

AGENDA ITEM

DATE: February 17, 2012

TO: Members, Regulation, Admissions and Discipline Oversight

FROM: Doug Hull, Director, Mandatory Fee Arbitration Program

SUBJECT: Request for Approval of Proposed Amendments to Rules of Procedure for Fee Arbitrations by the Los Angeles County Bar Association

EXECUTIVE SUMMARY

This agenda item is before your committee to approve the proposed rule amendments to the Rules for Conduct of Mandatory Fee Arbitration of Fee Disputes for the Los Angeles County Bar Association ("LACBA"), as set forth in Attachment A.

The proposals 1) designate the role of vice-chair to the program, 2) correct some references to the Bus. & Professions code, 3) clarify the process for initiation of an arbitration proceeding 4) add language for the addition of post-award interest 5) clarify the manner in which an award and other documents are served, and 6) add rules relating to the correction of an award. Additionally, the proposal segregates LACBA's mandatory fee arbitration rules from other dispute resolution rules.

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. 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.

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 gives the local bar programs jurisdiction to arbitrate fee disputes submitted under the auspices of the Mandatory Fee Arbitration Program (Minimum Standards, para. 1) and provides the fee arbitration program staff, director and volunteers the same immunity which attaches in judicial proceedings (Bus. & Prof. §6200(f).)

LACBA's rules were last approved in July 2007 by this committee. In January 2010, LACBA submitted proposed updates to their rules as outlined in this document. In response the CMFA noted that LACBA's rules, as submitted, were entitled "Rules for Conduct of Arbitration of Fee Disputes and Other Related Matters". The proposed rules contained references to other types of dispute resolution schemes as well as mandatory fee arbitrations. The CMFA found that it was difficult to determine whether the rules, as submitted, complied with the Minimum Standards. For that reason, the CMFA undertook the task of segregating the rules relating to the mandatory fee arbitration process from the rules for "other related matters" (Attachment A). These newly segregated rules (Attachment B) were reviewed to ensure compliance with the Minimum Standards and also compared to the Model Rules.

The segregated rules were presented to LACBA for its review to ensure that the organization was comfortable with the proposal presented by the CMFA. In January 2012, LACBA approved the proposal presented by the CMFA. Later that same month, the CMFA approved these rules.

DISCUSSION:

The substance of the rule changes proposed by LACBA and approved by the CMFA are as follows:

- 1) Proposed revision to Rule 3C ("Organization and Administration")**
This rule modification designates the role of the program vice-chair. The Minimum Standards are silent on a local bar's organizational structure. The CMFA determined that this organizational rule was acceptable and recommends approval.
- 2) Proposed Revision to Rule 6(a) (i) and (ii) ("Limits on Arbitration")**
This proposed revision corrects the references to the applicable Business & Professions Code sections. This section outlines the jurisdiction of the mandatory fee arbitration process and comports with the language in the Business and Professions Code. The CMFA recommends approval of this modification.

3) Proposed Revision to Rule 12 (“Initiation of Mandatory Arbitration Proceedings”)

This proposed modification reorganizes the language regarding service of the initiating document by deleting the rule regarding service of documents, moving it to Rule 48, as noted below.

4) Proposed Revision to Rule 36 (“Form and Contents of Award”)

The modification adds language to the form and content of the award. The modification requires the arbitrator to make a determination of whether the prevailing party should be awarded post-award interest. This proposal comports with Minimum Standard 16(c) and the CMFA recommends approval.

5) Proposed Revision to Rule 37 (“Service of Award to Parties”) and Proposed Revision to Rule 48 (“Service”)

These revisions clarify that service shall be performed in accordance with CCP 1013(a). The modification also states that the attorney involved in the arbitration will be served at the latest address shown on the official membership records of the State Bar. These modifications comport with Model Rules 14.2 and 14.3 and the CMFA recommends approval.

6) Proposed revision to Rule 38 (“Correction of Award”)

This proposed update addresses the grounds for which an award may be corrected: evident miscalculation; mistake in the description of a person, thing or property; the award is imperfect in a matter of form not affecting the merits. This rule also requires that the request for correction must be in writing and that the request must be made within 30 days after the service of the award. These rules mirror Model Rules 40.1 through 40.3 and the CMFA recommends approval.

FISCAL / PERSONNEL IMPACT:

None

RULE AMENDMENTS:

None

BOARD BOOK IMPACT:

None

PROPOSED BOARD COMMITTEE RESOLUTION:

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

RESOLVED, that the Regulation, Admissions and Discipline Oversight Committee approves the proposed amendments to the Los Angeles County Bar Association Rules of Conduct of Mandatory Arbitration of Fee Disputes 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.