

AGENDA ITEM

NOVEMBER
**Request for
Approval of
Amendments to
Rule of Procedure
for Fee Arbitrations
by the
Orange County Bar
Association**

DATE: October 7, 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 Amendments to Rule of Procedure for Fee Arbitrations by the Orange County Bar Association

EXECUTIVE SUMMARY

This agenda item is before your Committee to approve three proposed amendments by the Orange County Bar Association (OCBA) to its Rules of Procedure for Fee Arbitrations as set forth in Attachment A hereto.

OCBA's rule proposals would: 1) consistent with Minimum Standard 19 adopted earlier this year, delete the requirement that parties must agree to binding arbitration to qualify for a three member panel and set the dollar threshold for same as over \$10,000 in dispute; 2) include reference to optional fee mediation program available through OCBA; and 3) clarify the program's refund policy, including refunds for fee mediation matters.

The State Bar's Mandatory Fee Arbitration (MFA) Committee agreed to recommend approval of the rule amendments to your Committee. The MFA Committee finds that the proposed amendments comport with the State Bar Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs ("Minimum Standards"). Paragraph 19 of the Minimum Standards prohibits programs from requiring binding arbitration as a condition for a three member arbitration panel.

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 Orange County Bar Association's (OCBA) rules of procedure for fee arbitrations were last revised in 2007. Recently, the OCBA submitted to the State Bar's Mandatory Fee Arbitration (MFA) Committee three proposed amendments to its local bar rules as follows:

- A. Rule 7(A)- amendment would delete the requirement that parties must agree to binding arbitration when the amount in dispute is between \$5,000 and \$10,000 to obtain a three member arbitration panel. The amendment would provide a three-member arbitration panel if the amount in dispute is over \$10,000, regardless of whether the arbitration is non-binding or binding.
- B. Rule 7(G)-new rule would reference option of the parties to first try fee mediation through the OCBA's fee mediation program.
- C. Rule 36(B)-amendment would clarify that assignment pertains to arbitrator, panel or mediator and provide for refunds as set forth for fee mediation in addition to fee arbitration.

The OCBA's proposed rule amendments are set forth in redlined text in Attachment A.

II. DISCUSSION:

A. Proposed Revision to Rule 7(A) is consistent with Minimum Standard paragraph 19.

Under the MFA statute, parties may have their fee disputes arbitrated by single or three member panels. A three member panel must, as required 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.)

In May 2010, the Board of Governors approved a new component of Minimum Standard paragraph 19. The new standard prohibits a local bar program from conditioning the assignment of a three member panel on a party's waiver of the right to non-binding arbitration.

The MFA Committee finds that the proposed amendment to OCBA local bar rule 7(A) (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 OCBA rule 7(A) be approved.

B. New Rule 7(G) properly identifies OCBA's voluntary fee mediation program.

Local bar programs are authorized to provide fee mediation, in addition to fee arbitration, under the auspices of the MFA Program. (Bus. & Prof. Code §6200(d).) OCBA has offered fee mediation since 1997. The reference to the option for parties to attempt fee mediation before arbitration is appropriate and should be approved.

C. Proposed revision to Rule 36(B) merely clarifies OCBA's refund policy, including fee mediation refunds.

Current rule 36(B) sets forth OCBA's refund policy for fee arbitration cases. The amendment would clarify that "assignment" pertains to assignment of a case to an arbitrator, panel or mediator and clarifies that the policy applies to fee mediation as well as fee arbitration refunds. The amendment should 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 three amendments to OCBA's rules of procedure for fee arbitrations, the following resolution would be appropriate:

RESOLVED, that, the Board Committee on Regulation, Admissions & Discipline hereby approves the proposed amendments to rules 7(A), 7(G), and 36(B) to the Rules of Procedure for Fee Arbitrations by the Orange 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.