

AGENDA ITEM

NOV 2015

DATE: November 16, 2015

TO: Members, Regulation and Discipline Committee

FROM: Douglass Hull, Director, Mandatory Fee Arbitration

SUBJECT: Proposed Modifications to the Bar Association of San Francisco Rules of Procedure Arbitration and Mediation of Attorney/Client Fee Disputes

EXECUTIVE SUMMARY

This agenda item is before your Committee to seek approval of the proposed rule amendments to the Bar Association of San Francisco ("BASF") Rules For Fee Arbitrations ("rules"), as set forth in Attachment A.

The State Bar's Committee on Mandatory Fee Arbitration ("CMFA") has reviewed the proposed changes and determined they comport with the Minimum Standards and Guidelines for the Operation of Mandatory Fee Arbitration Programs ("Minimum Standards") as approved by the State Bar Board of Trustees.

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

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 the Business and Professions Code 6200-6206 and the Minimum Standards. Approval by the Board of Trustees gives the local bar programs jurisdiction to arbitrate fee disputes submitted under the auspices of the Mandatory Fee Arbitration Program ("MFA") (Minimum Standards, para. 1) and provides fee arbitration program staff, directors and volunteer arbitrators the same immunity which attaches in judicial proceedings (Bus. & Prof. §6200(f)).

DISCUSSION

BASF conducts fee arbitrations pursuant to rules authorized by the Bus. & Prof. Code 6200 eq. seq. and the State Bar of California. BASF's MFA program has been in existence for over 15 years. The last revision to the rules occurred in 2011.

In December of 2014, BASF submitted proposed changes to their fee arbitration rules. In all, 57 changes were proposed by the bar association. The CMFA considered the rule changes at several of its meetings. Discussions with BASF staff and volunteers occurred over the course of the last 11 months to address concerns that the CMFA had about the proposed rule changes.

The CMFA and BASF met to address all issues that related to the rules. Nearly every issue that was a concern of the CMFA about the proposed rules was addressed by BASF before they were considered by the CMFA for approval. At its October 2015 meeting, the CMFA voted to approve the proposed rule changes reflected in Attachment A. The CMFA's vote authorized staff to bring the attached rules reflecting the proposed rule changes to the Board of Trustees for final adoption.¹

A copy of the updated rules have been attached to this agenda item as Attachment A. The CMFA has reviewed the proposed rule changes and finds them to be in compliance with B&P 6200 eq. seq. and the Minimum Standards and Guidelines for the Operation of Mandatory Fee Arbitration Programs.

RECOMMENDATION

It is recommended that RAD approved the modifications to the Bar Association of San Francisco's Rules of Procedure For Fee Arbitrations in the form attached hereto as Attachment A.

FISCAL/PERSONNEL IMPACT

None.

RULE AMENDMENTS

None.

¹ During discussion of the proposed revised BASF rules, one CMFA member expressed concern that several BASF revised rules permit fees to be charged for items other than an initial filing fee, i.e. requests for continuances, abatements and late filings. The enabling statute, Business and Professions Code section 6200(a), provides that the fee arbitration rules may include provision for a "filing fee" and does not limit such fees to an "initial" filing fee. After the CMFA voted to approve the proposed rule changes, a resolution was passed to bring the member's concern about these additional charges to the attention of the Board of Trustees. It has been determined that these additional charges fall within the scope of the enabling statute.

BOARD BOOK IMPACT

None.

BOARD COMMITTEE RECOMMENDATIONS

Should the Regulation, Admissions and Discipline Oversight agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Regulation and Discipline Committee approves the proposed amendments to the Bar Association of San Francisco Rules for Fee Arbitrations in the form attached hereto as Attachment A as being in compliance with the Business and Professions Code section 6200-6206 and the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs.

ATTACHMENT(S) LIST

- A.** Modification to the Bar Association of San Francisco's Rules of Procedure for Fee Arbitrations