

AGENDA ITEM

JULY

Revisions to Notice of
Your Rights After Fee
Arbitration form- Request
to Release for Public
Comment

DATE: June 20, 2007

TO: Members of the State Bar Board Committee on Regulation, Admissions & Discipline Oversight

FROM: Jill Sperber, Director, State Bar Office of Mandatory Fee Arbitration

SUBJECT: Proposed Revisions to the Notice of Your Rights After Fee Arbitration form- Request for Release for Public Comment

Executive Summary

Business and Professions Code section 6200, *et seq.* governs the Mandatory Fee Arbitration (MFA) Program. Mandatory Fee Arbitration programs are required by statute to deliver to the parties with any fee arbitration award a notice advising them of their rights to judicial relief following the arbitration proceeding. At its May 11, 2007 meeting, the State Bar's Committee on Mandatory Fee Arbitration (MFA Committee) agreed to recommend that the Board of Governors approve revisions to the Notice of Your Rights After Fee Arbitration form distributed by the State Bar for all MFA programs to use.

The suggested revisions would: 1) identify on the notice form the Judicial Council forms available for post-arbitration filing in court and provide a website link to access the forms; 2) explain that as an alternative to requesting a trial de novo following non-binding arbitration; a party could petition to correct or vacate the award and request a new arbitration; 3) clarifies court procedures using more consumer friendly wording and 4) improves internal cross-references and provides a website address for the State Bar's form to request assistance to enforce the award.

This matter is before you to release the proposed revisions to the Notice of Your Rights After Fee Arbitration form for public comment for a 90-day period in the form attached hereto as Attachment A.

I. BACKGROUND

Pursuant to Business and Professions Code section 6200, *et seq.*, the Board of Governors is charged with establishing, maintaining and administering a system and procedure for the arbitration of disputes concerning fees, costs, or both, charged by attorneys for their professional services. Business and Professions Code section 6204.5 requires the State Bar or the local bar association program to deliver to the parties a notice advising them of their rights to judicial relief after the arbitration proceeding. The State Bar's Model Rules of Procedure for Fee Arbitrations are approved by the Board. Model Rule Rule 39.9 provides for program service of the Notice with the award, and that the Notice form be approved by the Board of Governors as follows.

39.9 The panel shall forward the original of the signed award to the Program., which shall serve a copy of the award by mail on each party together with a Notice of Rights After Arbitration form approved by the State Bar Board of Governors. No award is final or is to be issued until approved for procedural compliance and as to the form of the award by the Committee Chair or such person as the Chair may designate for this purpose. After approval of the award as to the procedural compliance and approval as to the form of the award, the Program shall serve a copy of the award by mail on each party together with a Notice of Rights After Arbitration form approved by the State Bar Board of Governors. Any party who has submitted exhibits or documents to the panel shall, upon service of the award, make arrangements to retrieve them.

II. PROPOSED REVISIONS TO THE NOTICE OF YOUR RIGHTS AFTER ARBITRATION FORM

Starting in Board Year 2005-2006, the MFA Committee began to comprehensively study ways to enhance consumer education about the MFA program. As a result, the MFA Committee developed Model Rules of Procedure for Fee Arbitrations ("Model Rules") to achieve greater consistency among local bar rules and to update local rules that comply with the applicable statutes and developments in the law. The Board approved the Model Rules in November 2006. More recently, the Board approved revisions recommended by the MFA Committee to improve the Notice of Client's Right to Arbitration form that must be delivered to the client by the attorney before an action or other proceeding to collect unpaid fees is filed.

During this period of review, the MFA Committee also observed that the required Notice of Your Rights After Fee Arbitration form is, generally, the first opportunity most fee arbitration parties have to learn about their various options for judicial relief or confirmation of award following mandatory fee arbitration. In response to suggestions

from several clients and after working with the current Notice form for a number of years, the MFA Committee concluded that the current Notice form could be improved upon to better educate clients about the post-arbitration judicial process especially since many clients in fee arbitration participate in pro per.

Specifically, the MFA Committee believes that the Notice form should identify the various Judicial Council forms available specifically for post-fee arbitration judicial relief. Also, the current Notice form's statement regarding one's options following non-binding arbitration inadequately failed to advise about the right to petition to correct or vacate a non-binding award. Further, since providing the website addresses to access Judicial Council and State Bar forms would be helpful to clients, those have been added. Accordingly, the MFA Committee agreed to recommend revisions to the Notice of Your Rights After Fee Arbitration form in the form attached hereto as Attachment A.

The overall purpose of the revisions, generally, is to accomplish the following:

- 1) identify the various Judicial Council forms and their availability on the internet;
- 2) describe all the options that parties have following non-binding mandatory fee arbitration, including the right to petition to correct or vacate the award;
- 3) clarify that if a petition to vacate an award is granted, the court may order a new arbitration with the same bar program with a new arbitration panel;
- 4) provide website addresses for downloading the Judicial Council and State Bar enforcement of award forms.

III. FISCAL/PERSONNEL IMPACT

None.

IV. IMPACT ON BOARD BOOK/ADMINISTRATIVE MANUAL

None.

VI. PROPOSED RESOLUTION

If you agree that the proposed further revisions to the Notice of Client's Right to Arbitration form set forth in Attachment A should be released for a 90 public comment period, your adoption of the following resolutions would be appropriate:

"RESOLVED, that the Board Committee on Regulation, Admissions and Discipline Oversight hereby authorizes the release of the proposed revisions to the Notice of Your Rights After Arbitration in the form attached hereto as Attachment A, for a public comment period of 90 days; and

FURTHER RESOLVED, that authorization by the Board Committee on Regulation, Admissions and Discipline Oversight for publication for public

comment is not, and shall not be construed as a recommendation or approval by the board committee or the Board of Governors of the materials published.”