

AGENDA ITEM

NOVEMBER
Request for
Approval of new
Rules of Procedure
for Fee Arbitrations
by the Desert 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 new Rules of Procedure for Fee Arbitrations by the Desert Bar Association

EXECUTIVE SUMMARY

This agenda item is before the RAD Committee to approve the proposed new Rules of Procedure for Fee Arbitrations by the Desert Bar Association in the form attached as Attachment A hereto.

The Desert Bar Association (DBA) has submitted new rules of procedure for fee arbitrations conducted by its mandatory fee arbitration (MFA) program. The DBA's proposed new rules of procedure consist of materially new rules to replace its current rules of procedure last approved by the Board in 1997. 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 reviewed the DBA's proposed Rules of Procedure and 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"). 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 (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 Desert Bar Association's (DBA's) rules of procedure for fee arbitrations in 1997. In 2006, the Board of Governors adopted the Model Rules of Procedure for Fee Arbitrations. 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. Further revisions to the Model Rules were approved by the Board in July 2008 and March 2010.

The DBA submitted proposed new rules of procedure for fee arbitrations based on the current Model Rules to the State Bar's Mandatory Fee Arbitration Committee (MFA Committee) for consideration at its July 30, 2010 meeting. The MFA Committee agreed to recommend to RAD that they be approved.

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

At its July 30, 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 RAD Committee that the DBA's proposed new Rules of Procedure for Fee Arbitrations be approved.

III. FISCAL AND PERSONNEL IMPACT:

None.

IV. BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT:

None.

V. PROPOSED RESOLUTION:

RESOLVED, that, the Board Committee on Regulation, Admissions & Discipline (RAD) hereby approves the Rules of Procedure for Fee Arbitrations by the Desert 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 Arbitration Programs.