

AGENDA ITEM

DATE: July 5, 2013

TO: Members, Regulation, Admissions and Discipline Oversight

FROM: Douglass Hull, Director Mandatory Fee Arbitration

SUBJECT: Proposed Modifications to Monterey County Bar Association Rules of Procedure for Fee Arbitrations

EXECUTIVE SUMMARY

This agenda item is before your Committee to approve the proposed rule amendments to the Monterey County Bar Association ("MCBA") 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 Douglass 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 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)).

ISSUE

In early 2013, the Monterey County Bar Association (MCBA) proposed modifications to their Rules of Procedure for handling fee arbitrations. The proposed rule changes involve modifications to the filing fee structure of the program. Depending on the amount in dispute, these changes could increase the filing fee charged to the requesting party. Since (1) the increase is in line with amounts charged by other programs and (2) the MCBA offers a fee waiver/reduction program, the committee viewed this increase as an acceptable modification to the rules. The CMFA reviewed the proposed changes to the fee structure and found them to be in line with fees charged by other programs. The final version, attached here at Attachment A, was approved by the CMFA at their May 2013 meeting.

DISCUSSION

The MCBA proposed the following modification to their rules of procedure.

15.1 Filing Fee Schedule

The filing fee is ~~[Deleted language] 100 for disputes up to \$ 7,499.
\$ 250 for disputes up to \$ 14,999.
\$ 500 for disputes up to \$ 24,999 or
\$ 1,000 for disputes of \$25,000 or more. [End of deleted language]~~

[Added language] \$100 for disputes less than \$ 5,000
\$250 for disputes of \$5,000 or more but less than \$10,000
\$500 for disputes of \$10,000 or more but less than \$15,000
\$1,000 for disputes of \$15,000 or more but less than \$25,000
5% of the amount in dispute for amounts of \$25,000 or more, with
a maximum fee of \$7,500 [End of added language]

This proposal only modifies the filing fee structure and does not affect the filing fee for amounts in dispute under \$5,000. For those amounts in dispute affected by the filing fee, under no circumstances does the filing fee exceed 5% of the amount in dispute, which is the amount charged by the State Bar's program.

The MCBA has redesigned their fee structure in an effort to keep the fees for single-arbitrator matters as low as possible. At the higher levels, the fee has been increased to better encourage the participants to value the arbitration process in scale with the amount at stake. The rationale behind the increase at \$25,000 is to account for the increase in costs and complexity in handling three-member arbitration panels in such a small county. As a small local bar, MCBA is glad to offer mandatory fee arbitration. The bar association has a small loyal pool of quality arbitrators who give generously of their time. However, the MCBA has also experienced staff expending exponentially more time in the setup, coordination, and arbitrator support for arbitrations over \$25,000

(which require three-member arbitration panels) than is needed for arbitrations under that threshold.

As an illustration of the effect this proposal will have on the filing fees, attachment B has been prepared. This attachment calculates the filing fees for varying amounts in dispute based on the current structure and compares it to the fee that would be charged for that same amount in dispute using the proposed structure. This was developed to help illustrate the impact this modification would have on the parties involved in fee arbitrations.

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 Monterey 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 Monterey 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.