



The State Bar *of California*

OPEN SESSION

AGENDA ITEM

54-118 JULY 2019

BOARD EXECUTIVE COMMITTEE II.C

DATE: July 11, 2019

TO: Members, Board Executive Committee
Members, Board of Trustees

FROM: Kenneth Bacon, Presiding Arbitrator
Andrew Tuft, Supervising Attorney, Office of Professional Competence
Isabel Liou, Staff Attorney, Office of Professional Competence

SUBJECT: Mandatory Fee Arbitrators – Appointment of New Fee Arbitrators

EXECUTIVE SUMMARY

The State Bar's Mandatory Fee Arbitration Program maintains a roster of volunteer fee arbitrators throughout the state to hear fee dispute matters administered by the State Bar. There are approximately 476 lawyer and non-lawyer arbitrators on the State Bar's roster. The Board of Trustees generally appoints the arbitrators to one-year terms of service, which are renewable by the Board.

Although most fee arbitration cases are conducted by approved local bar associations, the State Bar Program accepts fee arbitration cases when there is no local bar program, the local program lacks jurisdiction, or the local program cannot provide a fair hearing of the matter. The State Bar's fee arbitrators hold hearings in the county where substantial legal services were rendered. Thus, the State Bar Program must maintain a roster of qualified volunteer attorney and non-attorney (lay) fee arbitrators for possible assignment of fee arbitration matters in every county.

This agenda item requests approval of the appointment of the fee arbitrator applicants specified in Attachment A.

BACKGROUND

The State Bar's Fee Arbitration Program maintains a roster of volunteer attorney and lay arbitrators to hear attorney-client fee disputes. Although most fee arbitration cases are conducted by local bar associations with approved programs, the State Bar Mandatory Fee Arbitration Program accepts fee arbitration requests in three instances: (1) when there is no local bar program; (2) when the local program that would normally arbitrate the matter demonstrates that it has no jurisdiction or is otherwise unable to arbitrate the matter; or (3) when a party explains in a declaration why the party cannot obtain a fair hearing before the local bar association. The State Bar's fee arbitrators hold hearings in the county where substantial legal services were rendered. Therefore, the State Bar Mandatory Fee Arbitration Program must maintain a roster of qualified volunteer fee arbitrators for possible assignment of fee arbitration matters in every county throughout the state.

DISCUSSION

Attachment A contains a list of eight (8) applicants recommended by the State Bar's Presiding Arbitrator Kenneth E. Bacon and Mandatory Fee Arbitration Program staff for appointment as new fee arbitrators to the State Bar Mandatory Fee Arbitration Program for a term effective July 11, 2019 and ending December 31, 2019. Typically, arbitrator appointments are for a calendar year from January through December. However, the Program occasionally appoints new arbitrators throughout the year for terms of less than a year in order to continually bolster the roster of available arbitrators. This agenda item continues that practice and requests that the Board approve these eight arbitrator applicants for a term effective through the end of 2019. These individuals will be eligible for reappointment for the 2020 calendar year at the November 2019 Board meeting with the entire roster of State Bar arbitrators.

These applicants were reviewed to ensure that they meet the minimum qualifications for appointment to the State Bar's Fee Arbitration panel. The minimum qualifications require that attorney arbitrators must be admitted to the practice of law in California and currently be a member in good standing for a period of at least five years and have no public record of discipline; and lay arbitrators must not be admitted to practice law in any jurisdiction or have worked regularly for a public or private law office, court of law, or attended law school for any period of time.

In addition, each attorney applicant's name was submitted to the Office of Chief Trial Counsel (OCTC) to ascertain whether the attorney had any disqualifying discipline, public reportable actions, or criminal convictions. For these purposes, public reportable actions include:

- Imposition of judicial sanctions, including contempt orders and non-discovery sanctions in excess of \$1000
- Felony indictment, felony or misdemeanor charge, pleas or conviction
- Reversal of judgment in a proceeding for professional misconduct
- Filing of three or more civil suits for malpractice in 12 months
- Discipline in another jurisdiction

- Claims or actions for damages in a civil suit for professional misconduct, regardless of the outcomes (reported by professional liability insurance companies)
- Judgments, settlements, or awards in a civil suit for professional misconduct

For lay arbitrator applicants, web searches are conducted to determine whether there is any information readily available on the applicant that would suggest that appointment as a fee arbitrator would be inappropriate.

Arbitrators who have not already attended a fee arbitrator training program will be required to attend a training program before a case is assigned to them, unless they have prior fee arbitration experience through a local bar program.

The results of the OCTC search for discipline, public reportable actions, and convictions for the attorney arbitrator applicants are listed in Attachment A.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - core business operations

RECOMMENDATION

It is recommended that the Board Executive Committee and Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees appoints the applicants whose names appear on the list attached hereto as Attachment A to the State Bar Mandatory Fee Arbitration Program, each for a term commencing July 11, 2019, and expiring December 31, 2019.

ATTACHMENT(S) LIST

- A. List of Arbitrator Applicants for July 2019

Attachment A –

STATE BAR MANDATORY FEE ARBITRATION PROGRAM ARBITRATOR APPLICANTS FOR JULY 2019

All attorney arbitrators listed meet the minimum qualifications of 5 years of active membership in the State Bar and no State Bar disciplinary record.

Name	County	Bar Number	Discipline, Convictions or Reportable Actions ¹
Berger, Harvey Charles	San Diego	102973	No public discipline, no convictions, no public reportable actions. Applicant disclosed he was a criminal defendant in a 1973 possession of marijuana case.
Cohan, Katherine Rebecca	Los Angeles	269337	No public discipline, no convictions, no public reportable actions.
Frieden, Clifford Elliott	Orange	61185	No public discipline, no convictions, no public reportable actions.
Fong, Vivien Yuen Yee	Alameda	225624	No public discipline, no convictions, no public reportable actions.
Kaplan, Frank M.	Los Angeles	50859	No public discipline, no convictions, no public reportable actions.
Lloyd, Kimball	Contra Costa	N/A	Non-Attorney applicant.
Nwankwo, Emeka Udochukwu	Los Angeles	276714	No public discipline, no convictions, no public reportable actions.
Tarazizadeh, Mahshid	Los Angeles	249700	No public discipline, no convictions, no public reportable actions.

¹ Public Reportable Actions include the following reports to the State Bar:

- Imposition of judicial sanctions, including contempt orders and non-discovery sanctions in excess of \$1000
- Felony indictment, felony or misdemeanor charge, pleas or conviction
- Reversal of judgment in a proceeding for professional misconduct
- Filing of three or more civil suits for malpractice in 12 months
- Discipline in another jurisdiction
- Claims or actions for damages in a civil suit for professional misconduct, regardless of the outcomes (reported by professional liability insurance companies)
- Judgments, settlements, or awards in a civil suit for professional misconduct