

AGENDA ITEM

121 JULY 2015

DATE: July 1, 2015

TO: Members, Regulation and Discipline Committee
Members, Board of Trustees

FROM: Doug Hull, Director, Mandatory Fee Arbitration

SUBJECT: Updates to Sample Fee Agreement Forms. Request for Adoption Following Public Comment

EXECUTIVE SUMMARY

The State Bar's Committee on Mandatory Fee Arbitration ("CMFA") has developed Sample Fee Agreement ("SFA") forms to aid attorneys in the development of their own agreements. The forms are posted on the State Bar's website and cover (1) litigation matters on an hourly basis, (2) non-litigation matters on an hourly basis and (3) contingency matters. The committee also developed (4) Instructions and (5) Optional Clauses and Disclosure Forms that may be useful to attorneys in their representation of clients. These forms are not binding on the State Bar of California, the Board of Trustees or any persons or tribunal charged with regulatory responsibilities or any member of the State Bar of California. The CMFA seeks Board authorization to post the updated versions on the State Bar's website.

BACKGROUND

In 1987, the State Bar Board of Governors (now Board of Trustees) approved the sample fee agreement forms. These forms were developed by the State Bar's Committee on Mandatory Fee Arbitration to provide attorneys with basic fee agreements that meet the minimum requirements as required by statute and rule. They were originally maintained as hard copy samples which were distributed to interested attorneys when requested. With the advent of the internet, these forms were made available on a 24/7 basis through the State Bar's website. Throughout the years, these forms have been updated to incorporate updates to the various sources of authority and case law. The last updated occurred in November, 2010.

In July, 2014, the CMFA requested that RAD authorize release of the updates to the SFA forms for a 45-day public comment period. The Board declined the request and returned the forms to the CMFA, due to the Board's desire to provide input to the committee prior to the release for public comment. Two Board members, Joanna Mendoza and Dan Dean, provided feedback to the CMFA.

In March, 2015, this committee authorized the SFA forms for public comment. The public comment period expired April 30, 2015. No comment was received.

In May 2015, the CMFA returned to this committee seeking final authorization to post the documents. At that meeting two Board members, Joanna Mendoza and Heather Rosing, expressed concern about certain language contained within the documents. The request for approval was declined and returned to the CMFA to consider the Board's comments.

Since the May 2015 RAD meeting, the State Bar's Presiding Arbitrator, Kenneth Bacon, met telephonically with Trustees Rosing and Mendoza to address their concerns. The attached modified documents are a direct result of that conversation.

DISCUSSION

At its May 2011 meeting, the CMFA initiated the review of the SFA forms. The intent of the review was to ensure that the forms conformed with updated statutes, rules, codes and case law. A subcommittee was assigned to review all of the SFA Forms (hourly litigation, hourly non-litigation and contingency) and the Instructions. The review of the materials resulted in extensive changes throughout the documents. A third document entitled "Other Clauses of Interest" was re-named "Optional Clauses and Disclosure Forms". The retitled "Optional Clauses and Disclosure Forms" document now includes two newly developed disclosure forms: "Joint (Multiple) Client Disclosure and Consent", and a "Third Party Payor Disclosure and Consent".

The CMFA approved the updates in May 2014. In July 2014, the updates were presented to RAD with a request for release for public comment. At that meeting, RAD declined to authorize the release for public comment and requested to provide input. Board members Joanna Mendoza and Dan Dean volunteered to provide their comments to the CMFA. Through several e-mail exchanges, phone calls and Ms. Mendoza's appearance at the October 2014 CMFA meeting, the comments were provided to the CMFA.

The documents were authorized for release for public comment in March 2015. No public comment was received and the documents were presented to this committee for final adoption in May 2015. At that meeting, two Board members expressed concern about certain language and declined the request to post the documents. Heather Rosing and Joanna Mendoza provided feedback to the CMFA. State Bar Presiding Arbitrator Kenneth Bacon of Sacramento met with Trustees Rosing and Mendoza to address their concerns. The CMFA believes that the attached version of these documents reflects the language that the Board of Trustees wishes to include.

The CMFA requests authorization to post these documents on the State Bar's website.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK IMPACT

None

BOARD COMMITTEE RECOMMENDATIONS

The Regulation and Discipline Committee recommends that the Board of Trustees approve the following resolution:

RESOLVED, that upon the recommendation of the Regulation and Discipline Committee, that the Board of Trustees approve the posting of the attached Sample Fee Agreement forms on the State Bar's website; and it is

FURTHER RESOLVED, that these forms are not binding on the State Bar of California, the Board of Trustees or any persons or tribunal charged with regulatory responsibilities or any member of the State Bar of California

ATTACHMENT(S) LIST

- A. Sample Fee Agreement Forms: Instructions, Forms, Optional Clauses and Disclosure Forms