

**COMMITTEE ON MANDATORY FEE ARBITRATION  
THE STATE BAR OF CALIFORNIA**

**MINUTES**

**Friday, May 3, 2019  
10:00 a.m. – 3:00 p.m.**

The State Bar of California  
845 South Figueroa Street  
Conference Room 2CDE, 2<sup>nd</sup> Floor  
Los Angeles, CA 90017

**I. Roll Call**

**Members Present (9):** Ken Bacon (Presiding Arbitrator), Lee Straus (Vice Chair), Anahid Agemian, George Duesdieker, Pat Maloney, Joel Mark, John McDougall, Sharron McLawyer, Roy Zukerman.

**Not Present (4):** Lorraine Walsh (Chair), Clark Stone (Vice Chair), Jobi Halper, Nick Migliaccio.

**Staff Present:** Office of Professional Conduct Attorneys Andrew Tuft and Isabel Liou.

Vice Chair Lee Straus chaired the meeting in Lorraine Walsh's absence and called the meeting to order at 10:02 a.m.

**II. Call for Public Comment**

There were no requests for public comment.

**III. Approval of Minutes of February 1, 2019 meeting**

The minutes were approved as attached.

**IV. Chair's Report**

Lee did not have anything to report.

**V. Report from Presiding Arbitrator**

Due to time constraints, Ken designated Assistant Presiding Arbitrator/Vice Chair Lee Straus to handle three Orders re Administrative Penalty on Ken's behalf. After these orders were served, all three were imposed against the respective attorneys when they each failed to communicate with the State Bar and/or pay the arbitration award. Ken also noted that Assembly Bill 692, which proposes to toll the malpractice statute of limitations during fee arbitration, was introduced by Assemblymember Brian Maienschein.

## VI. Report from State Bar Staff

### A. Office Statistics

Updated statistics were handed out and discussed.

### B. Schedule of Events

Isabel summarized the various upcoming events in the month of May, including several trainings, MFA-related items for the May Board of Trustees meeting, and two Program Administrator Roundtables in San Francisco and Los Angeles. She also noted that today would be the last meeting for both Anahid and Joel, who are both unable to attend the final CMFA meeting in June.

### C. Recent Developments

The future of MFA trainings was discussed. Andrew clarified that while the MFA electronic learning training programs are being developed, in-person training programs may continue, if requested by local bars. Once the e-learning programs are developed, live trainings would most likely be determined on an as-needed basis.

## VII. Business

### A. Discuss Public Comment Regarding Sample Fee Agreement Documents

These documents returned to the Committee following a 45-day public comment period. The Committee discussed the two public comments received regarding the sample fee agreement documents, but determined that no changes should be made to the sample fee agreement documents after considering the two public comments. These revised sample fee agreement documents will be presented to the Board of Trustees on May 16-17, 2019.

### B. Finalize Updates to Arbitration Advisories

For Arbitration Advisory 2012-03, *Handling Legal Malpractice Claims and Ethical Issues During Arbitration*, Ken and Joel added a summary of the *Sheppard Mullin* case relating to attorney's fees. The Committee discussed, edited, and approved this revised advisory.

### C. Review and Update Model Rules for Fee Arbitration and Mediation

For this item, the Committee decided to add an interest clause to page 4 of the Model Rules for Fee Mediation that mirrors post-award interest language that appears in Fee Arbitration Model Rule 39.3.

### D. Discuss Updates Regarding Issue of Arbitrator Compensation and Whether to Revise Corresponding State Bar and Model Rules

Staff shared that the Office of General Counsel reviewed the issue of arbitrator compensation and determined that it is permissible under the Business and Professions Code. Then, the Committee discussed the proposed changes to the

State Bar and Model Rule on arbitrator compensation. The phrase “equal time” was omitted due to concerns and that it could invite challenges to arbitration awards. Following discussion, the proposed language for both rules was accepted by the Committee. This item will be presented to the Board of Trustees on May 16-17, 2019, requesting public comment circulation.

E. Discuss Other MFA Program Materials Requiring Updates

This item included two documents: the *Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs*, and the *Guidelines & Minimum Qualifications of Arbitrators for the State Bar Fee Arbitration Department*. For the first document, the Committee added an interest clause to the last page. For the second document, Ken recalled that the Guidelines and Minimum Standards for Arbitrators was recently updated, and Isabel found an updated version approved by the Board of Trustees in 2017. This version was provided to all attendees as an updated version of Attachment 8 in the agenda materials.

F. Discuss New Developments in *Soni v. Simplelayers Inc., et al* Appeal

This item was discussed. Lee shared that Appellant’s reply brief will be due in early July with oral argument to follow, and a decision likely by the end of the year. Several members stated that CMFA members in the Los Angeles area should attend oral argument.

G. Review and Discuss Proposed Program Advisory XXVII

This item was discussed and approved. It will be added to the other existing Program Advisories and distributed to local bar staff at the Program Administrator Roundtables later this month.

H. Review and Update Program Handbook

All twenty-six program advisories were discussed and revised. Significant changes include deleting Advisory VII, adding a paragraph about the *Schatz* case to Advisory IV, and adding a reference to *Lee v. Hanley* to Advisory XXIV.

The meeting adjourned at 2:25 p.m.