

AGENDA ITEM

January

Request for approval of new Rules of Procedure for Fee Arbitrations by the Palo Alto Bar Association.

DATE: December 6, 2010

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

FROM: Jill Sperber, (former) Director, Office of Mandatory Fee Arbitration

SUBJECT: Request for Approval of new Rules of Procedure for Fee Arbitrations by the Palo Alto 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 Palo Alto Bar Association in the form attached as Attachment A hereto.

The Palo Alto Bar Association (PABA) has submitted new rules of procedure for fee arbitrations conducted by its mandatory fee arbitration (MFA) program. The PABA's proposed new rules of procedure consist of materially new rules to replace its current rules of procedure last approved by the Board in 1998. 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 PABA's proposed Rules of Procedure and agreed to recommend approval of the rules to your Committee as being in compliance with the applicable statutes and 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 (former) Director Jill Sperber (415) 538-2023 or jill.sperber@calbar.ca.gov.

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 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 Palo Alto Bar Association’s (PABA’s) rules of procedure for fee arbitrations in 1998. 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 state’s 41 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.

ISSUE

The PABA 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 November 19, 2010 meeting. The MFA Committee agreed to recommend to Regulation, Admissions and Discipline Committee that they be approved.

Do the new proposed Rules of Procedure for Fee Arbitrations by the Palo Alto Bar Association comply with the applicable statutes and the State Bar’s Minimum Standards for the Operation of Mandatory Fee Arbitration Programs?

DISCUSSION

The proposed new rules essentially adopt the Model Rules of Procedure with some expected modifications to suit the locality served by the Palo Alto Bar, such as the filing fee schedule. PABA’s fee schedule is extremely modest to enable the public to use its program. Its proposed dollar threshold for a three member panel of \$15,000 is the same as the State Bar’s own program and on trend with the growing majority of local bar programs. Because the proposed new rules of procedure are materially different from the PABA’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 PABA program is attached hereto as Attachment A.

At its November 19, 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 Regulation, Admissions and Discipline Committee that the PABA’s proposed new Rules of Procedure for Fee Arbitrations be approved.

FISCAL / PERSONNEL IMPACT:

None

RULE AMENDMENTS:

N/A

BOARD BOOK IMPACT:

None

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Committee on Regulation, Admissions & Discipline (RAD) agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that, the State Bar's Committee on Regulation, Admissions & Discipline (RAD) hereby approves the Rules of Procedure for Fee Arbitrations by the Palo Alto 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.