

AGENDA ITEM

151 NOV 2015

DATE: October 26, 2015

TO: Members, Nominations and Appointments Committee
Members, Board of Trustees

FROM: Doug Hull, Mandatory Fee Arbitration

SUBJECT: Request for Modification to Board Appointments Policy

EXECUTIVE SUMMARY

Members of the State Bar's Committee on Mandatory Fee Arbitration (CMFA) are appointed by the State Bar Board of Trustees according to Board policy. The policy currently states that CMFA members are to be appointed to 3-year terms, except to permit service as a chair, vice-chair or chair-elect in a fourth year, or chair in a fifth year.

The CMFA currently employs a system of appointing two Vice Chairs (first- and second-Vice Chairs) and a Chair. The second-Vice Chair serves in this role in a member's fourth year, and then serves as first-Vice Chair in their fifth year. After the completion of their term as first-Vice Chair, that member becomes Chair in their sixth year. This system has aided in creating a path to leadership in CMFA. Each year the CMFA seeks to appoint members to the committee using this system, but must seek exception to current Board policy. This agenda item seeks to modify the Board policy to conform to CMFA practice.

BACKGROUND

The CMFA is a Board-appointed committee designated to oversee the State Bar's Mandatory Fee Arbitration Program. The committee is made up of 12 regular members, 2 vice chairs, a chair and the Presiding Arbitrator. Each year, approximately 4 new members are appointed the CMFA.¹

Applicants to the CMFA are screened according to a variety of factors, including, but not limited to: mandatory fee arbitration experience, length of time in practice, geographic location of the applicant, the local bar program represented, education, prior experience in bar association work, background in client protections, skill set, leadership potential, public speaking skills, teaching experience, personal recommendations, and (for attorneys) track record in legal research and writing. In recommending appointments to the CMFA, the committee also considers how to best compliment the experience and background of the current members. In addition, the committee considers the continuity of the CMFA and works to ensure that a stream of qualified members are available to ascend to leadership roles.

¹ This figure varies based on resignations or other issues that impact committee membership.

Recommendations for CMFA officers are based on prior service as an officer, contributions to past CMFA projects, level of demonstrated interest in the committee work product and apparent leadership skills.

DISCUSSION

The work of the CMFA is different than some of the board-appointed committees in that it oversees a state-wide program for arbitrating fee disputes between attorneys and clients. In the course of effectuating its responsibilities, the CMFA: 1) presents multiple fee arbitrator trainings throughout the year, 2) provides advice to arbitrators via the published arbitration advisories, 3) reviews modifications to local bars' fee arbitration rules of procedures and 4) updates board-approved documents, (i.e., the sample fee agreement forms) in conformity with changes to authority. A comparison could be drawn between the work of this committee and the work of many of the State Bar Sections (production of MCLE trainings, publication of educational materials).

The CMFA has found that in some instances, members who would make potential leaders in the CMFA need more time than the three year cycle to become an effective leader in the committee. It can take a volunteer member a year or two to really understand the nature of the work of the committee and what is required of a leader. This proposal develops a path to leadership to help ensure that the chair of the CMFA is well-versed in all aspects of the program and can represent it well.

In order to create a path to leadership, the CMFA, over the years, has invoked the creation of two vice chairs. The second Vice Chair position is appointed to a member after their third year of service. That position is responsible for organizing the committee's educational efforts, including updates to the training materials. The first Vice Chair assists the chair with administrative matters and runs the meetings in the chair's absence.

Over the past several years, the CMFA has based its recommendations for appointment on this structure. When the recommendations for appointment are submitted, the CMFA must request an exception to the current policy (Board Book Tab 15, Article 4, Section 2, Page 15) that states:

TERMS OF OFFICE AND OATH

Section 2 Term, Maximum.

The term of office for all members of standing, special and section executive committees shall be three years; said terms to be staggered. Members serve no more than three years, except to permit service as Chair, Vice-Chair or Chair-Elect in a fourth year, or Chair in a fifth year.

The CMFA wishes to amend the current policy in the following paragraph that states the exceptions. The new proposed language is underlined:

The exceptions to this policy are section executive and Mandatory Fee Arbitration committee members who serve as an officer in a fourth year, or as Chair, Vice-Chair or Chair-elect in a fifth year, or as Chair, in a sixth year; the Committee of Bar Examiners, the California Board of Legal Specialization and its Advisory Commissions, the LAP Oversight Committee and the Committee on State Bar Approved Professional Liability Insurance, whose members serve four-year terms, and the Continuing Education of the Bar (CEB) Governing Committee, whose members serve two-year terms, and the California Commission on Access to Justice and the Legal Services Trust Fund Commission, whose members may serve two consecutive three-year terms and whose officers may serve one or two additional one-year terms. Officers are appointed by the Board of Trustees and serve one-year terms.

This proposal would align the appointments to the CMFA with the policy that applies to the sections' Executive Committees.

FISCAL/PERSONNEL IMPACT

None.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

Tab 15, Article 4, Section 2, Page 15

BOARD COMMITTEE RECOMMENDATIONS

The Nominations and Appointments Committee recommends that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approve the proposed amendment to the Board Book's appointment policy as follows (additions underlined):

Tab 15, Article 4, Section 2, Page 15

The exceptions to this policy are section executive and Mandatory Fee Arbitration committee members who serve as an officer in a fourth year, or as Chair, Vice-Chair or Chair-elect in a fifth year, or as Chair, in a sixth year; the Committee of Bar Examiners, the California Board of Legal Specialization and its Advisory Commissions, the LAP Oversight Committee and the Committee on State Bar Approved Professional Liability Insurance, whose members serve four-year terms, and the Continuing Education of the Bar (CEB) Governing Committee, whose members serve two-year terms, and the California Commission on Access to Justice and the Legal Services Trust Fund Commission, whose members may serve two consecutive three-year terms and whose officers may serve one or two additional one-year terms. Officers are appointed by the Board of Trustees and serve one-year terms.