



The State Bar of California

OPEN SESSION AGENDA ITEM 50-10 MAY 2022

DATE: May 19, 2022

TO: Members, Board of Trustees

FROM: Randall Difuntorum, Program Director, Office of Professional Competence
Isabel Liou, Attorney, Office of Professional Competence

SUBJECT: Appointment of New Arbitrators to Mandatory Fee Arbitration Program

EXECUTIVE SUMMARY

The State Bar's Mandatory Fee Arbitration (MFA) program maintains a roster of volunteer fee arbitrators throughout the state to hear fee dispute matters administered by the State Bar. In 2021, the State Bar filed 61 cases and local bars handled at least 529 matters¹ statewide. There are approximately 408 lawyer and nonlawyer arbitrators on the State Bar's panel. The Board of Trustees appoints the arbitrators to one-year terms of service, which are renewable by the Board.

This agenda item requests approval of the appointment of six new attorney arbitrators, most of whom have fee arbitration experience from volunteering for a local bar association and are ready to hear fee disputes for the State Bar program.

BACKGROUND

The State Bar's MFA program maintains a roster of volunteer attorney and lay arbitrators to hear attorney-client fee disputes. Although most fee arbitration cases are conducted by

¹ This number represents cases managed by local bar programs that signed a reimbursement contract with the State Bar and requested reimbursement for cases that have been assigned to an arbitrator.

approved local bar associations, the State Bar's MFA program accepts fee arbitration requests in three instances: (1) when there is no local bar program; (2) when the local program lacks jurisdiction to hear the fee dispute; or (3) when a party asserts and it is determined that the party cannot obtain a fair hearing through the local bar association. The State Bar's fee arbitrators hold hearings in the county where substantial legal services were rendered. Therefore, the program must maintain a roster of qualified volunteer fee arbitrators for possible assignment of fee arbitration matters in every county throughout the state.

The MFA program last presented nine fee arbitrator applicants to the Board for approval during its November 2021 meeting. Since then, two bar associations in the San Francisco Bay Area have either discontinued or temporarily suspended their mandatory fee arbitration program. The Bar Association of San Francisco (BASF) discontinued offering mandatory fee arbitration effective January 1, 2022, but will continue processing existing cases through June 30, 2022. BASF also encouraged its fee arbitrators to apply for appointment to the State Bar MFA program; five of the six applicants recommended for appointment in this agenda item are former BASF fee arbitrators. In addition, the San Mateo County Bar Association temporarily suspended its program in January 2022 and will reevaluate whether to resume offering fee arbitration after one year's time. In the interim, fee arbitration requests that would have been filed with one of these two local programs are now filed with the State Bar program.

DISCUSSION

APPOINTMENT OF NEW FEE ARBITRATORS

Currently, the MFA program consists of approximately 408 attorney and lay arbitrators from counties throughout the state. Attachment A is a list of six attorney applicants recommended by the State Bar program's staff and Presiding Arbitrator Clark S. Stone for appointment as new fee arbitrators to the State Bar MFA program for a term effective May 19, 2022, and ending December 31, 2022. The MFA program's entire roster of arbitrators is renewable by the Board each November for a term consisting of the next calendar year. Staff has reviewed each applicant and verified that each meets the Guidelines and Minimum Qualifications of Arbitrators for the State Bar Fee Arbitration Program.² Attorney arbitrators must be licensed attorneys in California in good standing for a period of at least five years and have no public record of discipline; lay arbitrators must not be admitted to practice law in any jurisdiction or have worked regularly for a public or private law office or court of law, or attended law school for any period of time.

In addition, the Office of Chief Trial Counsel (OCTC) has reviewed each applicant to ascertain whether they have any disqualifying public reportable actions or criminal convictions. Public reportable actions include:

- Imposition of judicial sanctions, including contempt orders and nondiscovery sanctions in excess of \$1,000;

² A copy of the Guidelines and Minimum Qualifications of Arbitrators for the State Bar Fee Arbitration Program is provided as Attachment B.

- 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); and
- Judgments, settlements, or awards in a civil suit for professional misconduct.

Following OCTC's review, staff has verified that none of the applicants listed in Attachment A have any disqualifying public reportable actions or criminal convictions.

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.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None – core business operations

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees approve the appointment of the fee arbitrator applicants whose names appear on the list attached here as Attachment A to the State Bar Mandatory Fee Arbitration program, each for a term commencing May 19, 2022, and expiring December 31, 2022.

ATTACHMENTS LIST

- A.** State Bar Mandatory Fee Arbitration Program Arbitrator Applicants Recommended for Appointment (May 2022)
- B.** Guidelines & Minimum Qualifications of Arbitrators for the State Bar Fee Arbitration Program

**STATE BAR MANDATORY FEE ARBITRATION PROGRAM
ARBITRATOR APPLICANTS RECOMMENDED FOR APPOINTMENT (MAY 2022)**

All attorney arbitrators listed are active licensees of the State Bar for at least five years with no disciplinary record and therefore meet the minimum qualifications for appointment.

Name	City	Bar Number	Discipline, Convictions, or Public Reportable Actions¹
Andelman, Ethan B.	Berkeley	209101	None
Bach, James A.	San Francisco	92087	None
Kennard, Karen L.	San Francisco	141925	None
Miller, Scott H.	San Francisco	95534	None
Murphy, William F.	San Francisco	82482	None
Weiss, David E.	San Francisco	148147	None

¹ Public reportable actions include the following reports to the State Bar:

- Imposition of judicial sanctions, including contempt orders and nondiscovery sanctions in excess of \$1,000.00.
- 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.



GUIDELINES AND MINIMUM QUALIFICATIONS OF ARBITRATORS FOR THE STATE BAR OF CALIFORNIA FEE ARBITRATION PROGRAM

*(Adopted by the State Bar Committee on Mandatory Fee Arbitration 2001;
revised May 12, 2006; revised January 12, 2007; revised May 3, 2019.)*

I. ARBITRATOR APPOINTMENTS SELECTION COMMITTEE

The Appointments Selection Committee shall consist of the Presiding Arbitrator and at least one staff member from the State Bar's Mandatory Fee Arbitration Program. Recommendations for appointments of arbitrators are submitted to the appropriate State Bar Board Committee, which in turn forwards its recommendations to the full Board of Trustees for appointment.

II. GUIDELINES FOR MINIMUM QUALIFICATIONS OF ARBITRATORS

- A. The following guidelines are intended to set forth the minimum qualifications for lawyer and nonlawyer arbitrator appointments as well as the retention of appointees on the arbitrator panel. Any information provided by the applicant on their application form will be evaluated and could be used as grounds for exclusion from appointment. An applicant's failure to show, upon request of the Appointments Selection Committee, that they affirmatively meet these minimum qualifications may result in the rejection of an applicant or removal of an arbitrator from the Fee Arbitration Program.
- B. In addition, the Appointments Selection Committee may consider, within its sole discretion, any additional factors it may deem relevant in connection with any decision to accept or exclude any applicant.

III. APPOINTMENT TO THE MANDATORY FEE ARBITRATION PANEL

A. Requirements of all State Bar Fee Arbitrators

Prior to assignment to a panel, arbitrators are required to attend at least one comprehensive training program for arbitrators on attorney fee arbitration through a local bar association or the State Bar of California.

B. Lawyer Arbitrators

To be qualified for appointment as a lawyer arbitrator, an applicant must:

- 1. be, and have been for at least five years, an active licensee in good standing with the State Bar of California; or

2. be a retired judge who is an active licensee of the State Bar of California; and
3. not have a pending professional disciplinary matter filed with the State Bar Court, any federal court or agency, or other state bar discipline authority. Conviction of a crime for any felony or misdemeanor required to be reported under Business and Professions Code section 6068(o)(5) may constitute grounds for rejection of the applicant. The imposition of any public discipline by the State Bar Court, or a federal court or agency or other state bar discipline authority authorized to impose comparable professional discipline against attorneys may also constitute grounds for rejection of an application.

C. Nonlawyer Arbitrators

To be qualified for appointment as a nonlawyer arbitrator an applicant must:

1. provide sufficient information to the Appointments Selection Committee to its satisfaction concerning their business, professional or volunteer experience, education, or other relevant qualifications to serve as an arbitrator; and
2. have never been an active or inactive licensee of the bar of any state or the District of Columbia; and
3. have never worked regularly for a public or private law office or practice, court of law or attended law school for any period of time; and
4. have never worked as a paralegal, law firm staff, or law clerk.
5. have never been convicted of a felony, or a misdemeanor involving dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or a misdemeanor of any type.

IV. ONGOING REQUIREMENTS

- A. During the term of service, all lawyer arbitrators are required to report to the Fee Arbitration Program the existence of any professional disciplinary complaint filed with the State Bar Court or imposition of public professional discipline by the State Bar of California or by any federal court or agency authorized to impose comparable professional discipline against attorneys.
- B. During the term of service, all lawyer arbitrators are required to report to the Fee Arbitration Program the existence of any criminal conviction of a felony or misdemeanor required to be reported under Business and Professions Code section 6068(o)(5).
- C. During the term of service, all non-attorney arbitrators are required to report to the Fee Arbitration Program the existence of any criminal conviction of a felony, or a

misdemeanor involving dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or a misdemeanor of any type.

- D. Once appointed, all arbitrators shall attend a comprehensive training at least once every five years.