

# AGENDA ITEM

**DATE:** September 14, 2012

**TO:** Members, Board Committee on Operations

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

**SUBJECT:** Rules of Procedure for Fee Arbitrations for Solano & Napa County Bar Associations, Proposed Merger

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## EXECUTIVE SUMMARY

This agenda item is before your Committee to approve the proposed merging of the Solano and Napa County Bar Associations Rules of Procedure for Fee Arbitrations as set forth in Attachment A. The proposal merges the Solano and Napa County Fee Arbitration programs into a single program to be administered by the staff of the Solano County Bar Association.

The State Bar's Committee on Mandatory Fee Arbitration ("CMFA") has reviewed the proposed rules 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.

Any questions about this item should be addressed to the Director of the State Bar's Mandatory Fee Arbitration Program, 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 Trustees 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 fee arbitration program staff, directors and volunteer arbitrators the same immunity that attaches in judicial proceedings (Bus. & Prof. §6200(f)).

Both programs have previously had their rules approved by the Board of Trustees. Napa's rules were approved in March 2007 and Solano's rules were last approved in May 2010.

## **DISCUSSION**

The State Bar's Mandatory Fee Arbitration program was contacted by the Solano County Bar Association regarding a merger of the Solano County and Napa County Fee Arbitration Programs. Both counties agreed that it was in their best interest to consolidate their programs. The Napa program was staffed by volunteer attorneys, whereas the Solano County Bar Association had a full time employee that devoted a portion of their time to administering the Mandatory Fee Arbitration Program.

To achieve the goal of merging the two programs, Napa and Solano counties signed a memorandum of understanding ("MOU") whereby Solano would administer fee arbitration requests that were generated by parties in Napa County as well as requests received from parties in Solano County. For requests received from parties in Napa County, Solano will assign arbitrators from the Napa County program. Parties in Napa County won't need to travel to Solano County to have their disputes heard. A copy of the MOU is included to this agenda item as Attachment B. (The MOU also addresses lawyer referral services, which is not pertinent to the issue pending. The attached version of the MOU has been redacted to remove references to the lawyer referral service program.)

The two counties also generated a new, single set of rules for the merged program. Currently, each county has their own set of rules which are based on the State Bar's Model Rules of Procedure For Fee Arbitrations, which were originally approved by the Board of Trustees on November 17, 2006 and were most recently modified on May 11, 2012. The new set of merged rules is also based on the Model Rules. A copy of the merged rules appears as Attachment A.

A summary of the aspects of each of the individual programs and the aspects of the proposed merge program follows:

Summary of Aspect of the Napa and Solano current Fee Arbitration Programs  
and the Proposed Merged Program

**NAPA COUNTY BAR ASSOCIATION**  
**(Current)**

**Filing Jurisdiction**

*Attorney has an office in Napa County or maintained an office in Napa County at the time the services were rendered. Fee Waiver Program.*

**Filing Fee**

*\$20 plus 5% of the disputed amount up to a maximum fee of \$3,500*

**Panel Size**

*1 for disputes of \$10,000 or less*

*3 for disputes over \$10,000*

**SOLANO COUNTY BAR ASSOCIATION**  
**(Current)**

**Filing Jurisdiction**

*A substantial portion of the legal services were performed in the county or, at least one of the attorneys involved has an office in the county or maintained an office there at the time of service. Disputed amount must be \$300 or more. Fee Waiver Program.*

**Filing Fee**

*5% of amount in dispute \$50 minimum, \$500 maximum-*

**Panel Size**

*1 for \$10,000 or less*

*3 for over \$10,000*

**PROPOSED SOLANO/NAPA COUNTY BAR ASSOCIATION**

**Filing Jurisdiction**

*Substantial portion of the legal services was performed in the county where the Program is located, or at least one of the attorneys involved in the dispute has an office in Napa or Solano County or maintained an office in Napa or Solano County at the times the services were rendered.*

**Filing Fee**

*The filing fee is 5% of the amount in dispute, but in no case less than \$50, nor more than \$500.00.*

**Panel Size**

*1 for \$10,000 or less*

*3 for more than \$10,000*

At its meeting on July 13, 2012, the CMFA reviewed the request from Solano and Napa Counties. The committee found the proposed new rules to be in compliance with the Minimum Standards, as approved by the Bar of Trustees. The CMFA recommends adoption of these rules by the State Bar Board of Trustees.

**FISCAL / PERSONNEL IMPACT:**

None

**RULE AMENDMENTS:**

None

**BOARD BOOK IMPACT:**

None

**PROPOSED BOARD COMMITTEE RESOLUTION:**

Should the Board Committee on Operations agree with the above recommendation, the following resolution would be appropriate:

**RESOLVED**, that the Board Committee on Operations approves the proposed merger of the Rules of Procedure for Fee Arbitrations for the Solano and Napa County Bar Associations 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.