

JULY 54-121

Request for Approval of
Revisions to Notice of
Your Rights After Fee
Arbitration form- Return
from Public Comment

DATE: June 10, 2008

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

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 Approval Following Additional Public Comment

Executive Summary

Mandatory Fee Arbitration (MFA) 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 arbitration. At its July 19, 2007 meeting, the RAD Committee agreed to authorize release for a 90-day public comment period various revisions to the Notice of Your Rights After Fee Arbitration form proposed by the State Bar's MFA Committee.

The revisions would accomplish the following: 1) identify on the form the specific Judicial Council forms available for post-arbitration litigation 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 may instead petition the court to correct or vacate the award and request a new arbitration; 3) clarify post-arbitration procedures using more consumer friendly wording and 4) improve internal cross-references including the website address for the State Bar's form for clients to request assistance with enforcement of the award.

In response to comments received, the MFA Committee recommended further revisions to the Notice form as follows: place at the beginning of the form a warning about the importance of deadlines, explain that a party may become a defendant in a post-arbitration civil action, and provide information regarding entitlement to a trial following non-binding arbitration when a party failed to appear for arbitration. The additional proposed revisions to the Notice form, presented to the RAD Committee at its March 6, 2008 meeting, were released for an additional 60-day period ending on May 9, 2008. No comments were received.

The MFA Committee seeks approval by the Board of Governors, upon recommendation by the RAD Committee, of the revisions to the Notice of Your Rights After Arbitration form as set forth in Attachment A.

I. BACKGROUND

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 6200, *et seq.*) Business and Professions Code section 6204.5 requires the State Bar or the local bar association program delegated by the State Bar to conduct arbitration, to deliver to the parties a notice advising them of their rights to judicial relief after the arbitration proceeding. The State Bar provides the Board-approved form to the local bar arbitration programs.

Starting in Board Year 2005-2006, the Mandatory Fee Arbitration (MFA) Committee began to comprehensively study ways to enhance consumer education about the MFA program. During its review, the MFA Committee observed that the required Notice of Your Rights After Fee Arbitration form is, generally, the first time most fee arbitration parties learn about their options for judicial relief following mandatory fee arbitration. In response to suggestions from some parties 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 their post-arbitration rights.

In 2007, the MFA Committee proposed revisions to the Notice form to accomplish the following:

- 1) identify the various Judicial Council forms used in post-fee arbitration litigation;
- 2) describe more thoroughly 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) explain that the court will charge a filing fee but applications for waiver of fees and costs are available; and
- 5) provide website addresses for the Judicial Council and State Bar enforcement of award forms.

At its July 17, 2007 meeting, the RAD Committee released the proposed revisions to the Notice form for a 90-public comment period, ending on October 26, 2007.

II. PROPOSED ADDITIONAL REVISIONS TO THE NOTICE FORM FOLLOWING RETURN FROM PUBLIC COMMENT

During the public comment period ending October 26, 2007, four comments were received. Two comments were from local bar program administrators who appreciated the changes. The third comment was from the MFA Committee's former Chairperson,

Attorney Gerald Knapton. Mr. Knapton suggested waiting to revise the form until the California Supreme Court decides *Schatz v Allen Matkins* (S150371), a case concerning enforcement of an arbitration clause following non-binding MFA. Although the MFA Committee agrees that the opinion in *Schatz* may affect the form's discussion about rights following non-binding arbitration when there is a pre-existing arbitration clause, the MFA Committee believes that since the case has not been set for oral argument to date, the revisions should move forward subject to future amendments to the form as warranted by the *Schatz* decision.

The fourth comment was from Kathie Lustig, an Oregon resident and client in a 2006 California fee arbitration. Ms. Lustig frequently submits suggestions to the MFA Committee to improve consumer education about the Program. Her prior suggestion resulted in the proposed new language about the option to petition the court to correct or vacate a non-binding award set forth in Part 1 of the form. The portions of Ms. Lustig's latest comment relevant to the Form suggest re-ordering the options to challenge a non-binding arbitration award, "re-working" the consumer friendly wording, and providing information on recourse following an unfair hearing or procedural errors.

At its November 30, 2007 meeting, the MFA Committee considered the comments. In response to Ms. Lustig's comments, the MFA Committee suggested the following: list the statutory grounds for vacating a binding award (Part 2 para. B) and place a warning about the importance of deadlines at the beginning of the Form. At its January 25, 2007 meeting, the MFA Committee suggested two new sections to the form. The first new section explains that a party may become a defendant in a post-arbitration lawsuit (Part 1 para. F.) The second new section explains whether a party who failed to appear for non-binding arbitration is entitled to a trial de novo (Part 1 para. G.) The MFA Committee requested that these further proposed revisions to the Form be released for an additional 60-day public comment period.

At its March 6, 2008 meeting, the RAD Committee authorized the release of the additional proposed revisions to the Minimum Standards for public comment ending May 9, 2008. No comments were receiving during this period.

IV. EFFECTIVE DATE OF APPROVAL

The proposed revisions to the Notice of Your Rights After Arbitration form would become effective upon final consideration by the Board of Governors, after recommendation by the RAD Committee.

V. FISCAL/PERSONNEL IMPACT

None.

VI. IMPACT ON BOARD BOOK/ADMINISTRATIVE MANUAL

None.

VII. STATE BAR RULES IMPACT

None.

VIII. STRATEGIC IMPACT.

None.

IX. PROPOSED RESOLUTIONS

For the Regulation, Admissions & Discipline Committee:

RESOLVED, that the Board Committee on Regulation, Admissions and Discipline Oversight hereby recommends that the Board of Governors resolve to approve the revisions to the Notice of Your Rights After Arbitration form in the form attached here as Attachment A.

For the Board of Governors:

RESOLVED, that upon recommendation by the Board Committee on Regulation, Admissions and Discipline Oversight, the Board of Governors hereby approves the revisions to the Notice of Your Rights After Arbitration form in the form attached here as Attachment A.