

AGENDA ITEM

MAY 2016

DATE: April 27, 2016

TO: Members, Regulation and Discipline Committee

FROM: Douglass Hull, Director, Mandatory Fee Arbitration

SUBJECT: Proposed Modifications to Sacramento County Bar Associations
Mandatory Fee Arbitration Rules of Procedure

EXECUTIVE SUMMARY

This agenda item is before your Committee to seek approval of the proposed rule amendments to the Sacramento County Bar Association ("SCBA") Rules For Fee Arbitrations ("rules"), as set forth in Attachment A.

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

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 ("MFA") (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)).

DISCUSSION

The SCBA conducts fee arbitrations pursuant to rules authorized by the Bus. & Prof. Code 6200 eq. seq. and the State Bar of California. SCBA's MFA program has been in existence for over 20 years. The last revision to the rules occurred in 2012 when fee mediation rules were incorporated.

SCBA seeks to have two rules modified as outlined below.

Rule 15.3 “Filing Fee Schedule”

SCBA requests to modify the filing fee schedule. No changes to the calculation of the filing fees is being requested. SCBA solely seeks to increase the minimum filing fee from \$25.00 to \$50.00 and increase the maximum filing fee from \$3,500.00 to \$5,000.00. These modifications are in line with the minimums and maximums used by almost every local bar association fee arbitration program and the State Bar’s Mandatory Fee Arbitration Program.

The text of the proposed modification is as follows:

Fees- The filing fees schedule is based on the amount in dispute and is five percent (5%) of the amount in dispute with a minimum of [begin stricken language] \$25 [end stricken language] [begin inserted language] \$50 [end inserted language] and a maximum of [begin stricken language] \$3500 [end stricken language] [begin inserted language] \$5,000. [end inserted language]

Rule 30.1 “Subpoena”

SCBA requests to modify Rule 30.1 relating to the issuance of subpoenas. Rule 30.1 currently states that the chair “may” issue subpoenas upon request and that the Committee Chair or Panel Chair “shall” issue the subpoena to the requesting party. The rule is interpreted to mean that the issuing party has discretion to issue subpoenas, but once the subpoena request is approved by the Chair, the issuing party must issue the subpoena. There is no requirement that the requesting party provide a rationale for requesting a subpoena.

The rule, in its current form, does not require the requesting party to make a showing of good cause, but simply states that the Chair may issue them and that the Chair shall provide them. There is no provision in the current rules to ensure that the subpoena in question is germane to the arbitration at hand. This proposal addresses that issue.

The changes requested comport with changes made to the State Bar Model Rules of Procedure that adopted May, 2012 by the Board of Trustees.

The text of the proposed modification is as follows:

RULE 30.0 Subpoenas.

30.1 [begin stricken language] ~~The Committee Chair may issue subpoenas and/or subpoenas duces tecum at the request of a party. The Committee Chair or Panel Chair shall provide signed, blank subpoenas to the requesting party who shall be responsible for service of the subpoenas. The party requesting subpoenas will be responsible for any witness fees and any costs of service of the subpoenas.~~ [end stricken language]

[begin inserted language] In this rule, “subpoena” includes a subpoena duces tecum. A party seeking to have a subpoena issued shall submit a completed but unsigned Judicial Council subpoena form to the Committee Chair, or Panel Chair

if one has been appointed, with proof of service on all parties. Upon showing of good cause, the Committee Chair or Panel Chair may issue a subpoena requested by a party. In the event the Committee Chair or Panel Chair approves the issuance of a subpoena, the Committee Chair or Panel Chair shall sign the submitted subpoena and provide any executed subpoena to the requesting party, who shall be responsible for service of the subpoena. The party requesting a subpoena will be responsible for any witness fees and any costs of service of the subpoena. No subpoena may be served on any party or third party unless it has been approved and signed by the Committee Chair or Panel Chair pursuant to this rule. [end inserted language]

At its March 2016 meeting, the CMFA reviewed the proposed rule changes and found them to be in compliance with Bus. & Prof. 6200 *eq. seq.* and the Minimum Standards and Guidelines for the Operation of Mandatory Fee Arbitration Programs.

Business and Professions code 6200(d) authorizes the State Bar Board of Trustees, or a committee designated by the Board to approve changes to local bar rules:

(d) The board of trustees shall adopt rules to allow arbitration and mediation of attorney fee and cost disputes under this article to proceed under arbitration and mediation systems sponsored by local bar associations in this state. Rules of procedure promulgated by local bar associations are subject to review by the board *or a committee designated by the board* to ensure that they provide for a fair, impartial, and speedy hearing and award.

By resolution adopted October 1994, the then-Board of Governors delegated to this Committee the authority to determine whether local bar association programs are in compliance with the Minimum Standards.

The CMFA recommends that RAD approve the modifications to the Sacramento County Bar Association's Rules of Procedure For Fee Arbitrations in the form attached hereto as Attachment A.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK IMPACT

None

BOARD COMMITTEE RECOMMENDATIONS

It is recommended that the Regulation and Discipline Committee adopt the following resolution:

RESOLVED, that the Regulation and Discipline Committee approve hereby approves the Mandatory Fee Arbitration 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.

ATTACHMENT(S) LIST

- A. [Sacramento County Bar Association Mandatory Fee Arbitration Rules of Procedure](#)