

AGENDA ITEM

MAY

DATE: April 23, 2012

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 Voluntary Fee Mediation Rules of Procedure of the Sacramento County Bar Association

EXECUTIVE SUMMARY

The Sacramento County Bar Association wishes to institute a new fee mediation program as a companion to its current fee arbitration program. Much like fee arbitrations, this program requires the approval of rules of procedure to ensure a fair and impartial process. This agenda item is before your Committee to approve the proposed Voluntary Fee Mediation Rules of Procedure of the Sacramento County Bar Association in the form attached hereto as Attachment A.

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 and fee mediation programs. The programs' local rules of procedure must comply with Business and Professions Code sections 6200-6206 and the State Bar's Minimum Standards for the Operation of Mandatory Fee Arbitration Programs ("Minimum Standards.") (Attachment B). While the title of the Minimum Standards suggests that the standards only apply to arbitrations, there is a section outlining the minimum standards for fee mediations. The standards for fee mediation incorporate the standards for arbitration programs.

Approval by the Board of Governors, or its designee (RAD), of the rules of procedure promulgated by the local bars provides the local bar programs jurisdiction to arbitrate and mediate fee disputes submitted under the auspices of the State Bar's Mandatory Fee Arbitration Program (Minimum Standards for the Operation of Mandatory Fee Arbitration Programs, paragraph 1 and Minimum Standards for Mediation).

II. DISCUSSION:

Earlier this year, the Sacramento County Bar Association ("SCBA") determined that it wished to implement a voluntary fee mediation process in addition to its Mandatory Fee Arbitration Program. Currently, there are seven local bar association fee arbitration programs that offer fee mediation in California: Contra Costa, Los Angeles, Santa Monica, Orange County, San Diego, Northern San Diego and San Francisco. Sacramento reviewed the rules of other local bar fee mediation programs and drafted rules modeled on those used by the Bar Association of San Francisco.

The proposed rules state that fee mediation is voluntary and will commence only if all parties agree. Any party may terminate the mediation at any time. If parties do not wish to mediate, the dispute can proceed to arbitration. The fee paid for initiating arbitration will include up to four hours of mediation. After four hours of mediation, the parties shall compensate the arbitrator at an agreed upon rate no higher than \$150 per hour. In order to serve as mediators, volunteers must complete a minimum of 32 hours of training. If the mediation fails, the parties can proceed to arbitration without incurring any filing fees.

At its March 2012 meeting, the CMFA reviewed the proposed rules. The committee proposed some minor modifications and found the proposal to be in compliance with the Minimum Standards and Guidelines and conditioned approval of the proposed rules upon SCBA's acceptance of the modifications. SCBA agreed to those changes and requests approval of the proposed rules of procedure by RAD (Attachment A).

III. FISCAL AND PERSONNEL IMPACT:

None.

IV. BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT:

None.

V. PROPOSED RESOLUTION:

If the Regulation, Admissions and Discipline Oversight Committee agrees with the recommendation to approve the Sacramento County Bar Association's Voluntary Fee Mediation Rules of Procedure, the following resolution would be appropriate:

RESOLVED that, the Regulation, Admissions and Discipline Oversight Committee hereby approves the Voluntary Fee Mediation Rules of Procedure proposed by the Sacramento County 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.