

# AGENDA ITEM

**DATE:** April 19, 2013

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

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

**SUBJECT:** Proposed Modifications to San Mateo County Bar Association Rules of Procedure for Fee Arbitrations

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## EXECUTIVE SUMMARY

This agenda item is before your Committee to approve the proposed rule amendments to the San Mateo County Bar Association ("SMCBA") Rules of Procedure For Fee Arbitrations, as set forth in Attachment A.

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

Any questions about this item should be directed to Director Douglass 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 which attaches in judicial proceedings (Bus. & Prof. §6200(f)).

SMCBA's rules were last approved in March 2008 by the Board. Early in 2012, the SMCBA submitted the proposed updates. The CMFA worked with the SMCBA throughout 2012 to ensure that all requested changes complied with the Minimum Standards. The document attached to this agenda item is the culmination of joint work

between the CMFA and the SMCBA. New language is underlined and language to be deleted is stricken.

## ISSUE

In early 2012, the SMCBA proposed modifications to their Rules of Procedure for handling fee arbitrations. The CMFA met with the SMCBA throughout 2012 to develop language, which comports with the Minimum Standards, to implement the changes desired by the SMCBA. The final version, attached here at Attachment A, was approved by the CMFA at their March 2013 meeting. A summary of the approved rule changes is provided below:

<b>Rule Affected</b>	<b>Modification</b>	<b>CMFA Comments</b>
18.1 & 18.2	These new rules were added to clarify the procedure regarding replies to requests for arbitration.	The proposed change falls within the Minimum Standards
21.1	Increases the threshold for 3-member panels from \$10,000 to \$15,000.	The proposed change falls within the Minimum Standards and is the same as the State Bar threshold
27.4	Clarifies that the request for waiver of appearance or designation of representation shall be submitted 10 business days prior to the hearing	The proposed change falls within the Minimum Standards
27.5	This is a new rule that clarifies that any party may request a waiver and outlines the criteria used to determine whether the request will be granted or not.	The proposed change falls within the Minimum Standards
30.0	Updates the subpoena rule to comport with the State Bar Model Rules.	The proposed change falls within the Minimum Standards
31.3	Clarifies the continuance policy	The proposed change falls within the Minimum Standards
34.0	Clarifies that evidence subject to statutory privilege may be excluded from admission.	Change was proposed by the CMFA. The proposed change falls within the Minimum Standards

35.1 and 35.2*	Clarifies the time frame and format for exchange of documents prior to hearing.	Original submission was modified with committee's input. The proposed change falls within the Minimum Standards
41.2	Clarifies the process for requesting correction or amendment of an award.	Original submission was modified with committee's input. The proposed change falls within the Minimum Standards
43.0	Clarifies the retention policy of the program regarding fee arbitration files.	The proposed change falls within the Minimum Standards

\*subsequent rules were re-numbered

#### **FISCAL / PERSONNEL IMPACT:**

None

#### **RULE AMENDMENTS:**

None

#### **BOARD BOOK IMPACT:**

None

#### **RECOMMENDATION**

The CMFA recommends that RAD approved the modifications to the Rules of Procedure For Fee Arbitrations by the San Mateo County Bar Association.

#### **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 Committee approves the proposed amendments to the San Mateo County Bar Association Rules of Procedure 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.