

AGENDA ITEM

DATE: July 2, 2014

TO: Members, Regulation, Admissions and Discipline Oversight

FROM: Douglass Hull, Director, Mandatory Fee Arbitration

SUBJECT: Revisions to Sample Fee Agreement Forms. Request for Release for 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 on an hourly basis, (2) non-litigation matters on an hourly basis and (3) contingency matters. The committee also developed Instructions and Other Clauses of Interest 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 updates these forms from time to time to ensure they comport with new legislation, case law or ethical requirements. The CMFA performed a complete review of the forms and advances the attached proposed revisions, seeking RAD's authorization to release these documents for a 45-day public comment period.

BACKGROUND

In 1987, the State Bar Board of Governors (now Board of Trustees) approved the posting of sample fee agreement forms. These forms were developed by the State Bar's Committee on Mandatory Fee Arbitration to provide attorneys with a basic fee agreement that meets the minimum requirements as required by statute and rule. Throughout the years, these forms have been updated to incorporate updates to the various sources of authority and cases law. The last updated occurred in November, 2010.

ISSUE

At its May 2011 meeting, the CMFA initiated the review of the SFA forms. A subcommittee was assigned to review all of the SFA Forms (hourly litigation, hourly

non-litigation and contingency) and the Instructions and Other Clauses of Interest documents. The review of the materials resulted in extensive changes throughout the documents and the development of several new forms of interest: Joint (Multiple) Client Disclosure and Consent, and two versions of a document entitled Third Party Payor Disclosure and Consent.

DISCUSSION

At its May 2014 meeting, the committee finalized the proposed changes and authorized staff to forward the documents to this committee for release for public comment. The forms are included as Attachments to this agenda item.

SAMPLE FEE AGREEMENT FORMS

The modifications proposed to the Sample Free Agreement forms are extensive. The updated fee agreement forms are included as Attachment A1. The comparison of the revisions in legislative style are included as Attachment C1.

As an aid in the review process, the changes have been summarize in chart form as Attachment B1. The chart list each paragraph number and the modification proposed.

INSTRUCTIONS

The Instruction form has been modified to comport with the changes described in the Sample Fee Agreement forms. The updated Instruction document has been included as Attachment A2 in clean format and C2 in legislative format.

OTHER CLAUSES OF INTEREST

The document includes clauses that an attorney may want to consider incorporating into a fee agreement, depending upon their situation. The committee updated the language to all of the pre-existing clauses and added several more. The proposed language can be found at Attachment A3. The chart identifying the changes is included as Attachment B3 and the legislative version document, comparing the new version to the previous version, can be found as Attachment C3.

Staff agrees with and supports the vast majority of the changes recommended in these documents. The committee has conducted a thorough and well-reasoned review of the documents in question.

However, staff has concerns about the language in paragraph 4 of the Contingency Fee Agreement in the SFA (Attachment A1) and paragraphs 13.C ("Net Recovery Options") and 13.D. ("Gross Recovery Options") of the Other Clauses Of Interest document (Attachment A3). These paragraphs relate to the calculation of attorney's

fees in contingency matters. The proposed updates expand the calculation options that were previously presented in these forms providing that attorney's fees be calculated on an amount other than the recovery less any costs basis (net contingency).

Staff questions whether the text of these clauses, which may be legally and ethically allowed, belong in these sample forms.

The forms were created to ensure that attorneys meet the minimum requirements as set forth by statute and rule. Inclusion of these types of clauses is beyond the basic requirements as noted in footnote 1 of each SFA form. However, in order to vet the issue, staff supports the inclusion of this language in the document for release for public comment.

The proposed language of each form is attached to this item as provided below:

Attachment Number	Form	Version
A.1.	Updated Sample Fee Agreements	Clean version
A.2.	Updated Instructions	Clean version
A.3.	Update Other Clauses of Interest Other Forms of Interest	Clean version
B.1.	Sample Fee Agreements proposed modifications	Chart of modifications
B.2.	Other Clauses of Interest proposed modifications	Chart of modifications
C.1.	Sample Fee Agreements	Legislative version
C.2	Instructions	Legislative version
C.3.	Other Clauses of Interest Other Forms of Interest	Legislative version

CONCLUSION

The State Bar's Committee on Mandatory Fee Arbitration and its Director request RAD to authorize releasing these documents for public comment for a period of 45 days.

FISCAL / PERSONNEL IMPACT:

None.

RULE AMENDMENTS:

None.

BOARD BOOK IMPACT:

None.

RECOMMENDATION

The Committee and staff recommend that the attached forms be release for a period of 45 for public comment.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Regulation, Admissions and Discipline Oversight agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Regulation, Admissions and Discipline Oversight recommends that the proposed revisions to the Sample Fee Agreement forms, Instructions and Other Clauses of Interest documents be released for public comment for a period of 45 days; and it is

FURTHER RESOLVED, that this authorization for public comment is not, and shall not be construed as, a statement recommendation of approval of the proposal.