

AGENDA ITEM

MARCH 54-123

Revisions to Notice of Client's Right to Arbitration form- Request for Approval following Return from Public Comment

DATE: February 15, 2007

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

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

SUBJECT: Proposed Revisions to the Notice of Client's Right to Arbitration form- Request for Approval Following Public Comment

Executive Summary

Business and Professions Code section 6200, *et seq.* governs the Mandatory Fee Arbitration (MFA) Program. Prior to or at the commencement of a lawsuit or other proceeding to collect fees from a client, an attorney must give the client written notice of the right to fee arbitration using the State Bar Board-approved Notice of Client's Right to Arbitration form.

At its November 2006 meeting, your committee released revisions to the Notice form for public comment upon the recommendation of the MFA Committee.

The suggested revisions would: 1) clearly identify on the notice form the name and address of the attorney, the purported amount of the fee dispute and identification of the matter giving rise to the fee dispute; 2) ensure that proper notice be given to the client using either a local bar association or the State Bar of California-approved form; 3) expressly advise the client that the lawyer could file a lawsuit if the client does not request arbitration and the claim is not otherwise resolved; and 4) clarify the circumstances when requesting arbitration with the State Bar MFA Program rather than the local bar association is appropriate.

The public comment period ended January 2, 2007. The few comments received were favorable and offered minor technical suggestions. This matter is before you to approve the proposed revisions to the Notice of Client's Right to Arbitration form in the form as set forth in 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 6201(a) requires that before or at the time of service of summons or claim in an action or other proceeding against the client for recovery of fees or costs, the attorney must provide written notice to the client. The written notice "...shall be in the form that the board of governors prescribes, and shall include a statement of the client's right to arbitration under this article." (Bus. & Prof. Code § 6201(a).)

The State Bar's Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs (Minimum Standards) provides that local bar associations and lawyer referral service rules of procedure for fee arbitration shall provide:

"2. That the attorney, prior to or at the time of filing an action against the client for the recovery of fees for professional services, serve, personally, or by first class mail, upon the client the State Bar 'Notice of Client's Right to Arbitrate' form."

(Minimum Standards, Section II, para.2.) The State Bar's Notice of Client's Right to Arbitration form is available on the State Bar's website. While some local bar Association programs provide its attorney members with the State Bar Notice of Client's Right to Arbitration form, other bar associations provide their own Notice forms, using a version that substantially complies with the State Bar form. In either event, all MFA programs rely on the State Bar's Notice form for guidance if they provide their own forms.

II. PROPOSED REVISIONS TO THE NOTICE OF CLIENT'S RIGHT TO ARBITRATION FORM

During Board Year 2005-2006, the MFA Committee studied ways to improve consumer education about the MFA program. It observed that the required Notice of Client's Right To Arbitration form is, practically speaking, a client's first opportunity to learn of his or her right to mandatory fee arbitration. Therefore, the MFA Committee believes that the current Notice form could be improved upon to better educate clients, many of whom are in pro per when they receive the Notice from the former attorney. In addition, the MFA Committee found that the current statement in the Notice form regarding when a party may file for arbitration with the State Bar Program was incomplete and inadequately failed to advise clients about their options should a local program require binding arbitration as a condition of having that matter heard. As a result, the MFA Committee agreed to recommend revisions to the Client's Notice of Right to Arbitration form in the form attached hereto as Attachment B. At its November 2006 meeting, the RAD Committee authorized release of the proposed revisions for a 45 day public comment period.

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

1. clearly identify the name of the attorney, the attorney's address and the amount in dispute;
2. state the amount of unpaid fees and./or costs and identify the matter giving rise to the unpaid amount;
3. ensure that proper notice be given using either a local bar association or the State Bar of California form;
4. expressly advise the client that the lawyer may file a lawsuit if the client does not request fee arbitration and the claim is not otherwise resolved; and
5. clarify the circumstances when requesting arbitration with the State Bar MFA Program rather than the local bar program is appropriate.

III. PUBLIC COMMENTS

The State Bar MFA office specifically invited the local bar MFA programs to submit comment in addition to the usual means of requesting public comment. The public comment period ended January 2, 2007. Three comments (all from local bar program chairpersons or administrators) are in favor of the proposed revisions to the Notice form. Two comments offered friendly minor technical improvements as reflected in the current version attached hereto as Attachment A. In addition to stating the date of approval of the revision on the form, staff will attempt to reduce the form to one page if possible. The MFA Committee also recommends modifying the new proposed text to replace the word "forego" with "give up" to make it more user friendly, as follows:

"I have the right to file a lawsuit against you if you ~~forego~~ **give up** your right to mandatory fee arbitration."

IV. FISCAL/PERSONNEL IMPACT

None.

V. IMPACT ON BOARD BOOK/ADMINISTRATIVE MANUAL

None.

VI. PROPOSED EFFECTIVE DATE OF REVISED FORM

The MFA Committee proposes that the revisions, if approved, be made effective April 1, 2007 to allow for time for the State Bar to post the revised form on its website and distribute the form to the 45 local bar MFA programs.

VII. PROPOSED RESOLUTIONS

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 approved by the State Bar's Board of Governors, your adoption of the following resolutions would be appropriate:

Resolution for the RAD Committee:

RESOLVED, that the Board Committee on Regulation, Admissions and Discipline Oversight hereby recommends that the State Bar Board of Governors approve the proposed revisions to the Notice of Client's Right to Arbitration in the form attached hereto as Attachment A.

Resolution for the Board of Governors:

RESOLVED, upon the recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, that the Board of Governors hereby approves the proposed revisions to the Notice of Client's Right to Arbitration in the form attached hereto as Attachment A, effective April 1, 2007.