

# AGENDA ITEM

**MAY**  
**Request for  
Approval of  
Proposed  
Amendments to the  
Santa Monica Bar  
Association Rules  
of Procedure for Fee  
Arbitrations**

**DATE:** April 15, 2010

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

**FROM:** Doug Hull, Director, Office of Mandatory Fee Arbitration

**SUBJECT:** Request for Approval of Proposed Amendments to the Santa Monica Bar Association Rules of Procedure for Fee Arbitrations

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## **EXECUTIVE SUMMARY**

This agenda item is before your Committee to approve rule amendments proposed by the Santa Monica Bar Association (“SMBA”) to its Rules of Procedure for Fee Arbitrations in the form attached as Attachment A hereto.

SMBA’s proposed changes substantially track the State Bar Model Rules of Procedure (“model rules”), with the exception of three rules, which are explained in the body of this memo. The model rules were adopted by the State Bar Board of Governors and provide a template for local bars in creating rules for fee arbitration programs. The model rules are advisory in nature and are simply provided to assist the local bars in creating rules that comply with the Minimum Standards and Guidelines, which were also adopted by the State Bar Board of Governors.

The State Bar’s Committee on Mandatory Fee Arbitration (“CMFA”) reviewed the proposed amendments and recommends approval.

Any questions about this item should be directed to Director Doug Hull (415)538-2015 or [doug.hull@calbar.ca.gov](mailto:doug.hull@calbar.ca.gov).

## **I. BACKGROUND:**

Pursuant to Business and Professions Code section 6200(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.") In 2006, the CMFA developed model rules to assist local bars in adopting rules that comply with the Minimum Standards and Guidelines. The model rules provide a template which meets the standards of the legislation and the Minimum Standards. They are provided to the local bars to assist in rule development, but are advisory in nature. The model rules have been updated on occasion to reflect developments in legislation and case law. The last update to the model rules occurred in 2010.

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, paragraph 1). The Board of Governors last approved the SMBA's rules of procedure for fee arbitrations in November 2007. Recently, the SMBA submitted proposed amendments to its local bar rules to the CMFA. At its meeting on March 25, 2011, the CMFA reviewed the rules and found them to be in compliance with the State Bar Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs.

## **II. DISCUSSION:**

The updates provided by the SMBA basically track the current version of the Model Rules for Fee Arbitrations. The vast majority of the rule changes include typographical changes to the model rules, such as identification of Santa Monica as the bar association handling the arbitration; replacing the word 'section' with the symbol '§' and capitalizing the word 'program'.

In addition to the typographical changes, SMBA proposes modifications to three rules. The CMFA found that all of the proposed modifications comport with the Minimum Standards and Guidelines approved by this Board. The proposed substantive rule changes are described in the following paragraphs.

Rule 15.3 defines the filing fee structure for this program: 5% of the amount in dispute for those disputes of \$10,000 or less (minimum of \$100), 6% of the amount in disputes for disputes over \$10,000 but less than \$25,000, and 7% of the amount in dispute for amounts of \$25,000 or more, with a maximum of \$4,000. This proposed fee structure is comparable to that of other local bar programs and the CMFA determined these fees to be consistent with paragraph 17 of the Minimum Standards and Guidelines.

Rule 19.3 outlines the programs refund policies for arbitration matters that settle prior to the arbitration. The refund policy is comparable to that of other local bars and the CMFA found the proposed policy to be consistent with paragraph 17 of the Minimum Standards and Guidelines.

Rule 37 was amended to allow for the attendance of a certified shorthand reporter at arbitration proceedings. While this rule deviates from the model rules, the CMFA realizes that some local bar programs prefer to allow transcription of arbitrations when a party is willing to pay the cost. The rule adopted by Santa Monica reflects the previous version of the model rule adopted by

the CMFA but superseded in 2010, however, this rule, in its present form, meets the minimum standards.

The MFA Committee found all of these updates to be in compliance with the Minimum Standards and Guidelines. Attached to this agenda for reference is a copy of the proposed updated rules of procedure ("Attachment A").

### **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 amendments to the SMBA's rules of procedure for fee arbitrations, the following resolution would be appropriate:

**RESOLVED**, that, the Regulation Admissions and Discipline Oversight Committee hereby approves the proposed amendments to the Rules of Procedure for Fee Arbitrations by the Santa Monica 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.