

# AGENDA ITEM

**DATE:** February 17, 2012

**TO:** Members, Regulation, Admissions and Discipline Oversight

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

**SUBJECT:** Proposed Modifications to Santa Barbara County Bar Association Rules for Fee Arbitrations

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## EXECUTIVE SUMMARY

This agenda item is before your Committee to approve the proposed rule amendments to the Santa Barbara County Bar Association Rules for Fee Arbitrations, as set forth in Attachment A.

The proposal 1) clarifies the program's jurisdiction; 2) updates the rule regarding a client's participation when a 3<sup>rd</sup> party payor requests arbitration; 3) excludes attorney-attorney fee disputes; and 4) updates the filing fee structure.

The State Bar's Committee on Mandatory Fee Arbitration ("CMFA") has reviewed all of the proposed changes and has determined that 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. Additionally, the proposed rule changes generally track the State Bar of California Model Rules of Procedure for Fee Arbitrations ("Model Rules"). The Model Rules were approved by the State Bar Board of Trustees and serve as a template to local bar programs in the formulation of their rules.

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).

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## 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 Governors gives the local bar programs jurisdiction to arbitration fee disputes submitted under the auspices of the Mandatory

Fee Arbitration Program (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)).

Santa Barbara's rules were last approved in July 2007 by this committee. In September 2011, Santa Barbara submitted the proposed updates as outlined in this document and attached hereto as Attachment A.

## **DISCUSSION**

The following rule changes were proposed by the Santa Barbara County Bar Association:

### **1) Proposed Revision to Rule 11 (“Jurisdiction of the Program”)**

The proposal clarifies jurisdiction when multiple attorneys handle a matter that is the subject of the fee dispute. While this proposal varies slight from the Model Rules, the CMFA found this rule to comport with the minimum standards.

### **2) Proposed Revision to Rule 13.4 (“Request for Arbitration”)**

This rule clarifies that when arbitration is requested by third party payor, the client's signature is not required on the request for arbitration, but the client is to be notified of the arbitration. If the client does not become a party to the arbitration, it is the attorney's duty to maintain the confidences of the client, absent a waiver of non-disclosure from the client. This paragraph comports with paragraph 13 of the Minimum Standards and tracks Model Rule 14.5.

### **3) Proposed Revision to Rule 13.4 (“Request for Arbitration”)**

Another addition to this rule specifies that attorney-attorney disputes are not the subject of a Mandatory Fee Arbitration. While this is codified in Bus.& Prof. Code §6200(c), this addition of this rule simply reiterates that this program is a consumer protection program designed to address attorney-client fee disputes.

### **4) Proposed Revision to Rule 14.1 (“Filing Fee Schedule”)**

This proposal increases the filing fees. The last filing fee increase was authorized prior to 2006. The proposed fee schedule is in line with other fee arbitration programs and deemed acceptable by the CMFA.

**FISCAL / PERSONNEL IMPACT:**

None

**RULE AMENDMENTS:**

None

**BOARD BOOK IMPACT:**

None

**PROPOSED BOARD COMMITTEE RESOLUTION:**

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

**RESOLVED**, that the Regulation, Admissions and Discipline Oversight approves the proposed amendments to the Santa Barbara County Bar Association 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.