

AGENDA ITEM

JULY
**Request for
Approval of
Amendment to Rule
of Procedure for Fee
Arbitrations by the
BASF**

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 Amendment to Rule of Procedure for Fee Arbitrations by the Bar Association of San Francisco

EXECUTIVE SUMMARY

This agenda item is before your Committee to approve a single proposed rule amendment by the Bar Association of San Francisco (BASF) to its Rules of Procedure for Fee Arbitrations in the form attached as Attachment A hereto.

BASF's proposal would eliminate the current requirement that the client agree to binding arbitration in order to obtain a three member panel of arbitrators. This amendment is made to comport with the Board's recent revision to the State Bar Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs ("Minimum Standards"), paragraph 19. Paragraph 19 prohibits programs from imposing such conditions on parties. BASF also wishes to raise the dollar threshold that must be in dispute to entitle the parties to a three member panel from \$10,000 or more to \$25,000 or more.

The Mandatory Fee Arbitration Committee agreed to recommend approval of the rule amendment 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 Bar Association of San Francisco's (BASF's) rules of procedure for fee arbitrations on March 6, 2009. Recently, the local bar submitted a single proposed amendment to local bar rule 7. The amendment 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 effective May 2010 approved by the Board of Governors. Paragraph 19 prohibits local bar fee arbitration programs from imposing such conditions on parties to receive a three member panel. Amendment to BASF rule 7 would also increase the dollar threshold that must be in dispute to obtain a three member panel, from over \$10,000 to over \$25,000 as follows:

7. APPOINTMENT OF ARBITRATOR(S)

B. Number of Arbitrators

1. Amount in Dispute is less than \$25,000

In all cases in which the amount in controversy is ~~less than \$10,000~~ less than \$25,000, one (1) Arbitrator shall be assigned to hear the case. The Sole Arbitrator shall be an Attorney.

2. Amount in Dispute \$25,000 or More

In all cases in which the amount in controversy is more than \$25,000, a Panel of three (3) Arbitrators shall be appointed to hear the case, one of which is not an Attorney. Notwithstanding the amount in controversy, the parties may agree to have the matter heard by one (1) Arbitrator. That Arbitrator shall be an Attorney.

~~2. Binding Arbitration~~

~~In cases in which the amount in controversy is \$10,000 or more, and the Client has agreed to Binding Arbitration, a Panel of three (3) Arbitrators shall be appointed to hear the case, one of which is not an Attorney. Notwithstanding the amount in controversy, the parties may agree to have the matter heard by one (1) Arbitrator. That Arbitrator shall be an Attorney.~~

~~3. Non-Binding Arbitration~~

~~In cases in which the amount in controversy is less than \$20,000 and the Client has not agreed to Binding Arbitration, one (1) Arbitrator will hear the case. That Arbitrator shall be an Attorney. In cases in which the amount in controversy is \$20,000 or more, a Panel of three (3) Arbitrators shall be appointed to hear the case, one of which is not an Attorney. Notwithstanding the amount in controversy, the parties may agree to have the matter heard by one (1) 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.)

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 requirement that a party waive his or her right to non-binding arbitration. The amendment to BASF rule 7 would remove the current requirement that the client agree to binding arbitration to obtain a three member panel to comport with the recent Minimum Standard prohibition.

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 BASF rule 7 tracks this trend.

The MFA Committee finds that the proposed amendment to BASF local bar rule 7 (set forth above and as Attachment A hereto) complies with the MFA statutes and is consistent with the Minimum Standards. As such, the MFA Committee agreed to recommend to the Discipline Oversight Committee that the proposed amendment to BASF rule 7 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 7 of the BASF’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 7, Rules of Procedure for Fee Arbitrations by the Bar Association of San Francisco, 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.