

AGENDA ITEM

MARCH

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

DATE: February 9, 2010

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

This matter is before your Committee to authorize release of the proposed revisions to the Notice of Your Rights after Fee Arbitration form for public comment for a 45-day period in the form attached hereto as Attachment A.

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. The State Bar-approved Notice of Your Rights After Fee Arbitration form, is required for all MFA programs to serve with fee arbitration awards.

In response to public comment regarding other revisions to the form circulated and approved in 2009, one commentator observed that the Notice form should also advise parties of their right to apply to the arbitrator(s) to correct or amend the award, in addition to seeking court relief, consistent with a recent opinion in *Karton v. Segreto* (2009) 176 Cal. App. 4th 1. The MFA Committee agrees that the Notice form should discuss these options, including the requirement that an application for correction must be made promptly (i.e., within 10 days of service of the award.) After review at its November 20, 2009 and January 15, 2010 meetings, the MFA Committee proposed new language to incorporate these options as set forth in Attachment A.

Questions about this agenda item should be directed to Jill Sperber, MFA Director at (415) 538-2023 or jill.sperber@calbar.ca.gov.

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. Mandatory fee arbitration (MFA) is not binding unless the parties agree after the fee dispute arises to binding fee arbitration. (Bus. & Prof. Code § 6204(a).) Following non-binding fee arbitration, either party may reject the award and file an action in court for a new trial, as long as the action is filed within 30 days of service of the award. (Bus. & Prof. Code §§ 6204(b), 6204(c).)

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. This notice is generally the first time that the parties become informed in detail about their post-fee arbitration legal options. The State Bar provides to the 45 local bar programs a State Bar approved form entitled Notice of Your Rights After Fee Arbitration for this purpose. Amendments to the Notice form were last approved by the Board in November 2009.

The current Notice form in part 2 informs parties of their option to file a petition in court to correct the award on specified grounds such as arithmetic miscalculation or evident mistake as to a description in the award. The Notice does not, however, explain the right to first apply to the arbitrator for correction, as set forth in CCP section 1284. Nor does the current Notice form explain the arbitrator(s)' ability to amend the award if certain requirements are met. These rights were emphasized in a recent appellate court opinion. Although in *Karton v. Segreto* (2009) 176 Cal.App. 4th 1, the court of appeal focused on the trial court's duties when deciding a petition to correct an award, the court also confirmed the authority of arbitrator(s) to amend an award. In a footnote, the court of appeal suggested that a party seeking amendment of the award from the court must first request amendment from the arbitrator(s) prior to invoking the court's jurisdiction. (*Id.* at page 10, fn. 14.)

II. PROPOSED REVISIONS TO THE NOTICE OF YOUR RIGHTS FORM

At its November 20, 2009 meeting, the MFA Committee reviewed the suggestion from a public comment submitted in response to other revisions circulated for comment in 2009. The comment stated that the recent decision in *Karton v. Segreto*, *supra*, suggests the inclusion of a new section in the Notice of Your Rights after Arbitration form. At its January 15, 2010, the MFA Committee recommended adding new paragraph F to the Notice of Your Rights After Fee Arbitration form as set forth in Attachment A, shown there in redlining, as follows:

[new]F. DO I HAVE A RIGHT TO REQUEST THAT THE ARBITRATOR(S) CORRECT OR AMEND THE AWARD?

Once the arbitration award has been served, the arbitrator(s) may not reconsider the same or any new evidence presented after the case has been submitted for a decision. However, if you believe that the award contains a miscalculation of figures or imperfection as to form that does not affect the merits, then you may request a correction of the award. You must file a request to correct the award with the program and serve a copy to the other party within 10 days of the date of service of the award. The arbitrator(s) must either correct or deny correction of the award within 30 days of the date of service of the award.

If you believe that the arbitrator(s) failed to include a finding or issue raised in the hearing, then you may request an amendment of the award. The arbitrator(s) on their own may amend the award any time prior to judicial confirmation of the award.

Seeking an amendment or correction of the award by the arbitrator(s) is not permitted to challenge or appeal the arbitrator's findings or conclusions.

III. FISCAL/PERSONNEL IMPACT

None.

IV. IMPACT ON BOARD BOOK/ADMINISTRATIVE MANUAL

None.

V. PROPOSED RESOLUTIONS

If you agree that the proposed further revisions to the Notice of Your Rights after Arbitration form set forth in Attachment A should be released for a 45 public comment period, your adoption of the following resolutions would be appropriate:

"RESOLVED, that the Board Committee on 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 45 days; and

FURTHER RESOLVED, that authorization by the Board Committee on 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."