

# **ARBITRATION ADVISORY**

**2005-01**

## **JURISDICTION OF THE MANDATORY FEE ARBITRATION PROGRAM TO DETERMINE THE EXISTENCE OF AN ATTORNEY-CLIENT RELATIONSHIP**

**January 21, 2005**

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### **INTRODUCTION**

This Advisory addresses the jurisdiction of the Mandatory Fee Arbitration (MFA) Program to determine the threshold jurisdictional issue of whether an attorney-client relationship exists as part of a fee arbitration hearing. It concludes that the MFA statutes do not confer jurisdiction upon the program over the threshold issue of whether such a relationship exists except in those instances where the parties stipulate to submit that specific issue to the arbitration panel. If the parties do not enter into such a stipulation, however, an arbitration award is vulnerable to being vacated by the court on the ground that the arbitrators exceeded their powers if the court determines that no attorney-client relationship existed between the parties in the underlying MFA case.

We recommend that such matters be initially referred to the MFA Program Chair to determine whether the parties will stipulate to allowing the arbitrators to determine the question, whether the program must decline the matter, or if the matter may continue with MFA arbitration with the issue of the existence of an attorney-client relationship left unresolved. If the matter does continue with MFA arbitration, we recommend that the arbitrators follow the process outlined in this Advisory.

### **DISCUSSION**

The threshold jurisdictional issue underlying all MFA cases is whether a dispute over fees and/or costs is between an attorney and a client to whom professional services have been rendered [Business & Professions Code § 6200 (a)]. In some cases a party may legitimately assert that no attorney-client relationship existed yet still submit to the MFA process. Examples include: (1) a case where an attorney is hired by only one of two partners and does work for a joint venture between the two partners and later seeks fees from the second partner, who denies

any relationship and disputes the fees, (2) a case where the client is merely shopping for an attorney and did not hire the lawyer involved and the attorney later submits a bill for the consultation, and (3) a case where several people consult an attorney and only one of them hires the lawyer to do the work. When the bill comes to the others, they may want to assert the absence of an attorney-client relationship in the MFA as a defense to the billing.

Because of recent developments in the case law, there are two basic rules to keep in mind regarding the jurisdiction of the MFA program over the threshold issue of whether or not an attorney-client relationship existed.

Rule 1: If any party claims that no attorney-client relationship existed, the MFA program is without jurisdiction to decide that issue. If the program chooses to proceed with the matter anyway, it may proceed with the arbitration process in the usual manner and issue an award concerning the fees and costs. That award is subject to a later challenge by a party in court, however, on the grounds that the arbitrators exceeded their authority because the MFA panel lacked jurisdiction to issue any award because no attorney-client relationship existed between the parties.

In *National Union Fire Insurance Company v. Stites Professional Law Corp.*, 235 Cal.App.3d 1718, 1724 (1991), an MFA panel determined that it had jurisdiction over a fee dispute between an insurance company and *Cumis* counsel (independent counsel retained by the insured party at the expense of the insurance company). The fee arbitration proceeded to a hearing even though the lawyers refused to participate. The issue of jurisdiction (i.e., whether an attorney-client relationship existed) was not raised at the fee arbitration hearing. When a trial court held a hearing to confirm the award, the trial court concluded that the fee dispute was not subject to MFA arbitration because the insurance company (as opposed to the insured) which paid the attorneys' fees was not the attorneys' client.

*Stites* recognized that one of the statutory grounds for vacating an award issued by an MFA program (or other types of arbitrations) is that "[T]he arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted" [C.C.P. § 1286.2 (a)(4) (formerly numbered as sub-section (d))]. *Stites* held that this code section means that "even if the arbitrators determined that they did have jurisdiction, that finding would not have been binding on the trial court" [235 Cal.App.3d 1718, 1724].

The bottom line is that even though a party does not raise the issue of the arbitrator's jurisdiction at the arbitration hearing, the trial court has the authority to determine whether an attorney-client relationship existed and whether the panel had jurisdiction to issue an award.

Rule 2: If the parties specifically stipulate to confer jurisdiction on the MFA program to decide whether or not an attorney-client relationship exists, then the MFA panel may consider and make findings on that issue in addition to the usual issues regarding the fee dispute raised by the parties.

In *Glassman v. McNab*, 112 Cal.App.4<sup>th</sup> 1593, 1596 (2003; review denied), an MFA arbitration award was upheld where the parties stipulated as follows:

“We agree to binding arbitration in the above-referenced fee arbitration case. We understand that the award will become final and binding immediately, and that a new trial may not be requested.

Notwithstanding the above it is understood jurisdiction and attorney-client relationship are still issues in this proceeding, and rulings thereon binding as provided by law.”

McNab petitioned the Los Angeles MFA program challenging the validity of the attorney’s fees claim. After the quoted stipulation was signed and during the MFA hearing on the merits, McNab argued to the panel that Glassman had been hired by its former joint venture partner alone and no attorney-client relationship existed between Glassman and McNab. The panel’s findings and award concluded that an attorney-client relationship did exist and that the charges requested were reasonable. The trial court subsequently confirmed the MFA award. The central issue on appeal was the arbitrators’ subject matter jurisdiction to consider the issue of the existence of an attorney-client relationship.

The court held that the MFA statutory scheme found in Business & Professions Code § 6200 *et seq.* does not confer jurisdiction over the threshold issue of the existence of an attorney-client relationship (citing *Stites*) but that the MFA arbitrators had acquired such jurisdiction by the stipulation of the parties [112 Cal.App.4<sup>th</sup> 1593, at 1599].

The *Glassman* court held that nothing in the MFA statutes bars the parties from entering into an agreement to authorize the arbitrators to determine the existence of an attorney-client relationship and reiterated the requirement of Business & Professions Code § 6203(a) that the award “shall ... include a determination of *all the questions submitted to the arbitrators*, the decision of which is *necessary* in order to determine the controversy.”... “We therefore conclude that section 6200 *et seq.* permits the parties to agree that the arbitrators may decide the existence of an attorney-client relationship” [112 Cal.App.4<sup>th</sup> 1593, at 1600-01, emphasis in original].

## CONCLUSION

If the issue of the existence of the attorney-client relationship is raised, the matter should be referred to the local Program Chair to determine if the matter should be declined or if a stipulation is appropriate.

If the matter proceeds as a fee arbitration in the absence of a stipulation to consider the issue of the existence of an attorney-client relationship, any award should specifically note the existence of a dispute as to the existence of an attorney-client relationship. To provide a jurisdictional basis for the arbitration award, the award should also note that under the facts and

circumstances of the case, the award operates on the assumption that a court would conclude that such a relationship existed. The parties can raise the lack of jurisdiction in a court petition to vacate the award. The award is subject to being vacated (but not confirmed) if the court determines that the arbitration award was improper because no attorney-client relationship existed to establish MFA jurisdiction.

Only if a stipulation confers jurisdiction on the arbitrators to decide the issue should the program make findings as to the existence or absence of the attorney-client relationship in addition to determining all the other questions submitted to the arbitrators.