

AGENDA ITEM

JULY
**Request for
Approval of
Amendments to
Rules of Procedure
for Fee Arbitrations
by Contra Costa
County Bar
Association**

DATE: June 22, 2010

TO: Members of the Discipline Oversight Committee (DOC)

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

SUBJECT: Request for Approval of Proposed Amendments to Rules of Procedure for Fee Arbitrations by the Contra Costa County Bar Association

EXECUTIVE SUMMARY

This agenda item is before your Committee to approve rule amendments proposed by the Contra County Bar Association (CCCBA) to its Rules of Procedure for Fee Arbitrations in the form attached as Attachment A hereto.

CCCBA's proposal would include a modest filing fee increase (rule 3(d)), eliminate the current requirement that the client agree to binding arbitration in order to obtain a three member panel of arbitrators and raise the dollar threshold for same to \$25,000 or more (rule 4(a)), revise the required language for awards consistent with the Minimum Standards (rule 6(e)), and clarify the rights to seek amendment or correction of an award from the arbitrator(s) (rule 6(g).) Most of these amendments are made to comport with the Board's recent revisions to the State Bar Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs ("Minimum Standards"), paragraphs 16 and 19, and/or the Model Rules of Procedure for Fee Arbitrations.

The Mandatory Fee Arbitration Committee agreed to recommend approval of the CCCBA rule amendments to your Committee as being in compliance with the 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 Contra Costa County Bar Association's (CCCBA's) rules of procedure for fee arbitrations on July 17, 2009. Recently, the local bar submitted proposed amendments to its local bar rules.

II. DISCUSSION:

The amendment to rule 3(d) would modestly increase the local bar's filing fee schedule.

The amendment to rule 4(a) would eliminate the current requirement that the client agree to binding arbitration in order to be assigned a three member panel. This amendment is proposed to comport with a recent change to the Minimum Standards.

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.) A recent amendment to Paragraph 19 of the Minimum Standards, approved by the Board in May 2010, prohibits fee arbitration programs from placing as a condition to obtaining a three member panel a further requirement that a party waive his or her right to non-binding arbitration. The amendment to CCCBA rule 4(a) would remove the current requirement that the parties agree to binding arbitration to obtain a three member panel to comport with the recent Minimum Standard prohibition.

The amendment to rule 4(a) would also increase the dollar threshold that must be in dispute to obtain a three member panel, from \$10,000 or more to \$25,000 or more. When the MFA Program was created thirty years ago, the most common dollar threshold for a three member panel was \$7,500. It was later increased by some programs, including the State Bar's own MFA program, to \$10,000. The State Bar's threshold is currently \$15,000. In recent years, to keep pace with inflation, the Board has approved higher dollar thresholds for a growing number of local bar programs to dollar thresholds up to \$25,000. The amendment to CCCBA rule 4(a) tracks this trend.

The amendment to rule 6(e) revises the required language of an award to conform to the recently revised Minimum Standard paragraph 16 approved by the Board in May 2010. That revision was notable for its inclusion of post-award interest on all awards.

The amendment to rule 6(g) clarifies the parties' rights to seek amendment or correction of the award from the arbitrator. The CCCBA's amendments were made based on recent amendments to the State Bar's Model Rules of Procedure for Fee Arbitrations. The Model Rule amendments were approved by the Board in March 2010 consistent with certain rights as confirmed by *Karton v. Segreto* (2009) 176 Cal. App.4th 1.

The MFA Committee finds that the proposed amendments to the CCCBA's rules as set forth in Attachment A hereto 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 amendments 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 amendments to the CCCBA's rules of procedure for fee arbitrations, the following resolution would be appropriate:

RESOLVED, that, the Board Discipline Oversight Committee hereby approves the proposed amendments to the Rules of Procedure for Fee Arbitrations by the Contra Costa 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.