



The State Bar of California

OPEN SESSION AGENDA ITEM 60-2 MAY 2024

DATE: May 16, 2024

TO: Members, Board of Trustees
Sitting as the Regulation and Discipline Committee

FROM: Melanie J. Lawrence, Program Director, Office of Professional Support & Client Protection
Bridget Gramme, Special Counsel, Consumer Protection, Admissions, Access & Inclusion

SUBJECT: Request for Approval of Mandatory Fee Arbitration Filing Fee Increase

EXECUTIVE SUMMARY

Pursuant to a policy adopted in 2017, the State Bar is required to assess all program fees it charges every five years. Staff began its most recent fee review update in 2022. While initially the Mandatory Fee Arbitration (MFA) program was slated to be included in that effort, due to a planned review of the structure and operations of the program, staff determined that it would be appropriate to postpone the fee assessment until the review was completed.

In its April 2023 audit of State Bar financials, the State Auditor recommended that by October 2023, the State Bar should identify any service fees that do not fully cover the costs of providing the service and should increase the fees it identifies to the amount necessary to recoup its costs, unless it determines that doing so would limit the public's access to the services.

Fulfilling that recommendation, this item seeks the Board's approval of a filing fee increase from 5 percent of the amount in dispute to 6 percent, an increase to the minimum fee, and changing the maximum fee from a flat \$5,000 to a tiered approach based on the amount in dispute. The proposed increase would generate a 32 percent increase in annual revenue—an amount sufficient to meet the operational costs that were projected in 2022 and included in the revenue forecast for the 2025 budget consistent with the State Auditor's recommendation at the time. Staff do not recommend increasing the fee to completely recover current programmatic costs, which have risen significantly in the past two years. The necessary increase would limit the public's access to the service and be contrary to the program's goals.

BACKGROUND

The MFA Program is an informal, confidential, and relatively low-cost forum for resolving fee disputes between lawyers and their clients. Some local bar associations administer their own programs; generally, the State Bar provides fee arbitration only when there is no local bar program. Currently, the State Bar provides services to 39 unserved counties. Arbitration of a fee dispute is voluntary for a client but, in most instances, mandatory for a lawyer upon client request. While MFA is ostensibly a fee-for-service program, wherein the requesting party pays a filing fee based on the amount in dispute, those fees have not been increased in some time, so the program runs at a deficit and is heavily subsidized by attorney licensing fees.

Pursuant to a policy adopted in 2017, the State Bar is required to assess all program fees it charges for services every five years. Staff began the five-year fee update process in 2022. While initially the MFA program was slated to be included in that effort, due to a planned review of the structure and operations of the program staff determined that it would be appropriate to postpone fee adjustments pending the operational assessment underway.

Over the last year, program staff and leadership, including the program's presiding and assistant presiding arbitrators, have assessed various facets of the program to identify programmatic challenges and barriers to achieving maximum reach, and to determine needs and opportunities to increase efficiencies. The review included surveys of past parties who have used the program, volunteer arbitrators, and local bar association program administrators. Also, a "mystery-shopper" effort was initiated targeting local programs after State Bar staff's own efforts to reach some local programs were repeatedly unsuccessful. The mystery shopper revealed significant differences in customer service among local programs with some never responding to inquiries for assistance. As a result, the first major overhaul of the program rules in over 10 years was completed and approved by the Board for implementation in January 2024. Other no-cost opportunities to increase communication and efficiencies were also identified.

The review also included ways to enhance the use of the program and to clearly highlight it as a more appropriate means of resolving fee disputes early rather than them taking Office of Chief Trial Counsel resources necessary to review and possibly investigate complaints that do not amount to ethical violations. To that end, the State Bar's recent proposed Recommendation for Codifying a Diversion Program submitted to the Legislature pursuant to Business and Professions Code section 6086.20(b) includes enhancing the current MFA program to include a voluntary mediation component in advance of a formal arbitration hearing. The enhancement includes increasing outreach and education regarding MFA with the goal of increasing its usage and diverting complaints, as well as introducing a first-step mediation component using an online dispute resolution platform and the addition of third-party mediators. AB 3279 currently includes funding to support this effort, which is further detailed in the State Bar's "Justification for a Fee Increase" submitted to the Legislature in April 2024.

The proposed diversion enhancement aside, the State Bar's 2025 proposed budget does account for an approximate 32 percent increase in program revenue that would meet the

originally projected \$210,000 program deficit in 2022. But given the increased labor costs that have been realized over the past two years, the annual costs of running the program, which were projected to be \$310,000 in 2022,¹ are now projected to be to \$796,500.

The MFA filing fees are set by the Board of Trustees, pursuant to Rules of the State Bar, rule 3.534(A) and are set forth in the “Schedule of Charges and Deadlines” attached as Appendix A to Rules of the State Bar. Fees are determined by the amount in dispute. Currently, the filing fee is 5 percent of the disputed amount with a minimum of \$50 and a maximum of \$5,000, regardless of the amount in dispute. Currently, an applicant disputing \$100,000 in fees will pay that same amount for the program service (\$5,000) that an applicant disputing \$500,000 in fees.

MFA revenue annually, based entirely on filing fees, is estimated at only \$100,000 for 2024, resulting in a structural deficit for the program of \$696,500. Staff estimate that it would require an 87 percent increase in revenue to completely recoup the program’s current total costs.

DISCUSSION

Using data from the 2023 applications filed for the program and the amounts in dispute for each, staff propose to (1) increase filing fees from 5 percent to 6 percent of the disputed amount; (2) increase the minimum filing fee from \$50 to \$100; and (3) introduce a new tiered approach to set the maximum filing fees as follows:

Filing Rate	6%
Filing Minimum	\$100
Filing Cap <\$100,000	\$5,000
Filing Cap <\$250,000	\$10,000
Filing Cap <\$500,000	\$15,000
Filing Cap ≥\$500,000	\$20,000

Based on actual amounts in dispute from 2023 applications, this proposal would generate approximately \$333,000 in annual revenue. For 2024 a structural deficit of approximately \$463,000 would remain.

While the proposed increase in the cap for those cases over \$100,000 is two-fold at the lowest and four-fold the amount at the highest, the majority of applications are for disputed amounts less than \$100,000. In 2023, only 20 applications exceeded \$100,000 in dispute. Of those, seven applications exceeded \$250,000 in dispute and one application exceeded \$500,000 (the actual amount exceeded \$10 million). Thus, the highest increase in cost will be more appropriately

¹ [July 21, 2022, Five-Year Fee Review, Results for Attorney Regulation & Consumer Resources and Professional Competence](#)

born by those with the highest-dollar disputes. Moreover, for applicants who cannot afford the filing fee, a fee waiver is available if they qualify.

Given the purpose of the program (a lower-cost alternative to litigation) and the fact that the majority of applications are filed by clients disputing their legal bills, staff are concerned that an increase in fees significant enough to generate an 87 percent increase in revenue would dissuade parties from using the program, and therefore do not recommend such a large increase.

FISCAL/PERSONNEL IMPACT

The proposed increase in filing fees will result in \$333,000 in revenue, an amount that has been incorporated into the 2025 budget forecast, but the program will still continue to operate at a deficit.

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None – core business operations

RECOMMENDATIONS

Should the Board of Trustees, sitting as the Regulation and Discipline Committee, concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, approves raising the application filing fees for the Mandatory Fee Arbitration program as recommended and provided in the Schedule of Charges and Deadlines, Attachment A, Title 3, Division 4, Chapter 2, Fee Arbitration.

ATTACHMENT LIST

- A.** Title 3, Division 4, Chapter 2, Fee Arbitration

ATTACHMENT A**Title 3, Division 4, Chapter 2****Fee Arbitration**

Rule	Description	Amount	Deadline
Rule 3.534(A)	Filing Fee	6% of disputed amount, with a \$100 minimum and a maximum based on the amount in dispute, as follows: <\$100,000: \$5,000 ≥\$100,000 - <\$250,000: \$10,000 ≥\$250,000 - <\$500,000: \$15,000 ≥\$500,000: \$20,000	Submit 1) with the Request for Arbitration; 2) when the State Bar accepts jurisdiction; or 3) when a fee waiver request is denied in whole or in part.