

## INFORMATION REGARDING RIGHTS AFTER ATTORNEY-CLIENT FEE ARBITRATION

### 1. RIGHTS AFTER NONBINDING ARBITRATION

#### A. What is a nonbinding attorney-client fee arbitration award?

An award is nonbinding if (1) the parties did not agree in writing to be bound by the award after the dispute over fees or costs arose; and (2) a party who did not willfully fail to appear at the arbitration hearing rejects the award and requests a trial within 30 days after notice of a nonbinding award is mailed.

#### B. What are my rights if I am not satisfied with a nonbinding attorney-client fee arbitration award?

If the arbitration award is nonbinding, you may have a right to a trial in court. If a request for trial is granted in small claims or superior court, the normal procedures for pretrial discovery, motions, court-connected alternative dispute resolution ("ADR"), and trial in that court will apply. If you want a trial in court, you should follow the instructions in this form to protect your rights.

#### C. What are my rights if I did not appear at the attorney-client fee arbitration hearing?

If you did not appear at your fee arbitration hearing in person or by counsel, you will have to prove to the court that you had a good reason for not being there. If a court determines that your failure to appear was willful, you may not be entitled to a trial after arbitration, and the other party may be able to enforce the arbitration award.

#### D. What must I do to get a trial in court?

You must file papers in the proper court within the required time limit.

#### E. How long do I have to act?

If you want a trial in court, you must file your papers in court within 30 days after the date that the arbitration award is mailed to you. The date the arbitration award was mailed is written at the end of the notice you received.

#### F. What papers must I file? In what court must I file them?

That depends. Has a lawsuit about the fees already been filed?

##### (1) YES—lawsuit already filed

If a lawsuit about the fees has already been filed, then you must file a request for a trial in the same court where the lawsuit was filed, under the same case number of the lawsuit that is pending, after serving a copy on all parties who have appeared in the action as provided by law. If the lawsuit is in small claims court, you can use Judicial Council forms SC-100 and SC-101 to request a trial after a nonbinding attorney-client fee arbitration. If the lawsuit is in superior court, you can use form ADR-104 to request a trial after a nonbinding attorney-client fee arbitration.

##### (2) NO—lawsuit not yet filed

If no lawsuit about the fees has been filed, you must file your own lawsuit in the proper court and request a trial in that court if you do not want the award to become binding. If the arbitration was held in California, you must file the lawsuit and request for trial in the small claims court or the superior court in the county where the arbitration was held, and then serve the complaint, summons, and request for trial on all named parties as provided by law.

- If the amount in dispute is \$5,000 or less, you may file your lawsuit in small claims court. You can use Judicial Council form SC-100 to file a lawsuit in small claims court and form SC-101 to request a trial in that action.
- If the amount in dispute is more than \$5,000, you must file a complaint in the superior court to begin your lawsuit. You may be able to use Judicial Council forms PLD-C-001 through PLD-C-001(3) to file a new superior court action, but you may need a lawyer's help to prepare an appropriate complaint. You can use form ADR-104 to reject the arbitration award and request a trial at the same time you file your complaint.

#### G. What if I am satisfied with the award?

If you are satisfied with the nonbinding arbitration award, do nothing until the award becomes binding or the other party requests a trial. The award will become binding if the other party does not file papers requesting a trial in court within the 30-day limit.

## Information Regarding Rights After Attorney-Client Fee Arbitration (*continued*)

### 2. RIGHTS AFTER BINDING ARBITRATION

#### A. What is a binding attorney-client fee arbitration award?

An award is binding if either (1) the parties agreed in writing to be bound by the award after the dispute over fees or costs arose; or (2) no party rejects the award and requests a trial within 30 days after notice of a nonbinding award is mailed. (A trial after arbitration may not be granted, however, if the court determines that the party requesting the trial willfully failed to appear at the arbitration.)

#### B. What are my rights if I am not satisfied with a binding attorney-client fee arbitration award?

*A court has the power to vacate (cancel) an arbitration award, but only for the limited reasons stated in Code of Civil Procedure section 1286.2. The fact that a party disagrees with the arbitrator's award or thinks it is wrong is not a basis for vacating the award. In general, the grounds for vacating an award are:*

- (1) The award was obtained by corruption, fraud, or other unfair means.
- (2) One or more of the arbitrators was corrupt.
- (3) The misconduct of a neutral arbitrator substantially prejudiced a party's rights.
- (4) The arbitrator exceeded his or her authority and the award cannot be fairly corrected.
- (5) The arbitrator unfairly refused to postpone the hearing or to hear evidence useful to settling the dispute.
- (6) An arbitrator failed to disclose within the time for disclosure a ground for disqualification of which the arbitrator was then aware.
- (7) An arbitrator should have disqualified himself or herself after a party made a demand to do so.

*A court can also correct the following types of obvious mistakes in the award:*

- (1) The amount of the award was not calculated correctly, or a person, a thing, or property was not described correctly.
- (2) The arbitrator exceeded his or her authority,
- (3) The award is imperfect as a matter of form.

If you think you are entitled to correct or vacate the arbitration award, please follow the instructions below to protect your rights.

#### C. What must I do to vacate or correct a binding arbitration award?

You must file a petition to vacate or correct the award in the proper court within the required time limit.

#### D. How long do I have to act?

**If you want to correct or vacate the binding award, ordinarily you must file your petition within 100 days after the arbitration award was mailed to you. The date the award was mailed is at the end of the notice mailed with the award. If you receive notice from a court that the other side has filed a petition to confirm the award, however, you no longer have 100 days to file your petition. You then must respond by filing your petition to vacate or correct the award within the time stated on the notice from the court.**

#### E. What papers must I file? In what court must I file them?

That depends. Has a lawsuit about the fees already been filed?

(1) *YES—lawsuit already filed*

If a lawsuit about the fees has already been filed, you must file your petition to vacate or correct the award with the same court where the lawsuit was filed, under the same case number as the lawsuit that is pending, after serving a copy on all parties who have appeared in the action as provided by law.

(2) *NO—lawsuit not yet filed*

If no lawsuit about the fees has been filed, you must file your petition to correct or vacate the award in the proper court. If the arbitration was held in California, you must file the petition in the small claims court or the superior court in the county where the arbitration was held, and then serve the petition and a summons on all named parties as provided by law.

- If the amount in dispute is \$5,000 or less, you can file your petition in the small claims court, using Judicial Council forms SC-100 and SC-101.
- If the amount in dispute is more than \$5,000, you must file your petition in the superior court. You can use Judicial Council form ADR-103 to do this. (You do not need to file a separate complaint with form ADR-103 when you are petitioning to vacate or correct a binding arbitration award.)

## Information Regarding Rights After Attorney-Client Fee Arbitration (*continued*)

### F. What if I am satisfied with the binding arbitration award?

If the arbitration award indicates or says that you owe money and you do not intend to petition to have the award corrected or vacated (canceled), you should pay the amount that you owe. If you do not pay it, the other party has a right to get court orders allowing him or her to collect the debt by taking and selling your property and by taking money from your paycheck and bank account.

If the arbitration award says that you are owed money, you should write the other party a letter and demand payment.

If you are not paid, you can seek to enforce the arbitration award. See item 3 below.

### 3. ENFORCEMENT OF BINDING ATTORNEY-CLIENT ARBITRATION AWARDS

There are two procedures for enforcing binding attorney-client fee arbitration awards.

**A.** If you are the client, you have the right to ask the State Bar to assist you in enforcing the arbitration award if the following is true:

- (1) Your arbitration request was filed on or after January 1, 1994; and
- (2) (a) 100 days have passed from service of the award and the award is binding for either of the reasons stated in paragraph 2A above, or  
(b) The award has become a final judgment after a trial following arbitration or after a petition to vacate, correct, or confirm the award.

You can write or phone the State Bar and request the form *Request for Enforcement of an Award*.

Contact: Mandatory Fee Arbitration, 180 Howard Street, 6th Floor, San Francisco, CA 94105-1639 (telephone: 415-538-2020).

**B.** Any party who is owed money also has the right to request court orders allowing him or her to take property or money from the other party's paycheck and bank accounts. To get those court orders based on an attorney-client fee arbitration award, however, you must first make the arbitration award a judgment of the court. To do this, you must confirm the arbitration award in court.

(1) *What must I do to confirm the arbitration award?*

To confirm the arbitration award, you must file a petition to confirm award with the proper court within the required time limit.

(2) *How long do I have to act?*

You must file your petition to confirm award within four years after the date the arbitration award was mailed to you. That date appears at the end of the notice mailed with the award.

(3) *What papers must I file? In what court must I file them?*

That depends. Has a lawsuit about the fees already been filed?

(a) *YES—lawsuit already filed*

If a lawsuit about the fees has already been filed, you will file your petition with the same court where the lawsuit was filed, under the same case number as the lawsuit that is pending, after serving a copy of the petition on all parties who have appeared in the action as provided by law.

(b) *NO—lawsuit not yet filed*

If no lawsuit about the fees has been filed, then you must file your petition to confirm the award in the proper court. If the arbitration was held in California, you must file the petition in the small claims court or the superior court in the county where the arbitration was held, and then serve the petition and a summons on all named parties as provided by law.

- If the amount in dispute is \$5,000 or less, you can file your petition in the small claims court, using Judicial Council forms SC-100 and SC-101.

- If the amount in dispute is more than \$5,000, you must file your petition in the superior court. You can use Judicial Council form ADR-103 to do this. (You do not need to file a separate complaint with form ADR-103 when you are petitioning to confirm a binding arbitration award.)

(4) *What are my rights after the arbitration award is confirmed?*

When the arbitration award is confirmed, it becomes a judgment of the court. Once you have a judgment, you have a right to enforce the judgment. That means you can get court orders allowing you to collect your money. Enforcing judgments can be very technical and very complicated. The court has forms to use for this procedure.