attached hereto as Attachment A. The redlining in Attachment A shows the VCBA's modifications to the most current version of the Model Rules.

At its May 21, 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 DOC Committee that the proposed Rules of Procedure for Fee Arbitrations and Fee Mediation of the VCBA be approved.

III. FISCAL AND PERSONNEL IMPACT:

None.

IV. BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT:

None.

V. PROPOSED RESOLUTION:

RESOLVED, that, the Board Discipline Oversight Committee hereby approves the Rules of Procedure for Fee Arbitrations and Fee Mediation by the Ventura 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 and the Minimum Standards for Fee Mediation.