Notice of Your Rights After Fee Arbitration

(Revised October 5, 2001; rev. July 11, 2008)

The arbitrator=’s award deciding your fee dispute is enclosed. Please read the award carefully.

This notice will explain the rights you may have now that the arbitration is completed. To understand your rights, you must first determine whether the award is **binding** or **non-binding**, which should be stated in the award.

If you are not satisfied with the award, you should follow the instructions below to protect your rights to seek relief in court. If you are satisfied with the award, please see Part 1E below if your award is non-binding or Part 2C and D if your award was binding or has become binding. If you are unsure of your rights or have questions after reading this pamphlet, you should consult an attorney.

Each of the procedures described in this Notice has an important deadline. You may lose your legal rights if you miss these deadlines.

PART 1 - Rights After Non-Binding Arbitration

If the arbitration award is non-binding, you may have a right to a new trial in court. At the trial, you will have the opportunity to present evidence to a judge who will issue a new decision about the fee dispute without regard to the arbitration award. However, if you did not appear at your fee arbitration hearing, you will have to prove to the court that you had a good reason for not being there. If the court determines that your failure to appear was willful, you may not be entitled to a trial after arbitration.

The court will charge a filing fee or first appearance fee unless you are unable to pay them and request a waiver of fees and costs. Use Judicial Council Form FW-001 INFO [Information Sheet on Waiver of Court Fees and Costs, FW-001[Application for Waiver of Court Fees and Costs] and FW-003 [Order on Application for Waiver of Court Fees and Costs]. These forms are available online at www.courtinfo.ca.gov and at the court clerk=s office.

Although you are generally entitled to a trial after non-binding arbitration without explaining your reasons for doing so, you may prefer to petition to correct the award, or vacate the award and have a new arbitration with a new arbitration panel. See Part 2B below for further information on the remedies for correcting and vacating an arbitration award. Since these remedies apply only on proof of specified grounds, you may wish to preserve your right to trial in court in case the court denies these remedies. To preserve your right to a new trial, you will need to file your papers in the proper court

within 30 days after the award was mailed to you, as shown on the proof of service attached to the award. If your case is in superior court, you should consult an attorney if you wish to pursue correcting or vacating the award while preserving your right to a trial in court. If your case is in small claims court, Judicial Council Form SC-101 (described below in Part 1C) may be used.

A. HOW LONG DO I HAVE TO ACT?

If you want a trial in court, you must file your papers in court within **30 days** after the date the arbitration award was **served** on you. The **date the arbitration award was served** is printed on the Proof of Service attached to the award.

Failure to request a trial after a non-binding arbitration award within the 30-day period will change the arbitration award into a binding award.

B. HOW DO I GET A TRIAL IN COURT?

You must file **documents** in the **proper court** within the 30 day limit.

C. WHAT DOCUMENTS MUST I FILE? IN WHAT COURT MUST I FILE THEM?

That depends upon whether a lawsuit about the fees has already been filed.

(1) Yes - *lawsuit already filed.*

If a lawsuit about the fees has already been filed, then you must file a ~~A~~Rejection of Arbitration Award and Request for Trial After Attorney-Client Fee Arbitration with the same court under the same case number. The bar association does not provide this document. If the lawsuit was filed in superior court, Judicial Council form ADR-104 [Rejection of Arbitration Award and Request for Trial After Attorney-Client Fee Arbitration] may be used, but you may need a lawyer=’s help in filing and pursuing your case. If the lawsuit was filed in small claims court, you may discuss this with a Small Claims Court Advisor. The Small Claims Court has Judicial Council forms to use (forms SC-100 [see page 4-Information for the Defendant], SC-101[Attorney Fee Dispute After Arbitration] and SC-120 [Defendant=s Claim] for this purpose. These forms are available online at www.courtinfo.ca.gov and at the court clerk=s office.

(2) No - *lawsuit not yet filed.*

If no lawsuit about the fees has been filed yet, then you must file your own **lawsuit** in the **proper court.**

(a) Proper Court.

You may file in small claims court if the amount of money in controversy involves no more than $5,000. Otherwise, the superior court is the proper court.

(b) How to file a lawsuit.

A lawsuit is brought by filing papers with the court. The bar association does not have papers or forms to use. If you are filing a lawsuit in small claims court, you should file Judicial Council forms SC-100 [Plaintiff=s Claim and Order to Go to Small Claims Court] and SC-101 [Attorney Fee Dispute (After Arbitration)]. You should also file SC-104 [Proof of Service.] If you are filing a lawsuit in the superior court, you may need a lawyer=s help to file your papers. Judicial Council form ADR-104 [Rejection of Award and Request for Trial After Attorney-Client Fee Arbitration] should be filed with the superior court. Even if you are not seeking monies from the other party**,** to reject an award, you still must file a lawsuit, unless you choose to vacate the award if certain requirements are met as set forth in Part 2B below.

Judicial Council forms are available online at www.courtinfo.ca.gov and at the court clerk=’s office.

D. DO I RISK ANYTHING BY FILING FOR A TRIAL IN COURT?

Yes. After a new trial, the court may make a decision that is less favorable to you than the arbitration award. The Alosing party@ in court **may** be ordered to pay the prevailing party=’s attorney=’s fees and costs. You will be the Alosing party@ if you do no better in court than you did in the arbitration.

E. EXCEPTION TO RIGHT TO NEW TRIAL IN COURT: PRE-EXISTING PRIVATE ARBITRATION AGREEMENT

There is an exception to your right to a new trial de novo in court following non-binding mandatory fee arbitration if the attorney and client previously agreed to resolve disputes over fees and costs through private arbitration other than the mandatory fee arbitration program. If such an agreement exists, and either party acts to reject the award in court within the required 30 day time period after service of the , eitheraward, either -party is may be entitled to resolve the dispute through the agreed upon private arbitration instead of a new trial in court. Should the parties complete a subsequent arbitration, the parties will have the rights described in Part 2 of this Notice regarding rights after binding arbitration.

WHAT MUST I FILE TO REJECT THE AWARD IF THE PARTIES HAVE A PRE-EXISTING AGREEMENT TO ARBITRATE FEE DISPUTES ?

If the parties have a pre-existing written agreement to submit any fee or cost disputes to private arbitration, you may be required to accept another arbitration. If either party

~~wants another arbitration after non-binding fee arbitration, the other party may not be entitled to a trial after arbitration in court. If you want another arbitration after fee arbitration, you should file a petition to compel arbitration under CCP section 1281.2 within 30 days following service of the fee arbitration award.~~

~~E.~~ F. WHAT IF I AM SATISFIED WITH THE AWARD?

If you are satisfied with the award, wait 30 days. The non-binding award will become binding automatically if the other party does not file for a trial in court within the 30 day period after service of the award. Once the award becomes binding, see Part 2C and D to find out what to do next.

~~F~~G.~~.~~ WHAT SHOULD I DO IF THE OTHER PARTY FILES IN COURT TO REJECT THE NON-BINDING AWARD?

You must respond to the other party's request for trial after arbitration to avoid losing your right to participate in a trial about the fees, even if you are satisfied with the non-binding award. If no lawsuit was pending before arbitration, the other party has 30 days after the date the non-binding award was served to file an "action" in the court having jurisdiction over the amount of money in controversy. You will then become a defendant in the lawsuit, and a trial about the fees will take place in court. The judge will not consider the determinations of the arbitrators or the arbitration award except for limited purposes. (For example, see Paragraph G below.)

If the action is filed in small claims court and your claim against the other party involves less than $5,000 or it involves more but you are willing to give up the amount over $5,000, you may file a Defendant's Claim and may use Judicial Council form SC-120 [Defendant's Claim]. Otherwise, you should file a motion to transfer the case to the appropriate court for the full value of your claim.

If the lawsuit (action) after arbitration by the other party is filed in superior court, then you may need a lawyer's help to respond to the lawsuit.

If a lawsuit about the fees was pending in superior court before the fee arbitration, and the other party files to reject the arbitration award and requests a trial after arbitration, you must file a response within 30 days following service of the rejection of the award and request for trial after arbitration.

Failure to respond to the other party's request for trial after arbitration may result in a default judgment entered against you.

~~EXCEPTION TO RIGHT TO TRIAL IN COURT: PRE-EXISTING ARBITRATION AGREEMENT~~

~~There is an exception to your right to a trial de novo in court following non-binding arbitration if the attorney and client previously agreed to resolve disputes over fees and costs through arbitration other than the mandatory fee arbitration program. If such an agreement exists, and either party acts to reject the award in court within the required 30-day time period, either party is entitled to resolve the dispute through the agreed upon arbitration instead of a new trial in court. Should the parties complete a subsequent arbitration, the parties will have the rights described in Part 2 of this Notice regarding rights after binding arbitration.~~

~~G~~H. IS A PARTY WHO DID NOT APPEAR FOR FEE ARBITRATION ENTITLED TO A NEW ~~TRIAL~~ (TRIAL (OR ~~ANOTHER~~ ARBITRATION)~~AFTER ARBITRATION~~?

If a party willfully fails to appear at the arbitration hearing in the manner provided by the arbitration program, the court may determine that the party is not entitled to a trial after arbitration. The party who failed to appear has to prove that his or her failure to appear was not willful. In making its determination, the court may consider the findings made by the arbitrators on the subject of the party's failure to appear.
If the parties previously agreed to submit fee disputes to private arbitration other than mandatory fee arbitration, a party's willful failure to appear for the fee arbitration hearing may deprive the non-appearing party of the right to obtain ~~subsequent arbitration~~arbitration after fee arbitration.

PART 2 - Rights ~~After~~after Binding Arbitration

A. WHAT ARE MY RIGHTS IF THE ARBITRATION AWARD IS BINDING?

If the arbitration award is **binding**, ~~you must abide by it. T~~there is no ~~appeal from or~~ right to a new trial ~~after a binding award~~ in court or other arbitration. Even so, a binding award can be corrected or ~~A~~vacated~~@~~ (overturned) by a court, but only on limited grounds as set forth in Code of Civil Procedure section 1286.2 (see attached excerpts of the statute). If an award is vacated, the court may order a new arbitration with the same bar association with a new arbitration panel.

B. WHAT IF I AM DISSATISFIED WITH ~~A BINDING~~A BINDING AWARD?

A court has the power to ~~A~~vacate~~@~~ (overturn) an arbitration award, but only on very narrow grounds. The statutory grounds for vacating an award (Code of Civil Procedure section 1286.2) are limited to the following:

- The award was procured by corruption, fraud or other undue means.
- There was corruption in any of the arbitrators.
- The rights of the party were substantially prejudiced by misconduct of an arbitrator.

- The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.
- The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefore or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title.
- An arbitrator making the award either (1) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware; or (2) was subject to disqualification upon grounds specified in Section 1281.91 but failed upon receipt of timely demand to disqualify himself or herself as required by that provision.

A court can also correct obvious mistakes in the award, such as an arithmetic miscalculation or ~~error~~ evident mistake in the description of any person, thing or property referred to in the award.

If you think you are entitled to correct or vacate the arbitration award, please follow the instructions below to protect your rights.

(1) What must I do to vacate or correct a binding arbitration award?

You must file a **petition** in the **proper court**. Part 2B subsection (3) below describes this process.

(2) How long do I have to act?

(a) If you want to correct or vacate the award, you must file a petition within 100 days after the date the arbitration award was served. The date of service is on the proof of service attached to the award.

(b) However, if you wish to petition to vacate or correct the award but receive notice that the other side has filed a petition to confirm the award, **you no longer have 100 days to file your petition**. You must then respond by filing, in a timely manner, your opposition to the petition to confirm the award and your petition to vacate/correct the award.

(3) What is a petition?

A **petition** is a legal document that tells the court what you want and why you are entitled to it. The bar association **does not** provide forms for these petitions. You may need a lawyer=s help to prepare your petition. If you are filing the petition in small claims court, you should use Judicial Council form SC-101 [Attorney Fee Dispute (After Arbitration)]. If you are filing the petition in the superior court, you should use Judicial Council form ADR-103 [Petition After Attorney-Client Fee Dispute Arbitration Award].

You may need a lawyer=s help to assist you with a petition in the superior court.

(4) In what court do I file my petition?

That depends upon whether a lawsuit about the fees has already been filed.

(1) Yes *lawsuit already filed*.

If a lawsuit about the fees has already been filed, you will file your petition to vacate or correct the award with that same court under the same case number.

(2) No *lawsuit not yet filed*.

If no lawsuit about the fees has been filed, then you will file your petition with the court that has jurisdiction over the amount of the arbitration award. The small claims court is the proper court if the amount of the arbitration award is $5,000 or less otherwise, the superior court is the proper court.

(5) Do I risk anything by petitioning the court to correct or vacate the award?

Yes. If the award is vacated, after a new arbitration or court trial the award may be less favorable to you than the original arbitration award. If you lose, the court may order you to pay the prevailing party's attorney's fees and costs.

C. WHAT IF I AM SATISFIED WITH THE ARBITRATION AWARD AND AM OWED MONEY?

If the arbitration award grants you an amount for fees or costs or both, you should write the other party a letter and demand payment of the award amount. If you are not paid, and you are the **client**, you have the right to ask the State Bar of California to assist you in enforcing the award. If you want the State Bar to assist you and:

(1) 100 days have passed from service of the award and the award is binding or became binding if neither party filed for a trial within 30 days of service of a non- binding award, or

(2) the award has become a final judgment following a trial after arbitration or a petition to vacate, correct or confirm the award, and

(3) the award was served less than four years ago

You may request a form for enforcement of the award by contacting the following office:

The State Bar of California
Mandatory Fee Arbitration Program
180 Howard Street, 6th Floor
San Francisco, CA 94105
(415) 538-2020

You will be required to complete a State Bar "Client's Request for Enforcement of an Arbitration Award" form. This form is available online at www.calbar.ca.gov**.** The attorney on the other side will be given an opportunity to respond to your request and agree to a payment plan. He or she will also be able to ask for an opportunity to prove that he or she is not responsible for paying you or is financially unable to pay the award.

The State Bar Court may place the opposing attorney on involuntary inactive status until the award is paid. An attorney on inactive status is not entitled to practice law. (Business and Professions Code section 6203(d)). Any party may contact the State Bar at the address above for a copy of the rules that govern this procedure.

Any party who is owed money has the right to request court orders allowing that party to take property or money from the other party's paycheck, and/or bank accounts. To get those court orders, you must first obtain a judgment confirming the arbitration award.

(1) How do I obtain a judgment confirming the arbitration award?

To obtain a judgment confirming the arbitration award, whether it was the result of a hearing or a stipulated agreement, you must **ask (petition)** for confirmation of the award with the **proper court**.

(a) What is a petition for confirmation?

A petition for confirmation is a legal document that tells the court what you want and why you are entitled to it. The bar association **does not** have forms for these petitions. You may need a lawyer's help to prepare your petition. If you are filing in small claims court, you should use Judicial Council form SC-101 [Attorney Fee Dispute (After Arbitration)]. If you are filing in the superior court, you should use Judicial Council form ADR-103 [Petition After Attorney-Client Fee Dispute Arbitration Award].

(b) What is the proper court?

That depends on the amount you are owed. If it is $5,000 or less, the small

claims court is the proper court. Otherwise, the superior court is the proper court.

(2) How long do I have to file my petition for confirmation?

You must file your petition for confirmation within four years of the date the arbitration award is served on you. That date appears on the proof of service attached to the award.

(3) What are my rights after the arbitration award is confirmed?

When the arbitration award is confirmed, it becomes a judgment of the court. Once you have a judgment, as a judgment creditor, you have a right to "execute" the judgment. That means you may be entitled to court orders allowing you to collect your money by garnishing the other party's paycheck or bank accounts, and/or placing a lien on his or her property. The court has forms to use when you execute. The bar association has **no such forms**.

D. WHAT IF I AM SATISFIED WITH THE ARBITRATION AWARD AND I OWE MONEY?

If you owe money, pay it. If you do not pay the award, the other party has a right to obtain a judgment confirming the award and collect the judgment.

Attached are excerpts from the California Business and Professions Code and the California Code of Civil Procedure. The first excerpt, from the Business and Professions Code, is the law that governs fee arbitrations between attorneys and their clients, as well as the authority to request a trial following non-binding arbitration. The second excerpt, from the Code of Civil Procedure, sets forth the law on confirming, vacating or correcting arbitration awards.

You can find further information at your county law library or online at www.calbar.ca.gov. You can download Judicial Council forms at: http://www.courtinfo.ca.gov/forms.

WATCH THOSE DEADLINES!

The deadlines we have explained in this notice are important. You can lose certain rights if you do not act before the deadlines pass.

(Effective August 15, 2008)