

AGENDA ITEM

NOVEMBER
Request for
Approval of
Amendment to Rule
of Procedure for Fee
Arbitrations by the
Beverly Hills Bar
Association

DATE: October 4, 2010

TO: Members of the Regulation, Admissions & Discipline Committee (RAD)

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 Beverly Hills Bar Association

EXECUTIVE SUMMARY

This agenda item is before your Committee to approve a single proposed rule amendment by the Beverly Hills Bar Association (BHBA) to its Rules of Procedure for Fee Arbitrations in the form attached as Attachment A hereto. The State Bar's Mandatory Fee Arbitration (MFA) Committee agrees to recommend approval of the rule amendment to your Committee.

BHBA's proposal would increase the current dollar threshold from over \$10,000 to over \$15,000 that must be in dispute to entitle parties to a three member panel of arbitrators instead of a single arbitrator. The MFA Committee believes that the proposed amendment comports with the State Bar Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs ("Minimum Standards"), paragraph 19. Paragraph 19 requires that the monetary threshold set must be "reasonable."

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 other rule revisions to the Beverly Hills Bar Association's (BHBA) rules of procedure for fee arbitrations in 2007. Recently, the BHBA submitted a single proposed amendment to local bar rule 21.1. The amendment would increase the dollar threshold that must be in dispute to entitle parties to an arbitration hearing before a three member panel instead of a single arbitrator. Paragraph 19 of the Minimum Standards requires that a monetary threshold for a three member panel must be "reasonable." Amendment to BHBA 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 \$15,000 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 ~~\$10,000~~ **\$15,000** or less and three arbitrators if the amount in dispute is more than ~~\$10,000~~ **\$15,000**, 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 ~~\$10,000~~ **\$15,000**, 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 dollar threshold for a three member panel was \$7,500. Over time, it was increased by some programs, including the State Bar's own MFA program, to \$10,000. The State Bar's current monetary threshold for a three member panel is now also over \$15,000. In recent years, to keep pace with inflation, the Board has approved even higher dollar thresholds for a growing number of local bar programs to disputes over \$25,000 as being reasonable. The amendment to BHBA rule 21.1 is consistent with this trend for a higher threshold but is lower than other thresholds that have been approved.

The MFA Committee finds that the proposed amendment to BHBA local bar rule 21.1 (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 RAD Committee that the proposed amendment to BHBA 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 BHBA's rules of procedure for fee arbitrations, the following resolution would be appropriate:

RESOLVED, that, the Board Committee on Discipline, Admissions & Oversight hereby approves the proposed amendment to rule 21.1, Rules of Procedure for Fee Arbitrations by the Beverly Hills 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.