

AGENDA ITEM

JULY

DATE: July 1, 2011

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 Bar Association of San Francisco Attorney/Client Fee Dispute Rules

EXECUTIVE SUMMARY

This agenda item is before your Committee to approve rule amendments proposed by the Bar Association of San Francisco (“BASF”) to its Attorney/Client Fee Dispute Rules in the form attached as Attachment A hereto. The Attorney/Client Fee Dispute Rules are the regulations by which BASF administers their Mandatory Fee Arbitration Program.

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.

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.”) The CMFA assigns a subcommittee to review proposed rules for compliance with the 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, paragraph 1). The Board of Governors last approved the BASF’s Attorney/Client Fee Dispute Rules (hereinafter “rules”) in July 2010. Recently, the BASF submitted proposed amendments to its rules to the CMFA. At its meeting on May 20, 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 Bar Association of San Francisco made various modifications to their rules. Many of the changes were of typographical in nature, but several rules were added or substantially modified. The substantive updates provided by the BASF modify their rules as follows:

- **Addition of Rule 6.B.5(c) Attorney's Reply:** This rule imposes a filing fee on an attorney who is permitted to file a reply after the deadline has passed. The fee ranges from \$50 to \$100 based on the amount in dispute. The fee imposed is based a sliding scale and can be waived. The rationale for this rule is that the parties will be more inclined to follow the deadlines if there is a monetary penalty for not meeting them. A similar rule for requesting continuances was recently adopted and has greatly reduced the number of requests for continuances. The hope is that this new rule will have a similar impact and reduce the number of late responses received by the program.
- **Modification of Rule 7.A. Selection of Arbitrators:** This modification expands and clarifies the process for disclosures and recusal by arbitrators.
- **Addition of Rule 8M. Staying the Matter (Putting on Hold):** This rule requires the filing of application to BASF to request a stay in an arbitration. The rule includes a 5-day objection period by the opposing party. Included in the rule is an administrative charge for approved stay of \$50-\$100. Upon stipulation or application to the Panel Chair, the matter may be continued for good cause shown except in the instance where the continuance is for 30 days or more, in which case the continuance must be approved by the Presiding Arbitrator.
- **Modification of Rule 13.A.1 (b) Filing Fees:** This modification increases the maximum filing fee from \$5,000 to \$7,000. This new ceiling is higher than some counties, but is similar to some of the larger counties (Los Angeles and Alameda). It is still below the highest counties (Santa Clara and Marin).
- **Addition of Rule 13.B.4.(a) Filing Fees:** This new rule proposes a refund policy for those matters that settle. This proposed change matches the policies of Los Angeles and Santa Clara Counties and more accurately reflects the costs involved to BASF based on how far along a case is in the arbitration process.
- **Revision of Rule 14 Service:** The revision requires mail service of filing and reply documents to be postmarked by the due date. All other papers may be delivered personally, by mail, and fax. E-mailing of documents is allowed only if the parties and mediator/arbitrator have agreed to accept by email. It is the responsibility of the parties to keep each other and the program informed of address changes.

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 BASF's Attorney/Client Fee Dispute Rules, the following resolution would be appropriate:

RESOLVED, that, the Regulation Admissions and Discipline Oversight Committee hereby approves the proposed amendments to the Attorney/Client Fee Dispute Rules by the Bar Association of San Francisco, 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.