

# NOTICE OF YOUR RIGHTS AFTER FEE ARBITRATION

(Revised October 5, 2001; rev. July 11, 2008; rev. Nov. 16, 2009; rev. May 17, 2010)

The arbitrator's award deciding your fee dispute is enclosed. Please read the award carefully.

This notice will explain the rights you may have now that the arbitration is completed. To understand your rights, you must first determine whether the award is **binding** or **non-binding**, which should be stated in the award.

If you are not satisfied with the award, you should follow the instructions below to protect your rights. If you are satisfied with the award, please see Part 1G below if your award is non-binding or Part 2C and D if your award was binding or has become binding. If you are unsure of your rights or have questions after reading this pamphlet, you should consult an attorney.

**Each of the procedures described in this Notice has an important deadline. You may lose your legal rights if you miss these deadlines.**

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## **PART 1 – RIGHTS AFTER NON-BINDING ARBITRATION**

If the arbitration award is non-binding, you may have a right to a new trial in court. At the trial, you will have the opportunity to present evidence to a judge who will issue a new decision about the fee dispute without regard to the arbitration award. However, if you did not appear at your fee arbitration hearing, you will have to prove to the court that you had a good reason for not being there. If the court determines that your failure to appear was willful, you may not be entitled to a trial after arbitration.

The court will charge a filing fee or first appearance fee unless you are unable to pay them and request a waiver of fees and costs. Use Judicial Council Form FW-001 INFO [Information Sheet on Waiver of Court Fees and Costs, FW-001 [Application for Waiver of Court Fees and Costs] and FW-003 [Order on Application for Waiver of Court Fees and Costs]. These forms are available online at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov) and at the court clerk's office.

Although you are generally entitled to a trial after non-binding arbitration without explaining your reasons for doing so, you may prefer to petition to correct the award, or vacate the award and have a new arbitration with a new arbitration panel. See Part 2B below for further information on the remedies for correcting and vacating an arbitration award. Since these remedies apply only on proof of specified grounds, you may wish to preserve your right to trial in court in case the court denies these remedies. To preserve your right to a new trial, you will need to file your papers in the proper court within 30 days after the award was mailed to you, as shown on the proof of service attached to the award. If your case is in superior court, you should consult an attorney if you wish to pursue correcting or vacating the award while preserving your right to a trial in court. If

your case is in small claims court, Judicial Council Form SC-101 (described below in Part 1C) may be used.

#### **A. 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 the arbitration award was served on you. The date the arbitration award was served is printed on the Proof of Service attached to the award.

Failure to request a trial after a non-binding arbitration award within the 30-day period will change the arbitration award into a binding award.

#### **B. HOW DO I GET A TRIAL IN COURT?**

You must file documents in the proper court within the 30 day limit.

#### **C. WHAT DOCUMENTS MUST I FILE? IN WHAT COURT MUST I FILE THEM?**

That depends upon whether a lawsuit about the fees has already been filed.

##### **(1) YES – *lawsuit already filed.***

If a lawsuit about the fees has already been filed, then you must file a Rejection of Arbitration Award and Request for Trial After Attorney-Client Fee Arbitration with the same court under the same case number. The bar association does not provide this document. If the lawsuit was filed in superior court, Judicial Council form ADR-104 [Rejection of Arbitration Award and Request for Trial After Attorney-Client Fee Arbitration] may be used, but you may need a lawyer's help in filing and pursuing your case. If the lawsuit was filed in small claims court, you may discuss this with a Small Claims Court Advisor. The Small Claims Court has Judicial Council forms to use (forms SC-100 [see page 4-Information for the Defendant], SC-101 [Attorney Fee Dispute After Arbitration] and SC-120 [Defendant's Claim] for this purpose. These forms are available online at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov) and at the court clerk's office.

##### **(2) NO – *lawsuit not yet filed.***

If no lawsuit about the fees has been filed yet, then you must file your own lawsuit in the proper court.

###### **(a) Proper Court.**

You may file in small claims court if the amount of money in controversy involves no more than \$5,000. Otherwise, the superior court is the proper court.

###### **(b) How to file a lawsuit.**

A lawsuit is brought by filing papers with the court. The bar association does not have papers or forms to use. If you are filing a lawsuit in small claims court, you should file Judicial Council forms SC-100 [Plaintiffs Claim and

Order to Go to Small Claims Court] and SC-101 [Attorney Fee Dispute (After Arbitration)]. You should also file SC-104 [Proof of Service.] If you are filing a lawsuit in the superior court, you may need a lawyer's help to file your papers. Judicial Council form ADR-104 [Rejection of Award and Request for Trial After Attorney-Client Fee Arbitration] should be filed with the superior court. Even if you are not seeking monies from the other party, to reject an award, you still must file a lawsuit, unless you choose to vacate the award if certain requirements are met as set forth in Part 2B below.

Judicial Council forms are available online at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov) and at the court clerk's office.

#### **D. DO I RISK ANYTHING BY FILING FOR A TRIAL IN COURT?**

Yes. After a new trial, the court may make a decision that is less favorable to you than the arbitration award. The losing party in court may be ordered to pay the prevailing party's attorney's fees and costs. You will be the losing party if you do no better in court than you did in the arbitration.

#### **E. EXCEPTION TO RIGHT TO NEW TRIAL IN COURT: PRE-EXISTING PRIVATE ARBITRATION AGREEMENT**

There is an exception to your right to a new trial in court following non-binding mandatory fee arbitration if the attorney and client previously agreed to resolve disputes over fees and costs through private arbitration. If such an agreement exists, and either party acts to reject the award in court within the required 30 day time period after service of the award, either party may be entitled to resolve the dispute through the agreed upon private arbitration instead of a new trial in court.

#### **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, the arbitrator(s) may correct the award only if the award contains a miscalculation of figures, or an evident mistake in the description of any person, thing or property referred to in the award or if the award is imperfect in a matter of form not affecting the merits of the controversy. You may request a correction of the award with the program as long as you file your request with the program within 10 days of the date of service of the award and serve a copy on the other party. The arbitrator(s) must 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. You must file your request promptly with the program and serve a copy on the other party. 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 is not permitted to challenge or appeal the arbitrator's findings or conclusions.

## **G. WHAT IF I AM SATISFIED WITH THE AWARD?**

If you are satisfied with the award, wait 30 days. The non-binding award will become binding automatically if the other party does not file for a trial in court within the 30 day period after service of the award. Once the award becomes binding, see Part 2C and D to find out what to do next.

## **H. WHAT SHOULD I DO IF THE OTHER PARTY FILES IN COURT TO REJECT THE NON-BINDING AWARD?**

You must respond to the other party's request for trial after arbitration to avoid losing your right to participate in a trial about the fees, even if you are satisfied with the non-binding award. If no lawsuit was pending before arbitration, the other party has 30 days after the date the non-binding award was served to file an "action" in the court having jurisdiction over the amount of money in controversy. You will then become a defendant in the lawsuit, and a trial about the fees will take place in court. The judge will not consider the determinations of the arbitrators or the arbitration award except for limited purposes. (For example, see Paragraph I below.)

If the action is filed in small claims court and your claim against the other party involves less than \$5,000 or it involves more but you are willing to give up the amount over \$5,000, you may file a Defendant's Claim and may use Judicial Council form SC-120 [Defendant's Claim]. Otherwise, you should file a motion to transfer the case to the appropriate court for the full value of your claim.

If the lawsuit (action) after arbitration by the other party is filed in superior court, then you may need a lawyer's help to respond to the lawsuit.

If a lawsuit about the fees was pending in superior court before the fee arbitration, and the other party files to reject the arbitration award and requests a trial after arbitration, you must file a response within 30 days following service of the rejection of the award and request for trial after arbitration.

Failure to respond to the other party's request for trial after arbitration may result in a default judgment entered against you.

## **I. IS A PARTY WHO DID NOT APPEAR FOR FEE ARBITRATION ENTITLED TO A NEW TRIAL (OR ARBITRATION)?**

If a party willfully fails to appear at the arbitration hearing in the manner provided by the arbitration program, the court may determine that the party is not entitled to a trial after arbitration. The party who failed to appear has to prove that his or her failure to appear was not willful. In making its determination, the court may consider the findings made by the arbitrators on the subject of the party's failure to appear.

If the parties previously agreed to submit fee disputes to private arbitration other than mandatory fee arbitration, a party's willful failure to appear for the fee arbitration hearing may deprive the non-appearing party of the right to obtain arbitration after fee arbitration.

## **PART 2 – RIGHTS AFTER BINDING ARBITRATION**

### **A. WHAT ARE MY RIGHTS IF THE ARBITRATION AWARD IS BINDING?**

If the arbitration award is **binding**, there is no right to a new trial in court or other arbitration. Even so, a binding award can be corrected or vacated (overturned) by a court, but only on limited grounds as set forth in Code of Civil Procedure section 1286.2 (see attached excerpts of the statute). If an award is vacated, the court may order a new arbitration with the same bar association with a new arbitration panel.

### **B. WHAT IF I AM DISSATISFIED WITH A BINDING AWARD?**

A court has the power to vacate (overturn) an arbitration award, but only on very narrow grounds. The statutory grounds for vacating an award (Code of Civil Procedure section 1286.2) are limited to the following:

- The award was procured by corruption, fraud or other undue means.
- There was corruption in any of the arbitrators.
- The rights of the party were substantially prejudiced by misconduct of an arbitrator.
- The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.
- The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefore or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title.
- An arbitrator making the award either (1) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware; or (2) was subject to disqualification upon grounds specified in Section 1281.91 but failed upon receipt of timely demand to disqualify himself or herself as required by that provision.

A court can also correct obvious mistakes in the award, such as an arithmetic miscalculation or evident mistake in the description of any person, thing or property referred to in the award.

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

#### **(1) What must I do to vacate or correct a binding arbitration award?**

You must file a **petition** in the **proper court**. Part 2B subsection (3) below describes this process.

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

- (a) If you want to correct or vacate the award, you must file a petition within 100 days after the date the arbitration award was served. The date of service

is on the proof of service attached to the award.

(b) However, if you wish to petition to vacate or correct the award but receive notice that the other side has filed a petition to confirm the award, **you no longer have 100 days to file your petition**. You must then respond by filing, in a timely manner, your opposition to the petition to confirm the award and your petition to vacate/correct the award.

### **(3) What is a petition?**

A **petition** is a legal document that tells the court what you want and why you are entitled to it. The bar association does not provide forms for these petitions. You may need a lawyer's help to prepare your petition. If you are filing the petition in small claims court, you should use Judicial Council form SC-101 [Attorney Fee Dispute (After Arbitration)]. If you are filing the petition in the superior court, you should use Judicial Council form ADR-103 [Petition After Attorney-Client Fee Dispute Arbitration Award]. You may need a lawyer's help to assist you with a petition in the superior court.

### **(4) In what court do I file my petition?**

That depends upon whether a lawsuit about the fees has already been filed.

#### **(1) YES – *lawsuit already filed.***

If a lawsuit about the fees has already been filed, you will file your petition to vacate or correct the award with that same court under the same case number.

#### **(2) NO – *lawsuit not yet filed.***

If no lawsuit about the fees has been filed, then you will file your petition with the court that has jurisdiction over the amount of the arbitration award. The small claims court is the proper court if the amount of the arbitration award is \$5,000 or less otherwise, the superior court is the proper court.

### **(5) Do I risk anything by petitioning the court to correct or vacate the award?**

Yes. If the award is vacated, after a new arbitration or court trial the award may be less favorable to you than the original arbitration award. If you lose, the court may order you to pay the prevailing party's attorney's fees and costs.

## **C. WHAT IF I AM SATISFIED WITH THE ARBITRATION AWARD AND AM OWED MONEY?**

If the arbitration award grants you an amount for fees or costs or both, you should write the other party a letter and demand payment of the award amount. If you are not paid, and you are the client, you have the right to ask the State Bar of California to assist you in enforcing the award. If you want the State Bar to assist you and:

- (1) 100 days have passed from service of the award and the award is binding or became binding if neither party filed for a trial within 30 days of service of a non-binding award, or
- (2) the award has become a final judgment following a trial after arbitration or a petition to vacate, correct or confirm the award, and
- (3) the award was served less than four years ago.

You may request a form for enforcement of the award by contacting the following office:

The State Bar of California  
Mandatory Fee Arbitration Program  
180 Howard Street, 6th Floor  
San Francisco, CA 94105  
(415) 538-2020

You will be required to complete a State Bar "Client's Request for Enforcement of an Arbitration Award" form. This form is available online at [www.calbar.ca.gov](http://www.calbar.ca.gov). The attorney on the other side will be given an opportunity to respond to your request and agree to a payment plan. He or she will also be able to ask for an opportunity to prove that he or she is not responsible for paying you or is financially unable to pay the award.

The State Bar Court may place the opposing attorney on involuntary inactive status until the award is paid. An attorney on inactive status is not entitled to practice law. (Business and Professions Code section 6203(d)). Any party may contact the State Bar at the address above for a copy of the rules that govern this procedure.

Any party who is owed money has the right to request court orders allowing that party to take property or money from the other party's paycheck, and/or bank accounts. To get those court orders, you must first obtain a judgment confirming the arbitration award.

### **(1) How do I obtain a judgment confirming the arbitration award?**

To obtain a judgment confirming the arbitration award, whether it was the result of a hearing or a stipulated agreement, you must ask (petition) for confirmation of the award with the proper court.

#### **(a) What is a petition for confirmation?**

A petition for confirmation is a legal document that tells the court what you want and why you are entitled to it. The bar association does not have forms for these petitions. You may need a lawyer's help to prepare your petition. If you are filing in small claims court, you should use Judicial Council form SC-101 [Attorney Fee Dispute (After Arbitration)]. If you are filing in the superior court, you should use Judicial Council form ADR-103 [Petition After Attorney-Client Fee Dispute Arbitration Award].

#### **(b) What is the proper court?**

That depends on the amount you are owed. If it is \$5,000 or less, the small claims court is the proper court. Otherwise, the superior court is the proper

court.

**(2) How long do I have to file my petition for confirmation?**

You must file your petition for confirmation within four years of the date the arbitration award is served on you. That date appears on the proof of service attached to the award.

**(3) 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, as a judgment creditor, you have a right to “execute” the judgment. That means you may be entitled to court orders allowing you to collect your money by garnishing the other party’s paycheck or bank accounts, and/or placing a lien on his or her property. The court has forms to use when you execute. The bar association has no such forms.

**D. WHAT IF I AM SATISFIED WITH THE ARBITRATION AWARD AND I OWE MONEY?**

If you owe money, pay it. If you do not pay the award, the other party has a right to obtain a judgment confirming the award and collect the judgment.

Attached are excerpts from the California Business and Professions Code and the California Code of Civil Procedure. The first excerpt, from the Business and Professions Code, is the law that governs fee arbitrations between attorneys and their clients, as well as the authority to request a trial following non-binding arbitration. The second excerpt, from the Code of Civil Procedure, sets forth the law on confirming, vacating or correcting arbitration awards.

You can find further information at your county law library or online at [www.calbar.ca.gov](http://www.calbar.ca.gov). You may download Judicial Council forms at: <http://www.courtinfo.ca.gov/forms>.

**WATCH THOSE DEADLINES!**

The deadlines we have explained in this notice are important. You can lose certain rights if you do not act before the deadlines pass.

(Effective June 1, 2010)

Excerpt from the California **CODE OF CIVIL PROCEDURE** Section 1285 - 1288.8

**§ 1285. Filing Petition for Court Review of Award**

Any party to an arbitration in which an award has been made may petition the court to confirm, correct or vacate the award. The petition shall name as respondents all parties to the arbitration and may name as respondents any other persons bound by the arbitration award.

**§ 1285.2. Response to Petition**

A response to a petition under this chapter may request the court to dismiss the petition or to confirm, correct or vacate the award.

**§ 1285.4. Content of Petition**

A petition under this chapter shall:

- (a) Set forth the substance of or have attached a copy of the agreement to arbitrate unless the petitioner denies the existence of such an agreement.
- (b) Set forth names of the arbitrators.
- (c) Set forth or have attached a copy of the award and the written opinion of the arbitrators, if any.

**§ 1285.6. Contents of Response**

Unless a copy thereof is set forth in or attached to the petition, a response to a petition under this chapter shall:

- (a) Set forth the substance of or have attached a copy of the agreement to arbitrate unless the respondent denies the existence of such an agreement.
- (b) Set forth the names of the arbitrators.
- (c) Set forth or have attached a copy of the award and the written opinion of the arbitrators, if any.

**§ 1285.8. Grounds on Request to Vacate or Correct**

A petition to correct or vacate an award, or a response requesting such relief, shall set forth the grounds on which the request for such relief is based.

**§ 1286. Action by Court**

If a petition or response under this chapter is duly served and filed, the court shall confirm the award as made, whether rendered in this state or another state, unless in accordance with this chapter it corrects the award and confirms it as corrected, vacates the award or dismisses the proceedings.

**§ 1286.2. Grounds for Vacating Award**

- (a) Subject to Section 1286.4, the court shall vacate the award if the court determines any of the following:
  - (1) The award was procured by corruption, fraud or other undue means.
  - (2) There was corruption in any of the arbitrators.
  - (3) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator.
  - (4) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.
  - (5) The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefore or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title.
  - (6) An arbitrator making the award either: (A) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware; or (B) was subject to disqualification upon grounds specified in Section 1281.91 but failed upon receipt of timely demand to disqualify himself or herself as required by that provision. However, this subdivision does not apply to arbitration proceedings conducted under a collective bargaining agreement between employers and employees or between their respective representatives.
- (b) Petitions to vacate an arbitration award pursuant to Section 1285 are subject to the provisions of Section 128.7.

**§ 1286.4. Requisites for Vacating Award**

The court may not vacate an award unless:

- (a) A petition or response requesting that the award be vacated has been duly served and filed; or
- (b) A petition or response requesting that the award be corrected has been duly served and filed and:
  - (1) All petitioners and respondents are before the court; or
  - (2) All petitioners and respondents have been given reasonable notice that the court will be requested at the hearing to vacate the award or that the court on its own motion has determined to vacate the award and all petitioners and respondents have been given an opportunity to show why the award should not be vacated.

**§ 1286.6. Grounds for Correcting Award**

Subject to Section 1286.8, the court, unless it vacates the award pursuant to Section 1286.2, shall correct the award and confirm it as corrected if the court determines that:

- (a) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;
- (b) The arbitrators exceeded their powers but the award may be corrected without affecting the merits of the decision upon the controversy submitted; or
- (c) The award is imperfect in a matter of form, not affecting the merits of the controversy.

#### **§ 1286.8. Requisites for Correcting Award**

The court may not correct an award unless:

- (a) A petition or response requesting that the award be corrected has been duly served and filed; or
- (b) A petition or response requesting that the award be vacated has been duly served and filed and:
  - (1) All petitioners and respondents are before the court; or
  - (2) All petitioners and respondents have been given reasonable notice that the court will be requested at the hearing to correct the award or that the court on its own motion has determined to correct the award and all petitioners and respondents have been given an opportunity to show why the award should not be corrected.

#### **§ 1287. Order for Rehearing**

If the award is vacated, the court may order a rehearing before new arbitrators. If the award is vacated on the grounds set forth in subdivision (d) or (e) of Section 1286.2, the court with the consent of the parties to the court proceeding may order a rehearing before the original arbitrators.

If the arbitration agreement requires that the award be made within a specified period of time, the rehearing may nevertheless be held and the award made within an equal period of time beginning with the date of the order for rehearing but only if the court determines that the purpose of the time limit agreed upon by the parties to the arbitration agreement will not be frustrated by the application of this provision.

#### **§ 1287.2. Dismissal of Proceedings**

The court shall dismiss the proceeding under this chapter as to any person named as a respondent if the court determines that such person was not bound by the arbitration award and was not a party to the arbitration.

#### **§ 1287.4. Judgment Confirming Award**

If an award is confirmed, judgment shall be entered in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action of the same jurisdictional classification; and it may be enforced like any other judgment of the court in which it is entered, in an action of the same jurisdictional classification.

#### **§ 1287.6. Effect of Unconfirmed or Unvacated Award**

An award that has not been confirmed or vacated has the same force and effect as a contract in writing between the parties to the arbitration.

#### **§ 1288. Time to File Petition for Court Review**

A petition to confirm an award shall be served and filed not later than four years after the date of service of a signed copy of the award on the petitioner. A petition to vacate an award or to correct an award shall be served and filed not later than 100 days after the date of the service of a signed copy of the award on the petitioner.

#### **§ 1288.2. Time for Filing Response**

A response requesting that an award be vacated or that an award be corrected shall be served and filed not later than 100 days after the date of service of a signed copy of the award upon:

- (a) The respondent if he was a party to the arbitration; or
- (b) The respondent's representative if the respondent was not a party to the arbitration.

#### **§ 1288.4. Petition at Least Ten Days After Service of Award**

No petition may be served and filed under this chapter until at least 10 days after service of the signed copy of the award upon the petitioner.

#### **§ 1288.6. No Filing While Petition for Correction Pending**

If an application is made to the arbitrators for correction of the award, a petition may not be served and filed under this chapter until the determination of that application.

#### **§ 1288.8. Date of Service of Award When Petition for Correction Filed**

If an application is made to the arbitrators for correction of the award, the date of the service of the award for the purposes of this article shall be deemed to be whichever of the following dates is the earlier:

- (a) The date of service upon the petitioner of a signed copy of the correction of the award or of the denial of the application.
- (b) The date that such application is deemed to be denied under Section 1284.

# **BUSINESS AND PROFESSIONS CODE**

## **ARTICLE 13 ARBITRATION OF ATTORNEYS' FEES**

### **§ 6200. Establishment of system and procedure; arbitration and mediation; application of article; voluntary or mandatory nature; rules; immunity of arbitrator and mediator; powers of arbitrator; confidentiality of mediation**

(a) The board of governors shall, by rule, establish, maintain, and administer a system and procedure for the arbitration, and may establish, maintain, and administer a system and procedure for mediation of disputes concerning fees, costs, or both, charged for professional services by members of the State Bar or by members of the bar of other jurisdictions. The rules may include provision for a filing fee in such amount as the board may, from time to time, determine.

(b) This article shall not apply to any of the following:

(1) Disputes where a member of the State Bar of California is also admitted to practice in another jurisdiction or where an attorney is only admitted to practice in another jurisdiction, and he or she maintains no office in the State of California, and no material portion of the services were rendered in the State of California.

(2) Claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct, except as provided in subdivision (a) of Section 6203.

(3) Disputes where the fee or cost to be paid by the client or on his or her behalf has been determined pursuant to statute or court order.

(c) Unless the client has agreed in writing to arbitration under this article of all disputes concerning fees, costs, or both, arbitration under this article shall be voluntary for a client and shall be mandatory for an attorney if commenced by a client. Mediation under this article shall be voluntary for an attorney and a client.

(d) The board of governors shall adopt rules to allow arbitration and mediation of attorney fee and cost disputes under this article to proceed under arbitration and mediation systems sponsored by local bar associations in this state. Rules of procedure promulgated by local bar associations are subject to review by the board or a committee designated by the board to insure that they provide for a fair, impartial, and speedy hearing and award.

(e) In adopting or reviewing rules of arbitration under this section the board shall provide that the panel shall include one attorney member whose area of practice is either, at the option of the client, civil law, if the attorney's representation involved civil law, or criminal law, if the attorney's representation involved criminal law, as follows:

(1) If the panel is composed of three members the panel shall include one attorney member whose area of practice is either, at the option of the client, civil or criminal law, and shall include one lay member.

(2) If the panel is composed of one member, that member shall be an attorney whose area of practice is either, at the option of the client, civil or criminal law.

(f) In any arbitration or mediation conducted pursuant to this article by the State Bar or by a local bar association, pursuant to rules of procedure approved by the board of governors, an arbitrator or mediator, as well as the arbitrating association and its directors, officers, and employees, shall have the same immunity which attaches in judicial proceedings.

(g) In the conduct of arbitrations under this article the arbitrator or arbitrators may do all of the following:

(1) Take and hear evidence pertaining to the proceeding.

(2) Administer oaths and affirmations.

(3) Issue subpoenas for the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding.

(h) Participation in mediation is a voluntary consensual process, based on direct negotiations between the attorney and his or her client, and is an extension of the negotiated settlement process. All discussions and offers of settlement are confidential and may not be disclosed in any subsequent arbitration or other proceedings. (Added by Stats. 1978, ch. 719. Amended by Stats. 1984, ch. 825; Stats. 1989, ch. 1416; Stats. 1990, ch. 483; Stats. 1990, ch. 1020; Stats. 1993, ch. 1262; Stats. 1994, ch. 479; Stats. 1996, ch. 1104; Stats. 2009, ch. 54.)

### **§ 6201. Notice to client and state bar; stay of action; right to arbitration; waiver by client**

(a) The rules adopted by the board of governors shall provide that an attorney shall forward a written notice to

the client prior to or at the time of service of summons or claim in an action against the client, or prior to or at the commencement of any other proceeding against the client under a contract between attorney and client which provides for an alternative to arbitration under this article, for recovery of fees, costs, or both. The written notice shall be in the form that the board of governors prescribes, and shall include a statement of the client's right to arbitration under this article. Failure to give this notice shall be a ground for the dismissal of the action or other proceeding. The notice shall not be required, however, prior to initiating mediation of the dispute.

The rules adopted by the board of governors shall provide that the client's failure to request arbitration within 30 days after receipt of notice from the attorney shall be deemed a waiver of the client's right to arbitration under the provisions of this article.

(b) If an attorney, or the attorney's assignee, commences an action in any court or any other proceeding and the client is entitled to maintain arbitration under this article, and the dispute is not one to which subdivision (b) of Section 6200 applies, the client may stay the action or other proceeding by serving and filing a request for arbitration in accordance with the rules established by the board of governors pursuant to subdivision (a) of Section 6200. The request for arbitration shall be served and filed prior to the filing of an answer in the action or equivalent response in the other proceeding; failure to so request arbitration prior to the filing of an answer or equivalent response shall be deemed a waiver of the client's right to arbitration under the provisions of this article if notice of the client's right to arbitration was given pursuant to subdivision (a).

(c) Upon filing and service of the request for arbitration, the action or other proceeding shall be automatically stayed until the award of the arbitrators is issued or the arbitration is otherwise terminated. The stay may be vacated in whole or in part, after a hearing duly noticed by any party or the court, if and to the extent the court finds that the matter is not appropriate for arbitration under the provisions of this article. The action or other proceeding may thereafter proceed subject to the provisions of Section 6204.

(d) A client's right to request or maintain arbitration under the provisions of this article is waived by the client commencing an action or filing any pleading seeking either of the following:

- (1) Judicial resolution of a fee dispute to which this article applies.
- (2) Affirmative relief against the attorney for damages or otherwise based upon alleged

malpractice or professional misconduct.

(e) If the client waives the right to arbitration under this article, the parties may stipulate to set aside the waiver and to proceed with arbitration. (Added by Stats. 1978, ch. 719. Amended by Stats. 1979, ch. 878; Stats. 1982, ch. 979; Stats. 1984, ch. 825; Stats. 1989, ch. 1416; Stats. 1990, ch. 483; Stats. 1993, ch. 1262; Stats. 1994, ch. 479; Stats. 1996, ch. 1104.)

#### **§ 6202. Disclosure of attorney-client communication or attorney's work product; limitation**

The provisions of Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code shall not prohibit the disclosure of any relevant communication, nor shall the provisions of Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure be construed to prohibit the disclosure of any relevant work product of the attorney in connection with: (a) an arbitration hearing or mediation pursuant to this article; (b) a trial after arbitration; or (c) judicial confirmation, correction, or vacation of an arbitration award. In no event shall such disclosure be deemed a waiver of the confidential character of such matters for any other purpose. (Added by Stats. 1978, ch. 719. Amended by Stats. 1982, ch. 979; Stats. 1984, ch. 825; Stats. 1996, ch. 1104; Stats. 2004, ch 182)

#### **§ 6203. Award; contents; damages and offset; fees and costs; finality of award; appellate fees and costs; attorney inactive status and penalties**

(a) The award shall be in writing and signed by the arbitrators concurring therein. It shall include a determination of all the questions submitted to the arbitrators, the decision of which is necessary in order to determine the controversy. The award shall not include any award to either party for costs or attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding, notwithstanding any contract between the parties providing for such an award of costs or attorney's fees. However, the filing fee paid may be allocated between the parties by the arbitrators. This section shall not preclude an award of costs or attorney's fees to either party by a court pursuant to subdivision (c) of this section or of subdivision (d) of Section 6204. The State Bar, or the local bar association delegated by the State Bar to conduct the arbitration, shall deliver to each of the parties with the award, an original declaration of service of the award. Evidence relating to claims of malpractice and professional misconduct, shall be admissible only to the extent that those claims bear upon the fees, costs, or both, to which

the attorney is entitled. The arbitrators shall not award affirmative relief, in the form of damages or offset or otherwise, for injuries underlying any such claim. Nothing in this section shall be construed to prevent the arbitrators from awarding the client a refund of unearned fees, costs, or both previously paid to the attorney.

(b) Even if the parties to the arbitration have not agreed in writing to be bound, the arbitration award shall become binding upon the passage of 30 days after service of notice of the award, unless a party has, within the 30 days, sought a trial after arbitration pursuant to Section 6204. If an action has previously been filed in any court, any petition to confirm, correct, or vacate the award shall be to the court in which the action is pending, and may be served by mail on any party who has appeared, as provided in Chapter 4 (commencing with Section 1003) of Title 14 of Part 2 of the Code of Civil Procedure; otherwise it shall be in the same manner as provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure. If no action is pending in any court, the award may be confirmed, corrected, or vacated by petition to the court having jurisdiction over the amount of the arbitration award, but otherwise in the same manner as provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.

(c) Neither party to the arbitration may recover costs or attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding with the exception of the filing fee paid pursuant to subdivision (a) of this section. However, a court confirming, correcting, or vacating an award under this section may award to the prevailing party reasonable fees and costs incurred in obtaining confirmation, correction, or vacation of the award including, if applicable, fees and costs on appeal. The party obtaining judgment confirming, correcting, or vacating the award shall be the prevailing party except that, without regard to consideration of who the prevailing party may be, if a party did not appear at the arbitration hearing in the manner provided by the rules adopted by the board of governors, that party shall not be entitled to attorney's fees or costs upon confirmation, correction, or vacation of the award.

(d) (1) In any matter arbitrated under this article in which the award is binding or has become binding by operation of law or has become a judgment either after confirmation under subdivision (c) or after a trial after arbitration under Section 6204, or in any matter mediated under this article if: (A) the award, judgment, or agreement reached after mediation includes a refund of fees or costs or both, to the client and (B) the attorney has not complied with that award, judgment, or agreement

the State Bar shall enforce the award, judgment, or agreement by placing the attorney on involuntary inactive status until the refund has been paid.

(2) The State Bar shall provide for an administrative procedure to determine whether an award, judgment, or agreement should be enforced pursuant to this subdivision. An award, judgment, or agreement shall be so enforced if:

(A) The State Bar shows that the attorney has failed to comply with a binding fee arbitration award, judgment, or agreement rendered pursuant to this article.

(B) The attorney has not proposed a payment plan acceptable to the client or the State Bar.

However, the award, judgment, or agreement shall not be so enforced if the attorney has demonstrated that he or she (i) is not personally responsible for making or ensuring payment of the refund, or (ii) is unable to pay the refund.

(3) An attorney who has failed to comply with a binding award, judgment, or agreement shall pay administrative penalties or reasonable costs, or both, as directed by the State Bar. Penalties imposed shall not exceed 20 percent of the amount to be refunded to the client or one thousand dollars (\$1,000), whichever is greater. Any penalties or costs, or both, that are not paid shall be added to the membership fee of the attorney for the next calendar year.

(4) The board shall terminate the inactive enrollment upon proof that the attorney has complied with the award, judgment or agreement and upon payment of any costs or penalties, or both, assessed as a result of the attorney's failure to comply.

(5) A request for enforcement under this subdivision shall be made within four years from the date (A) the arbitration award was mailed, (B) the judgment was entered, or (C) the date the agreement was signed. In an arbitrated matter, however, in no event shall a request be made prior to 100 days from the date of the service of a signed copy of the award. In cases where the award is appealed, a request shall not be made prior to 100 days from the date the award has become final as set forth in this section. (Added by Stats. 1978, ch. 719. Amended by Stats. 1982, ch. 979; Stats. 1984, ch. 825; Stats. 1989, ch. 1416; Stats. 1990, ch. 483; Stats. 1992, ch. 1265; Stats. 1993, ch. 1262, Stats. 1996, ch. 1104; Stats. 2009, ch. 54.)

**§ 6204. Agreement to be bound by award of arbitrator; trial after arbitration in absence of agreement; commencement of proceeding; prevailing party; effect of award and determination**

(a) The parties may agree in writing to be bound by the award of arbitrators appointed pursuant to this article at any time after the dispute over fees, costs, or both, has arisen. In the absence of such an agreement, either party shall be entitled to a trial after arbitration if sought within 30 days, pursuant to subdivisions (b) and (c), except that if either party willfully fails to appear at the arbitration hearing in the manner provided by the rules adopted by the board of governors, that party shall not be entitled to a trial after arbitration. The determination of willfulness shall be made by the court. The party who failed to appear at the arbitration shall have the burden of proving that the failure to appear was not willful. In making its determination, the court may consider any findings made by the arbitrators on the subject of a party's failure to appear.

(b) If there is an action pending, the trial after arbitration shall be initiated by filing a rejection of arbitration award and request for trial after arbitration in that action within 30 days after service of notice of the award. If the rejection of arbitration award has been filed by the plaintiff in the pending action, all defendants shall file a responsive pleading within 30 days following service upon the defendant of the rejection of arbitration award and request for trial after arbitration. If the rejection of arbitration award has been filed by the defendant in the pending action, all defendants shall file a responsive pleading within 30 days after the filing of the rejection of arbitration award and request for trial after arbitration. Service may be made by mail on any party who has appeared; otherwise service shall be made in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure. Upon service and filing of the rejection of arbitration award, any stay entered pursuant to Section 6201 shall be vacated, without the necessity of a court order.

(c) If no action is pending, the trial after arbitration shall be initiated by the commencement of an action in the court having jurisdiction over the amount of money in controversy within 30 days after service of notice of the award. After the filing of such an action, the action shall proceed in accordance with the provisions of Part 2 (commencing with Section 307) of the Code of Civil Procedure, concerning civil actions generally.

(d) The party seeking a trial after arbitration shall be the prevailing party if that party obtains a judgment more favorable than that provided by the arbitration award,

and in all other cases the other party shall be the prevailing party. The prevailing party may, in the discretion of the court, be entitled to an allowance for reasonable attorneys' fees and costs incurred in the trial after arbitration, which allowance shall be fixed by the court. In fixing the attorneys' fees, the court shall consider the award and determinations of the arbitrators, in addition to any other relevant evidence.

(e) Except as provided in this section, the award and determinations of the arbitrators shall not be admissible nor operate as collateral estoppel or res judicata in any action or proceeding. (Added by Stats. 1978, ch. 719. Amended by Stats. 1979, ch. 878; Stats. 1982, ch. 979; Stats. 1984, ch. 825; Stats. 1992, ch. 1265; Stats. 1996, ch. 1104; Stats. 1998, ch. 798; Stats. 2009, ch. 54.)

**§ 6204.5 Disqualification of arbitrator or mediator; notice of right to judicial relief**

(a) The State Bar shall provide by rule for an appropriate procedure to disqualify an arbitrator or mediator upon request of either party.

(b) The State Bar, or the local bar association delegated by the State Bar to conduct the arbitration, shall deliver a notice to the parties advising them of their rights to judicial relief subsequent to the arbitration proceeding. (Added by Stats. 1986, ch. 475; Stats. 1996, ch. 1104.)

**§ 6205. Repealed by Stats. 1996, ch. 1104 § 18**

**§ 6206. Limitation of actions; judicial resolution of arbitration dispute**

The time for filing a civil action seeking judicial resolution of a dispute subject to arbitration under this article shall be tolled from the time an arbitration is initiated in accordance with the rules adopted by the board of governors until (a) 30 days after receipt of notice of the award of the arbitrators, or (b) receipt of notice that the arbitration is otherwise terminated, whichever comes first. Arbitration may not be commenced under this article if a civil action requesting the same relief would be barred by any provision of Title 2 (commencing with section 312) of Part 2 of the Code of Civil Procedure; provided that this limitation shall not apply to a request for arbitration by a client, pursuant to the provisions of subdivision (b) of section 6201, following the filing of a civil action by the attorney. (Added by Stats. 1978, ch. 719. Amended by Stats. 1984, ch. 825.)