

AGENDA ITEM

122 MAY 2015

DATE: May 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 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. RAD authorized the forms for release for 45-day public comment period ending April 30, 2015. No comments were received.

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 basic fee agreements that meet 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.

In July, 2014, the CMFA requested that the RAD authorize release of the updates to the sample fee agreement 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 and that input is reflected in the attached forms.

In March, 2015, this committee authorized the attached documents for public comment. That period expired April 30, 2015. No comment has been received.

ISSUE

Whether to adopt for posting the Sample Fee Agreement Forms, Instructions and Optional Clauses and Disclosure Forms as developed by the Committee on Mandatory Fee Arbitration.

DISCUSSION

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. 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" 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 attached here reflect the input of the Board members that was adopted by the CMFA.

FISCAL / PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK IMPACT

None

RECOMMENDATION

Staff recommends that the attached Sample Fee Agreement Forms be approved for posting on the State Bar's website.

PROPOSED BOARD COMMITTEE RESOLUTION:

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

RESOLVED, that the Regulation and Discipline Committee recommends that the Board 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.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the Regulation and Discipline Committee's recommendation, the following resolutions would be in order:

RESOLVED, that upon the recommendation of the Regulation and Discipline Committee, the Board hereby approved 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.