

# AGENDA ITEM

January

**Request for approval of Amendment to Rule of Procedure for Fee Arbitrations by the Santa Clara County 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 Colin Wong, Chief Administrative Officer, State Bar Court

**SUBJECT:** Request for Approval of Proposed Amendment to Rule of Procedure for Fee Arbitrations by the Santa Clara County Bar Association

## EXECUTIVE SUMMARY

This agenda item is before your Committee to approve a single proposed rule amendment by the Santa Clara County Bar Association (SCCBA) 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 agreed to recommend approval of the rule amendment to your Committee.

SCCBA's proposal would increase the current dollar threshold set forth in Rule 21.1, Rules of Proc., from over \$5,000 to over \$10,000 that must be in dispute to entitle parties to a three member panel of arbitrators instead of a single arbitrator. By statute, a three member panel consists of a lay person in addition to two attorney arbitrators. The MFA Committee found that the proposed amendment is consistent 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](mailto: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 local programs' 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 new rules of procedure for the Santa Clara County Bar Association's (SCCBA) Mandatory Fee Arbitration Program at its last meeting in November 2010. The new rules essentially adopt the State Bar's Model Rules of Procedure, with some modifications. Shortly after they were approved, the SCCBA submitted a single proposed amendment to local bar Rule 21.1. The proposed 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. By statute, a three member panel consists of one lay person in addition to two attorney arbitrators. Paragraph 19 of the Minimum Standards requires that a monetary threshold for a three member panel must be "reasonable." The proposed amendment to SCCBA's 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 21.1            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 or less and three arbitrators if the amount in dispute is more than \$5,000 \$10,000, 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 \$5,000 \$10,000, the parties may agree, in writing, to have the matter heard by a single attorney arbitrator.

## **ISSUE**

Does the proposed amendment to Santa Clara County Bar Association's rule 21.1 comply with the applicable statutes and the State Bar's Minimum Standards for the Operation of Mandatory Fee Arbitration Programs?

## **DISCUSSION**

Under the MFA statutes, 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 over \$7,500. Over time, it was increased by some programs, including the State Bar’s own MFA program, to over \$10,000 that must be in dispute to qualify. The State Bar’s current monetary threshold for a three member panel is now 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 SCCBA’s Rule 21.1 is consistent is on trend for a higher threshold above \$10,000 but is considerably lower than some dollar thresholds that have been approved for other local bars by the Board.

The MFA Committee finds that the proposed amendment to SCCBA 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 Regulation, Admissions and Discipline Committee that the proposed amendment to SCCBA Rule 21.1 be approved.

**FISCAL / PERSONNEL IMPACT:**

None

**RULE AMENDMENTS:**

N/A

**BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT:**

N/A

**PROPOSED RESOLUTION:**

If your Committee agrees with the recommendation to approve the amendment to Rule 21.1 of the Santa Clara County Bar Association’s rules of procedure for fee arbitrations, adoption of 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 Santa Clara 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 State Bar’s Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs.

## ATTACHMENT A

### **RULE 21.1      Appointment of Panel**

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 or less and three arbitrators if the amount in dispute is more than ~~\$5,000~~ \$10,000, 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 ~~\$5,000~~ \$10,000, the parties may agree, in writing, to have the matter heard by a single attorney arbitrator.